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APPENDIX A

No. 22-3244

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FAITH TOWNSEND)

Plaintiff-appellant,)

v.)

ROCKWELL)

AUTOMATION, INC.)

Defendant-Appellee.)

ORDER

Entered Jan 5, 2023

BEFORE: GRIFFIN, NALBANDIAN, AND
READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition are fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY THE ORDER OF THE COURT
s/Deborah S. Hunt, Clerk

APPENDIX B

NOT RECOMMENDED FOR PUBLICATION

No. 22-3244

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Issue Date Oct. 25, 2022

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OHIO

FAITH TOWNSEND, Plaintiff

v.

ROCKWELL AUTOMATION, INC.

ORDER

BEFORE:

GRIFFIN, NALBANDIAN, and READLER, Circuit
Judges.

Faith Townsend, proceeding pro se, appeals a district court's judgment dismissing a second employment-discrimination suit that she filed pursuant to the title VII of the Civil Rights Act of 1964,

42 U.S.C. §§ 2000e-5 to 2000e-17, against her former employer, Rockwell Automation, Inc. Claim preclusion was a partial basis for the dismissal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed R. App. P. 34(a).

Townsend, an African American woman, was employed by Rockwell from 1996 until 2018. During the latter half of her time at Rockwell, she worked at its technical support call center.

On October 6, 2017, Townsend filed a charge of race discrimination against Rockwell with the Ohio Civil Rights Commission (“OCRC”) based on events between 2007 and June 2017. The Equal Employment Opportunity Commission (“EEOC”), issued a right-to-sue letter a few weeks later. In 2018, Townsend filed a second OCRC charge of race discrimination against Rockwell, premised on events between June 2017 and August 2018. Townsend submitted her notice of resignation on or about August 7, 2018. The EEOC issued a right to sue letter on September 25, 2018.

In November 2018, Townsend filed her first Title VII action, raising claims of disparate treatment, hostile work environment, constructive discharge, and retaliation based on her race and gender. For the time period prior to her 2017 OCRC charge, Townsend alleged, among other things, that coworkers made racial slurs about nooses and watermelon; Rockwell failed to adequately investigate the comments and an incident in which a coworker accosted her; supervisors purchased equipment for coworkers but not her; Rockwell refused to pay her for overtime work; “incorrect statistics” had a negative effect on her pay, she did not receive equal training; a supervisor said, “I don’t know why they don’t educate their kids”; she was demoted from a team leader position; a supervisor

changed the call tracking policy to favor the rest of her team; and a supervisor appeared at her son's funeral uninvited.

For the time period after the 2017 OCRC charge, Townsend alleged that she (1) could not order new equipment after reporting discrimination to Rockwell, (2) was assigned to 20 call management queues while other team members were assigned to one, (3) was suspended due to her email blast to the entire department about unfair treatment, (4) received text messages with racial slurs, (5) was forced to resign due to unsafe work environment, and (6) was wrongfully denied unemployment compensation.

Rockwell moved for summary judgment. Townsend filed a response, newly arguing that Rockwell had cancelled her health insurance while she was on leave in 2018 and that she received lower merit increases and bonuses compared to her white male coworkers after she reported harassment.

The district court dismissed claims based on events occurring prior to October 6, 2017, as untimely and granted summary judgement to Rockwell on the remaining claims. *Townsend v. Rockwell Automation, Inc.*, No. 1:18-cv-02742, 2020 WL 95189 (N.D. Jan. 8, 2020). The court declined to consider Townsend's allegations of cancellation of health insurance and disparate pay structures because she had not raised these claims in her complaint. We affirmed the district court's judgement and decline to review Townsend's perfunctory arguments asserting pretrial error. *Townsend v. Rockwell Automation, Inc.*, F. App'x 1011, 1017 (6th Cir. 2021) (order). Specifically, she had argued that the district court erred by setting the deadline for amending the complaint before the conclusion of discovery, which had revealed additional discrimination; that Rockwell did not timely provide

discovery; and that the district court erred by not entering her evidence into the record until the entry of the judgement.

Several months later, Townsend filed a second Title VII action against Rockwell on the grounds of race and gender discrimination. As to the period preceding her 2017 OCRC charge, Rockwell reiterated her allegations regarding racial slurs, being denied equipment, being denied overtime compensation, false statistics on her performance review and supervisor's statement about educating children, changes in work policy to favor male coworkers, and her supervisor's attendance at her son's funeral. As to the period after the 2017 OCRC charge, Rockwell reiterated her allegation regarding her assignment to 20 call-management queues, her suspension, and the wrongful denial of unemployment compensation. Last, she reiterated and expanded on the allegations from her summary judgement response that Rockwell had canceled her health insurance while she was on leave and that her merit increases and bonuses had been lower than those of five white men after she reported harassment.

Rockwell moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Townsend thereafter tendered an amended complaint, additionally alleging that Rockwell had breached her employment contract to divert monetary compensation and had committed embezzlement by depriving her of her wages.

The district court dismissed the complaint on the grounds that Townsend had failed to exhaust her administrative remedies before filing her second suit, that the doctrine of claim preclusion barred the action, and that the state law claims also failed as a matter of

law. The court thereafter denied Townsend's motion for reconsideration.

On appeal, Townsend challenges the dismissal of her claims regarding the cancellation of her health insurance, disparate pay structures, breach of contract, and embezzlement. She also argues that she could not have amended the complaint in her prior suit because the deadline to do so had passed before the completion of discovery, Rockwell had withheld discovery, and the district court did not enter her evidence until after rendering a judgment. Townsend further argues that her 2017 and 2018 OCRC charges satisfy the exhaustion requirement.

We review de novo a district court's judgment dismissing a complaint pursuant to federal Rule of Civil Procedure 12(b)(6). *Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2015). We likewise review de novo a district court's application of the doctrine of claim preclusion, sometimes referred to as res judicata. See *Bragg v Flint B. of Educ.*, 570 F.3d 775, 776 (6th Cir. 2009).

"[C]laim preclusion prevents parties from raising issues that could have been raised and decided in a prior action even if they were not actually litigated." *Lucky Brand Dungarees, Inc. v Marcel Fashions Grp, Inc.*, 140 S. Ct. 1589, 1594 (2020). Claim preclusion applies when there is

- (1) A final decision on the merits by a court of competent jurisdiction;
- (2) a subsequent action between the same parties or their "privies";
- (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action;
- (4) an identity of the causes of action.

Bragg, 570 F3d at 776 (quoting *Bittinger v. Tecumseh Prods. Co.*, 123 F3d 877, 880 (6th Cir 1997))

The district court properly concluded that the claim preclusion barred Townsend's current claims. First, the grant of summary judgement to Rockwell in the prior action constituted a final judgement on the merits. See *Stemler v. Florence*, 350 F.3d 578, 587 (6th Cir. 2003) ("A summary judgement order is a decision on the merits"). Second, the current action is between the same parties-Townsend and Rockwell. Third, Townsend raises issues regarding pay discrimination, and it is of no moment that she may not have been able to discover the before the deadline to amend her complaint had passed. A plaintiff may amend a complaint after the pleading deadline with the judge's consent and upon demonstrating good cause for not seeking leave earlier. See Fed. R. Civ. P. 16(b)(f); *Garza v. Lansing Sch. Dist.*, 972 F.3d 853, 879 (6th Cir. 2020). Fourth, there is an identity of the causes of action because Townsend alleged the same discriminatory acts in both cases. See *Bragg*, 570 F.3d at 776-77. Because claim preclusion applies, we need not reach the matter of exhaustion.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

s/ Deborah S. Hunt, Clerk

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APPENDIX C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO EASTERN

DISVIION

Case No. 1:21-cv-02226

Issue date 02/22/22

Judge J. Philip Calabrese

Magistrate Judge Thomas M. Parker

FAITH TOWNSEND, plaintiff

vs.

ROCKWELL AUTOMATION INC, defendant

OPION AND ORDER

On November 22 2021, pro se Plaintiff Faith Townsend filed a complaint against Defendant Rockwell Automation, Inc. (ECF No. 1) Plaintiff alleges that the Defendant discriminated against her based on sex and race in violation of Title VII of the Civil Rights Act of 1964. Defendant moves to dismiss for failure to state a claim (ECF No. 3) In response, Plaintiff opposes (ECF No. 6) and seeks to amend her

complaint (ECF No. 7) and Defendant's motion to dismiss (ECF No. 3)

FACTUAL AND PROCEDURAL BACKGROUND

Taking the facts alleged in the complaint as true and construing them in Plaintiff's favor, as the court must on the motion before it, Plaintiff bases her claim on the following facts.

A. The Complaint

In her complaint, Plaintiff alleges that Rockwell Automation paid her substantially less than five white men in her department, even though three of them began their employment many years after she did. (ECF No. 1, PageID #1; ECF No. 16, PageID #114.)

Rockwell Automation employed Faith Townsend, an African-American woman, from 1996 to 2018. (ECF No. 1, PageID#2; ECF No. 16, PageID#114.) For ten years, she worked in the technical support call center, during which time she was promoted to senior engineer. (ECF No. 1 PageID #2; ECF No. 16, PageID #114.) Notwithstanding her promotion, she was in salary. (ECF No. 1 PageID #2; ECF No. 16, PageID #114.) In 2005, Mrs. Townsend transferred to the afterhours weekend support group and became the team lead. (ECF No. 1 PageID #2; ECF No. 16, PageID #114.) Still, she did not receive a pay increase, though one was promised. (ECF No. 1, PageID #2; ECF No 16, PageID #114.)

After her promotion, Mrs. Townsend experienced racial harassment from her five white male colleagues, which reported on multiple occasions to the human resources department. (ECF

No. 1, PageID #2; ECF No. 16, PageID#114.) She complains that she was subject to “[s]tories about hangings, nooses, guns, watermelon[s].” (ECF No. 1, PageID #2; ECF No. 16, PageID#114.) Plaintiff alleges that, follow the first report, she experienced adverse treatment in her job, including a decrease in merit incentive pay, an increase in her workload, and deprivation of certain equipment needed for her position. (ECF No. 1 PageID #2; ECF No. 16, PageID#114.) Still, in 2010, 2011, 2012, Mrs. Townsend Received good job reviews, though her pay lagged that of her colleagues. PageID #2; ECF No. 16, PageID#115.) When a new supervisor started, she made another report to the new supervisor. (ECF No. 1, PageID #2; ECF No. 16, PageID#115.)

On investigation, Plaintiff believed she was underpaid for overtime by about \$700, but her supervisor disputed that she was owed for the overtime. (ECF No. 1, PageID #2; ECF No. 16, PageID#116.) In 2013 and 2014, Plaintiff alleges that she experienced lower merit pay increases, which were lower as she stepped up her complaints. (ECF No. 1, PageID #2; ECF No. 16, PageID#116.)

In 2015, Plaintiff allege that a new supervisor took over her group and replaced her as team lead with one of her underperforming and less qualified male colleagues. (ECF No. 1, PageID #2-3; ECF No. 16, PageID#116.) According to the complaint, her supervisor dedicated her male colleagues to providing support for one specific product but required Mrs. Townsend to support as many a twenty varied products, which had a negative effect on her performance. (ECF No. 1, PageID #3; ECF No. 16, PageID#116-17.) In 2017, her supervisor allegedly made a derogatory statement that black people “do

not educate their children” in plaintiff’s presence. (ECF No. 1, PageID #3; ECF No. 16, PageID#117.)

Later in 2017, Mrs. Townsend filed a complaint with the Equal Employment Opportunity Commission and received a right-to-sue letter. (ECF No. 1, PageID #3; ECF No. 16, PageID#117.) The complaint acknowledges that Plaintiff did not file suit, due the Mrs. Townsend’s mental state following the death of her son. ECF No. 1, PageID #3; ECF No. 16, PageID#117.)

When Mrs. Townsend returned to work following the death of her son, her difficult working conditions continued. ECF No. 1, PageID #3; ECF No. 16, PageID#117.) She went to a corporate ombudsman, but did not receive an adequate response. ECF No. 1, PageID #3; ECF No. 16, PageID#117.) In February 2018, Mrs. Townsend was suspended after she emailed her entire department with complaints. ECF No. 1, PageID #3; ECF No. 16, PageID#117.) As a result, Mrs. Townsend alleges that she was under such great stress that she was hospitalized. ECF No. 1, PageID #3; ECF No. 16, PageID#118.) In retaliation, Rockwell Automation allegedly canceled her insurance while Mrs. Townsend was on medical leave. ECF No. 1, PageID #3; ECF No. 16, PageID#118.) In these circumstances, Mrs. Townsend resigned, though she alleges that Rockwell Automation reported that she had returned to work to interfere with her receipt of unemployment benefits. ECF No. 1, PageID #3; ECF No. 16, PageID#118)

Later in 2018, Plaintiff filed a lawsuit. ECF No. 1, PageID #3; ECF No. 16, PageID#118.) Information discovered in that lawsuit led Mrs.

Townsend to believe that the racial discrimination of which she complains was perpetrated not only by her five white male colleagues but also by management. ECF No. 1, PageID #4; ECF No. 16, PageID#118.) Plaintiff seeks \$10 million in damages, plus \$1 million in punitive damages. ECF No. 1, PageID #4; ECF No. 16, PageID#119.)

B. Amendment

Defendant moves to dismiss for failure to state claim. (ECF No. 3.) In response, Plaintiff timely moved to amend. (ECF No. 8.) In that amendment, Plaintiff adds two claims under State law: One for embezzlement, and one for breach of contract. (*Id.*) As for the latter, Plaintiff alleges that discrimination in violation of federal law breaches the employment agreement between the parties, (*Id.*) Additionally, she may assert this breach of contract claim under various federal statutes, including 42 U.S.C. §1658 and 1981. (*Id.*, PageID #63.)

Because Plaintiff seeks to amend her complaint as a matter of course pursuant to Rule 15(a)(1)(B) in response to Defendant's motion to dismiss, the Court Grants that motion. For that reason, the summary of the allegations in the complaint set forth above contains parallel citations to the complaint and the amendment. In the interest of judicial economy and to conserve the resources of the parties, the Court reads Defendant's motion to dismiss as applying with equal force to the amended complaint.

ANALYSIS

Rule 12(b)(6) provides that a court can dismiss a complaint if it fails to state a claim upon which relief can be granted. A Rule 12(b)(6) motion is "a test of the plaintiff's cause of action as stated in the

complaint, not a challenge to the plaintiff's factual allegations. "Golden v. City of Columbus, 404 F.3d 950, 958-59 (6th Cir. 2005). Dismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief. Craighead v. E.F. Hutton & Co., Inc., 899 F.2d 485, 489-90 (6th Cir. 1990). When determining whether the plaintiff has stated a claim upon which relief can be granted, the Court must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The plaintiff's obligation to provide the grounds for relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do" Id at 555.

Although the pleadings and documents pro se litigants file are liberally construed and held to less stringent standards than the formal pleadings of lawyers, Martin v. Overton, 391 F.3d 710, 712(6th Cir. 2004), pro se litigants are not exempt from the requirements of the Federal Rules of Civil Procedure, Wells v. Brown, 891 F.2d 591, 594 (6th Cir 1989). At this stage of the proceedings that means that even a pro se complaint must "Contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" to avoid dismissal. Iqbal, 556 U.S. at 678.

I. Failure to Exhaust Administrative Remedies

Before filing a suit under Title VII, a plaintiff must bring claims to the EEOC to provide the agency an opportunity to investigate and decide if it wants to

pursue charges on behalf of the federal government. See *EEOC v. Frank's Nursery and Crafts, Inc.*, 177 F.3d 448-56 (6th Cir. 1999). “[F]or 180 days after the filing of a charge the EEOC retains ‘exclusive jurisdiction over the subject matter of that charge[,]’ a period that is ‘crucial to the statutory scheme.’” *Id.* at 456 (quoting *EEOC v. Hearst Corp.*, 103 F.3d 462, 466 (5th Cir. 1997)).

Under the law of this Circuit, the lack of a right to sue letter does not deprive a district court of jurisdiction, but instead constitutes a condition precedent to filing suit that is curable (by receiving a right-to-sue letter) or waivable (by the parties or the Court). *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 309, (6th Cir. 2000) (NOTING IT would be “unduly harsh... to deny Plaintiff his day in court as to his ADA claim” based on not having a right to sue letter at the time he filed the complaint); *Rivers v. Barberton Bd. Of Educ.*, 143 F.3d 1029, 1032 (6th Cir. 1998) (holding a right to sue letter is a condition precedent, not a jurisdictional requirement). However, district courts retain discretion to dismiss claims or action without prejudice where a plaintiff fails to obtain a right to sue letter before filing. See *Mitchell v. Chapman*, 343 F.3d 811, 820 n.10 (6th Cir. 2003); accord *Lott v. Kmart*, No. 2:13-cv228, 2013 WL 3927617, at *2 (S.D. Ohio July 2013) (dismissing without prejudice).

Here, the complaint makes clear that Plaintiff, though proceeding pro se, knows she must obtain a right to sue letter. So far as the Court can tell, Plaintiff does not have one. Defendant has not waived the requirement that Mrs. Townsend present the claims to the agency before filing suit. Because obtaining a right-to-sue letter is a condition precedent to filing suit, and there is no record

Plaintiff received one, the Court dismisses this action for failure to exhaust administrative remedies. The Court need not decide whether that dismissal is with or without prejudice because of Defendants argument for dismissal on the basis of res judicata.

II. Res Judicata

“Res judicata” is an overarching term encompassing both the issue and claim preclusion. See *Hutcherson v. Lauderdale Cnty.*, 326 F.3d 747, 758 n.3(6th Cir. 2003)(citing Charles Ala Wright, *The Law of Federal Courts* §100A, at 722-23 (5th ed. 1994); Black’s Law Dictionary 1312 9th ed. 1999). Res judicata promotes “the finality of judgments and thereby increase certainty, discourage multiple litigation, and conserve judicial resources.” *Stolmayer v. McCarthy*, 171 F. Supp. 3d 690, 694(N.D. Ohio 2016).

Claim preclusion prevents “parties from raising issues that could have been raised and decided in prior action even if they were not actually litigated.” *Lucky Brand Dungaree, Inc. V. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589. 1954 (2020). “If a later suit advances the same claim as an earlier suit between the same parties, the earlier suit’s judgment prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted in the prior preceding.” If. (quoting *Brown v. Felsen*, 442 U.S. 127. 131(1979)).

To prevail on this defense, a party must demonstrate: (1) a prior and final decision of the merits by a court of competent jurisdiction; (2) a second action involving the same parties, or their

privities, as the first; (3) a second action arising from the claims that were or could have been litigated in the first action; and (4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action. *Martin v. JBS Techs., LLC*, 443 F. Supp 2d 962, 965 (S.D. Ohio 2006) (cleaned up). Because res judicata constitutes a defense, Defendant bears “the burden of pleading and providing and proving each element.”

II.A. Prior Litigation Between These Parties

Plaintiff’s complaint alleges that she filed a previous lawsuit in 2018. See also *Townsend v. Rockwell Automation Inc.*, No. 1:18-cv-2742 (N.D. Ohio). Although a court’s analysis on a motion to dismiss is ordinarily limited to the complaint, matters of public record, orders, items appearing in the record of the case, and exhibits attached to or made part of the complaint may also be taken into account. *Amini v. Oberlin College*, 259, F.3d 493, 502 (6th Cir. 2001). Accordingly, the Court considers the record from the earlier lawsuit between the parties both because it is a matter of public record and because Plaintiff references it in her complaint.

In the earlier litigation, the amended complaint alleged that Mrs. Townsend’s supervisor, who also named as a defendant there but is not here, ignored complaints of harassment by co-workers, failed to investigate misuse of company property by the Plaintiff’s co-workers and other violations of company policy, and treated her more unfavorably than her co-workers based on her race. Further, the amended complaint in the first lawsuit claims that Plaintiff did not receive overtime pay, had her performance reviews negatively affected by incorrect

statistics about call volumes, and was suspended for airing her grievances to all employee at her location. See generally *Townend*, no. 18-cv-2742, ECF No. 13 (Apr. 5, 2019).

In the earlier lawsuit, the court entered summary judgement in favor to the defendants. That ruling came after the parties engaged in discovery. First, the court determined that various factual claims on which Plaintiff relied for her claims were time-barred because Plaintiff failed to file suit within 90 days of receiving a right-to-suit letter, leaving her to complain only of alleged discrimination occurring after November 17, 2017. Additionally, the court concluded that Plaintiff failed to carry her burden of establishing a Title VII claim or that she was subject to a hostile work environment, constructively discharge, or subject to unlawful retaliation. *See generally Townsend*, no. 18-cv-2742, ECF No. 66 (Jan. 8, 2020). On appeal, the Sixth Circuit Affirmed. *Townsend v. Rockwell Automation, Inc.*, 852 F. App'x 1011, 1013-17(6th Cir. 2021).

II.B. Claim Preclusion

With the benefit of the prior lawsuit Mrs. Townsend brought in federal court against Rockwell Automation raising substantially similar claims based on many of the same material allegations, Defendant has an easy time carrying its burden of establishing that res judicata bars this suit. In the first suit between the parties the Northern District of Ohio reached a decision on the merits on summary judgment, which was affirmed on appeal; the parties in this action are the same as in the first action; Plaintiff's discrimination claims were litigated in the first action; and this action arises out of and relates

to the same transaction or occurrence at issue in the first suit.

Two other issues merit a brief mention, but need not detain the Court long. First, to the extent Plaintiff's amends complaint in this case alleges facts occurring after the first lawsuit, she might argue that recclusion doctrine does no bar this suit. Such an argument would fail. Res judicata bars not just any claim actually litigated, but also any claim that could have been asserted in the first action. See, e.g., *Brown v. Felsen*, 442 U.S. 127, 131 (1979) (recognizing that preclusion doctrine encompasses that "we previously available to the parties, regardless of whether they were asserted or determined in the first proceeding"). In her first suit and here, Plaintiff's claims arose from a set of facts culminating in her separation from employment with Rockwell Automation. For that reason, any cause of action Plaintiff might wish to assert could have and should have been raised in her first suit and is barre now.

Second, even if that were not the case, Plaintiff's new State-law causes of action - embezzlement and breach of contract - fail as a matter of law. In effect, her breach of contract claim restates Plaintiff's Title VII cause of action, perhaps to avoid the procedural bar of preclusion doctrine. As for embezzlement, Plaintiff attempts to state a claim in Ohio's criminal statute proscribing embezzlement. Enforcement of that statute rests with a county prosecutor, no Plaintiff. To the extent her allegations, liberally construed, state a civil claim for criminal conduct under Section 2307.60 of the Ohio Revised Code, a one-year statute of limitation applies, barring any such claim here.

CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's motion to amend (ECF No. 7) and Defendant's motion to dismiss (ECF No. 3). Further, the Court DIRECTS the Clerk to enter judgment accordingly.

SO, ORDERED.

Dated: February 22, 2022
s/ J. Philip Calabrese
United States District Judge
Northern District of Ohio

APPENDIX D

NOT RECOMMENDED FOR PUBLICATION

File Name: 21a0226n.06 No. 20-3079

UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

FAITH TOWNSEND,) ON APPEAL FROM
Plaintiff-Appellant) THE UNITED STATES
v.) DISTRICT COURT FOR
ROCKWELL) THE NORTHERN
AUTOMATION INC. et al) DISTRICT OF OHIO
Defendant-Appellee.	

ISSUED 04/27/2021

ORDER

Before: GUY, CLAY, and DONALD, Circuit Judges.

Faith Townsend, proceeding *pro se*, appeals a district court's judgment dismissing her employment-discrimination suit filed pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5 to 2000e-17. This case has been referred to a panel of the Court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Townsend, an African American, worked for many years for defendant Rockwell Automation, Inc. ("Rockwell") in its Technical Support Center on the "After Hours Team," a group

that consisted of five engineers and a supervisor.

Team members handled weekend customer service calls and worked remotely except for one shift per week in the office. Robert Rodriguez was the team's supervisor from 2014 through 2018. In June 2017, Townsend's son died, leading her to take an extended leave of absence. On October 6, 2017, while still on leave, she filed a charge of race discrimination against Rockwell with the Ohio Civil Rights Commission ("OCRC"). After an investigation, the Equal Employment Opportunity Commission ("EEOC") concluded Townsend's allegations, if proven, would not violate any antidiscrimination statutes. The EEOC nonetheless issued her a right-to-sue letter on October 17, 2017, which required

Townsend to file suit within ninety days. *See* 42 U.S.C. § 2000e-5(f)(1). Despite the notice provided in her right-to-sue letter, Townsend did not file suit until November 28, 2018, more than 9 months past the statute of limitations.

Townsend returned to work at Rockwell on the same day that she received her right-to-sue letter. In February 2018, Rodriguez sent the team an email regarding proper use of the "cell phone escalation process," a protocol requiring use of a designated cell phone to obtain assistance with difficult customer service calls and tracking of the calls by sending emails to supervisors. Townsend responded with an email blast to hundreds of Rockwell employees, alleging race discrimination at Rockwell, prior unfair application of the call-tracking policy, and assignment of a disproportionately high volume of calls to her. Rockwell suspended Townsend with pay until an internal investigation concluded that her email had

violated company policy and that there was no merit to her allegations of race discrimination, save for one improper remark made years before by a coworker. Townsend received a written warning from Rodriguez on April 11, 2018.

After the conclusion of the investigation, Rodriguez attempted to arrange Townsend's return to work. But the stress of the situation had caused Townsend to be hospitalized for a few days, prompting her to take a few weeks of paid leave, followed by additional unpaid leave. Townsend never returned to work and submitted notice of her resignation on or about August 7, 2018. Her application for state unemployment benefits was denied.

On September 13, 2018, Townsend filed a second OCRC charge of race discrimination against Rockwell. The EEOC issued a right-to-sue letter on September 25, 2018.

On November 28, 2018, Townsend filed her employment-discrimination suit, naming Rockwell and Rodriguez as defendants and raising claims of discrimination under Title VII and 42 U.S.C. § 1983 beginning in 2007. For the time period prior to her 2017 EEOC charge, Townsend alleged verbal harassment, Rockwell's failure to adequately investigate discrimination, unfounded criticism of her work, denial of payment for overtime, lack of equal training opportunities, demotion from a team leader position, a change in the call-tracking policy to favor the rest of her team, and Rodriguez's uninvited attendance at her son's funeral. For the time period after the 2017 EEOC charge, Townsend alleged that she had been: (1) unable to order new equipment since reporting discrimination to Rockwell; (2) assigned to twenty call management queues while other team

members were assigned to one; (3) suspended due to her email blast;

(4) sent text messages with racial slurs during her post-suspension leave; (5) forced to resign due to an unsafe work environment; and (6) denied unemployment compensation because Rockwell falsely reported that she had worked for two days immediately prior to her resignation. The defendants moved to dismiss the complaint, arguing, among other things, that the complaint failed to state a claim.

The district court initially granted the motion in part, dismissing the § 1983 claims and dismissing Rodriguez as a defendant. Townsend amended her complaint to withdraw her § 1983 claims. Upon further consideration, the district court dismissed as untimely Townsend's Title VII claims arising from alleged discrimination occurring prior to her 2017 EEOC charge and dismissed for lack of exhaustion her claims asserting later discrimination.

Protesting that she had exhausted her claims, Townsend filed a copy of her 2018 right-to-sue letter. After the district court reopened the case, Townsend moved the court to reconsider its dismissal of her older claims as untimely. She contended that she had been unable to file a timely lawsuit because she had suffered continuing mental trauma from the uninvited appearance of Rodriguez and others at her son's funeral. The district court denied Townsend's motion, concluding that equitable tolling was not appropriate because she had waited about a year to file suit and because emotional distress from discrimination was not unusual.

Rockwell moved for summary judgment. Upon consideration of the motion and the responsive pleadings, the district court granted summary

judgment in Rockwell's favor, concluding that Townsend's claims were time-barred, were without merit, or were not properly raised.

On appeal, Townsend reasserts her claims that Rockwell discriminated against her, subjected her to a hostile work environment, retaliated against her, and constructively discharged her. She argues that the untimeliness of her claims should be excused under the doctrines of equitable tolling and equitable estoppel. She further asserts that the district court committed errors at the case management and pretrial conferences.

In response to Rockwell's summary judgment motion, Townsend raised further claims regarding disparate merit increases and the cancellation of her health insurance. We decline to consider issues not raised in her original or amended complaint because they have not been properly pleaded. *See J.H. v. Williamson County*, 951 F.3d 709, 722 (6th Cir. 2020).

We also note that Townsend has attached an unauthorized appendix to her brief on appeal. See 6 Cir. R. 30(a)(1). We will not consider any evidence in the appendix that is not part of the district court record. *See Adams v. Holland*, 330 F.3d 398, 406 (6th Cir. 2003).

Likewise, Townsend did not raise her argument for equitable estoppel below. We grant equitable estoppel only if Plaintiff can demonstrate: "(1) misrepresentation by the party against whom estoppel is asserted; (2) reasonable reliance on the misrepresentation by the party asserting estoppel; and (3) detriment to the party asserting estoppel." *Michigan Exp., Inc. v. United States*, 374 F.3d 424, 427 (6th Cir. 2004). Townsend now argues that Rockwell misled her with a promise of a fair

investigation into her complaints and caused her not to pursue her right to sue by allowing the time to expire during the internal investigation. But Rockwell never encouraged Townsend to abandon her suit. And a promise to conduct a fair investigation is not a misrepresentation that would cause us to grant this rarely invoked procedure “reserved for truly exceptional circumstances.” *Newberry v. Serv. Experts Heating & Air Conditioning, LLC*, 806 F. App'x 348, 360 (6th Cir. 2020). Accordingly, even on the merits, we find invoking equitable estoppel for Townsend's time-barred claims to be unwarranted.

Townsend next contends that the district court committed errors at the case management and pretrial conferences. She asserts that the court erred by setting the pleading amendment cutoff date as the day of the case management conference; not permitting discussion of the deadline; holding the pretrial conference despite her receipt of discovery only eighteen hours earlier; and not discussing discovery with her. However, Townsend does not cite any authority supporting her assertion that the court erred, and she does not explain how the court's actions prejudiced her.

We find these arguments to be without merit.

We review a grant of summary judgment de novo. *Peeples v. City of Detroit*, 891 F.3d 622, 630 (6th Cir. 2018). Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Upon consideration of a motion for summary judgment, the district court's function is not to weigh the evidence and determine the truth of the

matters asserted, but to determine whether there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The movant bears the initial burden of establishing an absence of evidence to support the nonmoving party's case.

Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

The district court must view the evidence in the light most favorable to the non-moving party, who must present sufficient evidence such that a rational jury might find in its favor. *Anderson*, 477 U.S. at 255, 256-57; *see also Rorrer v. City of Stow*, 743 F.3d 1025, 1038 (6th Cir. 2014). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient." *Anderson*, 477 U.S. at 252.

To pursue a Title VII action, a plaintiff must file a timely charge of employment discrimination with the EEOC or the appropriate state agency, obtain a right-to-sue letter from the EEOC, and file a timely complaint in federal court. *See* 42 U.S.C. § 2000e-5(e)(1), (f)(1); *Peeples*, 891 F.2d at 633. Where, as here, the alleged discrimination occurred in a "deferral state," i.e., a state such as Ohio which has enacted its own employment discrimination laws, the plaintiff must file a charge within 300 days of the alleged unlawful act. *See* 42 U.S.C. § 2000e-5(e)(1); *Amini v. Oberlin Coll.*, 259 F.3d 493, 498 (6th Cir. 2001). After receiving the right-to-sue letter, the plaintiff has ninety days to file a federal complaint. *See* 42 U.S.C. § 2000e-5(f)(1).

Townsend filed her complaint within ninety days of receipt of her second right-to-sue letter. However, the complaint is timely only with respect to alleged discrimination occurring on or after November 17, 2017, i.e., within the 300-day period before

Townsend filed her second EEOC charge on September 13, 2018.

Both time limits are subject to waiver, estoppel, and equitable tolling. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 392-98 (1982) (300-day limit); *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560 (6th Cir. 2000) (ninety-day limit). Townsend argues her inability to meet the filing deadline should be excused for equitable tolling. Where the facts regarding equitable tolling “are undisputed or the district court rules as a matter of law that equitable tolling is unavailable, we apply the de novo standard of review to a district court’s refusal to apply the doctrine of equitable tolling; in all other cases, we apply the abuse of discretion standard.” *Amini*, 259 F.3d at 500 (quoting *Dunlap v. United States*, 250 F.3d 1001, 1007 n.2 (6th Cir. 2001)). Similar to our review of petitions for equitable estoppel, “this circuit has repeatedly cautioned that equitable tolling relief should be granted only sparingly.” *Id.* In consideration of this claim, we consider several factors including (1) the plaintiff’s lack of notice of the filing requirement; (2) the plaintiff’s lack of constructive knowledge of the filing requirement; (3) the plaintiff’s diligence in pursuing her rights; (4) an absence of prejudice to the defendant; and (5) the plaintiff’s reasonableness in remaining ignorant of the legal requirement. *Jackson v. United States*, 751 F.3d 712, 719 (6th Cir. 2014). Townsend claims she was unable to bring her claims in a timely fashion because the discrimination she faced in her workplace impacted her mental health. This assertion, alone, is insufficient to warrant tolling and we thus decline to equitably toll the limitations period for her claims.

Townsend's timely allegations of race discrimination are that she was assigned more calls than other team members, that she alone did not receive new equipment, and that she was suspended. In support of her claim, she provided a screen shot from her phone, allegedly showing that on October 2, 2017, she was assigned to twenty call queues while other team members were assigned to one queue. Her email blast also contained screenshots for queues on December 2, 2017.

Under Title VII, it is unlawful "for an employer . . . to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). A plaintiff may prove discrimination by direct or circumstantial evidence. *See Peebles*, 891 F.3d at 633.

The Supreme Court established a three-part framework for the allocation of proof in employment discrimination cases where there is an absence of direct evidence. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800-03 (1973). The complainant in a Title VII action carries the initial burden of establishing a prima facie case of discrimination. *Id.* at 802. To establish a prima facie case, a plaintiff must show that: (1) she is a member of a protected class;

(2) she was qualified for the position; (3) she experienced an adverse employment action; and

(4) her employer replaced her with someone outside of the protected class or treated her differently from similarly situated non-protected employees. *See id.*

Peeples, 891 F.3d at 634. Adverse actions include “a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation. “*Kuhn v. Washtenaw County*, 709 F.3d 612, 625 (6th Cir. 2013) (quoting *Michael v. Caterpillar Fin. Servs. Corp.*, 496 F.3d 584, 594 (6th Cir. 2007)).

Once the plaintiff establishes a prima facie case, the burden of production shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse action taken against the employee. *McDonnell Douglas Corp.*, 411 U.S. at 802. Thereafter, the burden shifts to the plaintiff to establish that the employer’s stated reason was a pretext for discrimination. *Id.* at 804. Although the burden of production shifts, the burden of persuasion remains at all times with the plaintiff. *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981); *Montell v. Diversified Clinical Servs., Inc.*, 757 F.3d 497, 504 (6th Cir. 2014).

We conclude that Townsend failed to demonstrate that she was subjected to an adverse action. As to the higher call volume, the October screenshot occurred before the date encompassed by the second EEOC charge. And, even when considered with the later screenshots, Townsend has only presented snapshots of days from her work schedule. The snapshots cannot, without complete data of Rockwell’s call logs, demonstrate a pattern of subjecting Townsend to a higher call volume compared to her peers. With respect to the alleged denial of new

equipment, Townsend did not identify any equipment that she had not received and merely made a conclusory allegation that other team members had new equipment in their work areas. Last, before she resigned, Rockwell placed Townsend on paid leave because she sent an email that violated her workplace's email acceptable use policy. We have held that a paid suspension does not constitute an adverse action. *See Sensabaugh v. Halliburton*, 937 F.3d 621, 629 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 1116 (2020). Therefore, the district court's grant of summary judgment on this claim was proper.

Townsend's timely allegations of a hostile work environment include the increased call volume, lack of new equipment, and text messages sent by her coworkers during her post-suspension leave. Townsend did not consider it appropriate for coworkers to text her while she was on leave, and she construed one text message as suggesting that she had been discharged by Rockwell. She newly alleges that a human resources representative at an April 2018 meeting appeared to have a gun.

To establish a Title VII hostile-work-environment claim, a plaintiff must provide evidence of harassment that "unreasonably interfer[ed] with her work performance and creat[ed] an objectively intimidating, hostile, or offensive work environment." *Grace v. USCAR*, 521 F.3d 655, 678 (6th Cir. 2008); *see also Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 362 (6th Cir. 2010). In determining whether the workplace is subjectively and objectively hostile, a court should consider the totality of the circumstances, which may include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere

offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22-23 (1993). "An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor." *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998).

Townsend has failed to establish a hostile-work-environment claim.

To begin, her allegation regarding the gun is raised for the first time on appeal and will not be considered. *See Durden*, 448 F.3d at 922. In regards to her text communications with coworkers, Townsend received two text messages between coworkers as part of a group chat.

But they were text messages that no reasonable person would find physically threatening, humiliating, or even offensive. *See Harris*, 510 U.S. at 22-23. Further, as discussed above, the allegations of an increased call volume and lack of new equipment are not supported by the evidence. Nor do these same allegations, analyzed in a hostile workplace context, represent harassment that would create "an objectively intimidating, hostile, or offensive work environment." *Grace*, 521 F.3d at 678.

Townsend also asserts that Rockwell retaliated against her after she reported discrimination within the company and filed EEOC charges. Her timely allegations of retaliation include the increased call volume, lack of new equipment, her suspension, the text messages, and Rockwell's interference with her application for unemployment benefits by issuing her

a paycheck which purportedly suggested that she had returned to work and then resigned.

To establish a prima facie case of retaliation under Title VII, the plaintiff must show that:

(1) she engaged in activity protected by Title VII; (2) the defendant knew of the protected activity;

(3) the defendant thereafter took an adverse employment action against the plaintiff; and (4) a causal connection existed between the protected activity and the adverse employment action. *Montell*, 757 F.3d at 504. Protected activities include filing an EEOC charge and opposing discriminatory practices by making complaints to management. *See* 42 U.S.C. § 2000e-3(a); *EEOC v. New Breed Logistics*, 783 F.3d 1057, 1067 (6th Cir. 2015).

Townsend engaged in protected activities by filing an EEOC charge and reporting alleged discrimination to Rockwell. But again, she has not shown that Rockwell took an adverse employment action against her: 1) her allegations of increased call volume and lack of new equipment were unsupported in the evidence, 2) none of the text messages she received from her coworkers could be construed as offensive, and 3) being placed on paid leave is not an adverse employment action. Additionally, her allegation that Rockwell interfered with her unemployment benefits is not supported by the record. Townsend was denied benefits because she resigned from her position after going on unpaid leave, rather than because Rockland simply provided her a paycheck for her last date of employment.

Finally, Townsend contends that Rockwell constructively discharged her, and she reasserts her above allegations of discrimination. Constructive

discharge occurs where the discrimination suffered by an employee was so intolerable that a reasonable person would feel compelled to resign and the employee did so. *Green v. Brennan*, 136 S. Ct. 1769, 1776-77 (2016). When determining whether a constructive discharge occurred, courts consider the same types of circumstances as for a hostile-work-environment claim. *See Goldmeier v. Allstate Ins. Co.*, 337 F.3d 629, 635 (6th Cir. 2003) (citing *Harris*, 510 U.S. at 23). Additionally, we consider whether an employee is subjected to: (1) demotion; (2) reduction in salary; (3) reduction in job responsibilities; (4) reassignment to menial or degrading work; (5) reassignment to work under a younger supervisor; (6) badgering, harassment, or humiliation by the employer calculated to encourage the employee's resignation; or (7) offers of early retirement or continued employment on terms less favorable than the employee's former status. *Logan v. Denny's, Inc.*, 259 F.3d 558, 569 (6th Cir. 2001).

Although Townsend in fact resigned, for the reasons previously stated, she has not demonstrated that she suffered discrimination that would support her claim. None of the actions she alleges, including a higher call volume, the text messages she received from coworkers, or a lack of new equipment, can be considered "so intolerable that a reasonable person would feel compelled to resign." *Green*, 136 S. Ct. at 1776-77.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

s/Deborah S. Hunt, Clerk



APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

FAITH TOWNSEND : Case No. 1:18-cv-02742
Plaintiff, :
 : OPINION & ORDER
Vs : [Resolving Doc. 33]

ROCKWELL
AUTOMATION INC. *et al.*,
Defendants.

JAMES S. GWIN, UNITED STATES DISTRICT
JUDGE: Order issued January 8, 2020

Pro se Plaintiff Faith Townsend claims her employer discriminated against her, created a hostile work environment based on her race, constructively discharged her, and retaliated against her.

Defendant Rockwell Automation (Rockwell) moves for summary judgment, claiming that Rockwell should receive judgment in its favor as a matter of law.

For the following reasons, the Court GRANTS Defendant's motion.

I. Background

This case deals with a limited employment period. Although Townsend worked for Rockwell from 1996 to 2018, she did not timely sue on claims before October 6, 2017.

Because she did not sue for earlier claims, this case deals only with claims after October 6, 2017.

Defendant Rockwell employed Plaintiff Townsend between 1996 and 2018.¹ Townsend worked at Rockwell's Technical Support Call Center during weekend shifts. The weekend team worked Saturday and Sunday from 7am-7pm, and worked an additional weekday shift. Five Rockwell employees worked on this weekend shift. Townsend says that she is the only African American in this call center group.

On October 6, 2017, Plaintiff Townsend had filed earlier charges with the Equal Employment Opportunity Commission (EEOC). In her earlier October 6, 2017, charge, Townsend alleged that she had been subjected to discrimination.² On October 17, 2017, the EEOC sent Townsend a right-to-sue letter that gave Plaintiff Townsend 90 days to file a lawsuit based on the October 6, 2017, charge.³

Townsend never filed the lawsuit within the right-to-sue time period and therefore gave up claims for events before October 6, 2017.

a. Alleged Harassment After October 6, 2017

On October 21, 2017, Townsend returned to work after taking leave following her son's death.⁴ She claims her supervisor harassed her by assigning her a disproportionately large call volume to her upon her return. Rockwell denies that Townsend received a disproportionate work load.

In February 2018, Townsend's supervisor sent an email to the five call team members. The email discussed a call tracking policy.

Townsend responded to the email by sending an email

to her team and to “hundreds of [other] Rockwell employees.” Townsend sent the email to Rockwell employees who had nothing to do with the call tracking policy. In her email to the substantial number of Rockwell employees she claimed that the call-tracking policy was biased and that her supervisor had joined the “self-proclaimed KKK.”⁵ Her email also made a colloquial reference to a female co-employee as “a beard.”

Because Townsend had copied the other Rockwell employees, Rockwell investigated whether Rockwell should discipline Townsend. Rockwell’s Ombudsman did the review. During the Ombudsman’s investigation, Rockwell put Townsend on paid administrative leave for seven weeks.⁶ Townsend’s compensation continued during the paid leave.

After the review, the Ombudsman found that Townsend’s email violated Rockwell’s email acceptable use policy.⁷ The Ombudsman also found that Townsend’s email allegations were not true except for an incident the human resources department had addressed years ago.⁸

² Doc. 33-1.

³ *Id.*

⁴ Doc. 36 at 4.

⁵ *Id.* 33-4 at 2.

⁶ Doc. 33-4 at 2.

⁷ *Id.* at 1213.

⁸ *Id.*

Rockwell gave Townsend a written warning but did not otherwise discipline Townsend or dock her pay in any way.

Rockwell scheduled Plaintiff Townsend to return from her paid leave on April 11, 2018. Townsend did not appear for work on April 11, 2018. Instead, Rockwell took short-term disability leave from April 14, 2018 to May 7, 2018. She then went on unpaid leave.⁹

Plaintiff resigned on August 7, 2018.¹⁰ Plaintiff claims, however, that Rockwell listed her final day of employment as August 8, 2018. Plaintiff's unemployment benefits claim was denied.¹¹

On September 13, 2018 Plaintiff Townsend filed a second EEOC charge, alleging discrimination and retaliation after first EEOC charge and before her August 7, 2018 resignation.¹²

She alleged that she "was subjected to different terms and conditions of employment" when she was given a greater call load than her co-workers.¹³ She also alleged that she had been demoted, and that her co-workers had sent harassing texts.¹⁴ She described her paid leave and claimed that she had been constructively discharged.¹⁵

On September 25, 2018, the EEOC sent Townsend a right-to-sue letter informing Townsend that it did not find a violation but she could sue on her own.¹⁶ She timely moved to amend her complaint to include the claims in the September 13, 2018, EEOC charge.¹⁷

⁹ Doc. 31-1 at 25.

¹⁰ Doc. 31-1, Exhibit 2019.

¹¹ Doc. 33-6

¹² Doc. 33-2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*¹⁷ Doc. 13.

a. Procedural History

On November 28, 2018, Plaintiff Townsend filed this suit.¹⁸ On May 1, 2019, the Court dismissed Townsend's claims relating to her first EEOC charge as untimely.¹⁹ The Court also dismissed the Townsend's claims postdating the October 6, 2017, EEOC charge because Townsend had not obtained a right-to-sue letter for Rockwell's alleged actions after the time period after the first EEOC charge.²⁰

On May 9, 2019, Townsend moved to reopen the case, and on June 17, 2019, the Court reopened the case "for those claims authorized by the September 25, 2018 EEOC

right-to-sue letter."²¹

On October 7, 2019, Rockwell filed the pending motion for summary judgment.²²

II. Discussion

The Court grants summary judgment if the movant demonstrates that there is no genuine dispute of material fact and she is entitled to judgment as a matter of law.²³ A genuine issue of material fact exists if a reasonable jury could return a verdict for the non-moving party.²⁴ The Court views the evidence, and draws all reasonable inferences, in the light most favorable to the non-moving party.²⁵

¹⁸ Doc. 1.

¹⁹ Doc. 17 at 3.

²⁰ *Id.*

²¹ Doc. 21.

²² Doc. 33. Plaintiff timely opposed. Doc. 36.

²³ Fed. R. Civ. P. 56(a).

²⁴ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

A. Scope of Plaintiff's Claims

Title VII of the Civil Rights Act of 1964²⁶ requires employees alleging discrimination or retaliation to file administrative charges with the EEOC before bringing litigation.²⁷ While “a Title VII plaintiff cannot bring claims in a lawsuit that were not included in his EEOC charge,” the Sixth Circuit interprets *pro se* employees’ EEOC charges liberally “so that courts may also consider claims that are reasonably related to or grow out of the factual allegations in the EEOC charge.”²⁸ “[T]he general rule in this circuit [is] that the judicial complaint must be limited to the scope of the EEOC investigation reasonably expected to grow out of the charge of discrimination.”²⁹

Plaintiff Townsend’s 2018 EEOC charge alleges racial discrimination, retaliation, and constructive discharge.³⁰ Because a claim for hostile work environment is reasonably related, the Court considers all four claims.³¹

²⁶ 42 U.S.C. § 2000e, *et seq.*

²⁷ 42 U.S.C. § 2000e-5(e)(1). *See Barrow v. City of Cleveland*, 773 F. App’x. 254, 260 (6th Cir. 2019).

²⁸ *Barrow*, 773 F. App’x at 260 (quoting *Younis v. Pinnacle Airlines, Inc.*, 610 F.3d 359, 361 (6th Cir. 2010)).

²⁹ *Id.* (alterations in original) (quoting *Dixon v. Ashcroft*, 392 F.3d 212, 217 (6th Cir. 2004)).

³⁰ Doc. 33-2.

³¹ The parties have represented to the Court that these four claims form the basis for the legal questions at issue in trial. Doc. 56, 57. .

B. Plaintiff's Barred Factual Claims

Defendant Rockwell argues that Plaintiff Townsend's claims before the September 18, 2018, charge are time-barred.³² In particular, it claims that two of Townsend's 2018 EEOC charge alleged discriminatory acts occurred in the before the 2017 EEOC charge period. Rockwell argues that, because Townsend did not timely file a lawsuit from the 2017 EEOC charge, these acts cannot be used for Townsend's claims in this lawsuit.

A party alleging a Title VII claim must file a lawsuit within ninety days after receiving an EEOC right-to-sue letter.³³ Townsend received her first EEOC right-to-sue letter in September 2017. She did not file a lawsuit within ninety days but filed this lawsuit in November 2018.³⁴ This Court held that Townsend's "Title VII claims arising from her first EEOC charge [are] untimely."³⁵

The question, then, is whether any Townsend's second charge claims refer to events involved with her 2017 charge. Rockwell argues that Townsend's claim about her increased October 2017 call volume occurred earlier in 2017.³⁶ And Rockwell says that Townsend's demotion claim occurred in 2015.³⁷

³² Doc. 33 at 9.

³³ *Mayers v. Sedgwick Claims Mgmt. Serv., Inc.*, 101 F. App'x 591, 593 (6th Cir. 2004).

³⁴ Doc. 17.

³⁵ *Id.*

³⁶ Doc. 33 at 9-10.

³⁷ *Id.* at 10.

Rockwell supports its timing argument with Townsend's deposition testimony. In that deposition, Plaintiff Townsend testified that she took on more work than her co-workers "[p]rior to [her] 2017 FMLA absence." The FMLA leave occurred in June 2017.³⁸ Townsend also stated that "[t]here was no official demotion date," but that she learned of her demotion in 2015.³⁹ Townsend's briefing does not contradict Rockwell's timing for the alleged demotion, but says Townsend had a higher October 2017 call volume.⁴⁰ To support this argument, Townsend offers only one October 22, 2017, screenshot to support her claim. The screenshot appears to be two Rockwell internal webpages.⁴¹ Townsend says that this evidence shows that she "had been assigned to 20 [phone] queues while [her co-workers] were only assigned to one."⁴² Rockwell disputes that Townsend received disproportionate call volume. Rockwell cites to Investigator Edward Blakemore's phone volume review⁴³. Blakemore found that any difference between Townsend's daily call volume was not disproportionate.⁴⁴

"A party asserting that a fact . . . is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record."⁴⁵ Plaintiff, as the non-moving party, "must show sufficient evidence to create a genuine issue of material fact."⁴⁶ "The showing of a mere scintilla of evidence is insufficient; 'there must be evidence on which the jury could

³⁸ Doc. 33 at 10 (citing Doc. 31-1 at 49).

³⁹ *Id.* (citing Doc. 31-1 at 39-40).

⁴⁰ See Docs. 36, 53.

⁴¹ Doc. 36-1, Exhibit 1014.

⁴² Doc. 36 at 4.

⁴³ Doc. 33 at 4.

⁴⁴ Doc. 33-4 at 1018.

⁴⁵ F.R.C.P. 56(c)(1).

⁴⁶ *Kleper v. First Am. Bank*, 916 F.2d 337, 342 (6th Cir. 1990).

reasonably find for the plaintiff.”⁴⁷

The record does not contain sufficient evidence to support Townsend’s theory that

the demotion and increased volume of calls occurred during the 2018 charge period. In a light most favorable to her, the screenshots show the status of the phone queues for one day. The screenshot does not show day or week workloads. The screenshot, at best, shows call loads at one time point.

Also, the screenshots do not include any indication of what search terms she used to generate the data.

Townsend give insufficient evidence to support her theory that she was subjected to any materially higher call volume during the period covered by the September 18, 2018, charge.

There is, therefore, is no genuine issue of material fact as to whether, during the 2018 charge’s period, Rockwell demoted Townsend or assigned her an increased number of calls. Townsend cannot rely on these events to form a basis for her claims in this litigation.

C. Throughout briefing for summary judgment, Townsend’s filings have alleged other factual misconduct, including the cancellation of her health insurance and disparate pay structures.⁴⁸ Townsend did not make these claims in her complaint and cannot use them.⁴⁹ Townsend cannot rely on these events to form a basis for her claims in this litigation either. Title VII Violations

⁴⁷ *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986))

⁴⁸ *See, e.g.*, Docs. 36 at 6, 53.

⁴⁹ See *Tucker v. Union of Needletrades, Indus. & Textile Emp.*, 407 F.3d 784, 788 (6th Cir. 2005).

a. Racial Discrimination and Disparate Treatment

Townsend alleges that Rockwell discriminated against her based on her race in violation of section 2000e-2(a) of Title VII.⁵⁰ Plaintiffs alleging racial discrimination may

prove their case based on direct or circumstantial evidence.⁵¹ When relying on circumstantial evidence, courts apply the three-part test articulated in *McDonnell Douglas Corp. v. Green*.⁵²

Under the *McDonnell Douglas* burden-shifting framework, a plaintiff must first show that 1) she belongs to a racial minority; 2) she suffered an adverse employment action; 3) she was qualified for the position; and 4) she was treated differently from similarly situated members of the unprotected class.⁵³ If the plaintiff proves the prima facie case, the burden shifts to the defendant to describe a non-discriminatory reason for the action.⁵⁴ If the defendant gives a non-discriminatory reason, the plaintiff has the burden of showing that the reason is pretextual. "A reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason."⁵⁵

Plaintiff Townsend provides only circumstantial evidence to support her claim of racial discrimination. She alleges that she was treated differently from her co-workers when she was assigned a greater call volume.⁵⁶ As discussed above, Townsend does not show a disproportionate call volume during the 2018 charge period.

But even if she could, this treatment does not qualify as

an adverse employment action.

“Adverse employment actions are typically marked by a ‘significant change in employment status,’ including ‘hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.’”⁵⁷ “It must be ‘more disruptive than a mere inconvenience or alteration of job responsibilities.’”⁵⁸

While Townsend’s responsibilities may have partially changed, they were not significantly different. In these circumstances, Rockwell did not take an adverse employment action by allegedly increasing Townsend’s workload.

In contrast, Rockwell’s placement of Townsend on administrative leave in February 2018 is an adverse employment action.⁵⁹ But Townsend has not demonstrated that she was treated differently from similarly situated members of the unprotected class. She provides no comparator evidence that Rockwell treated other similarly-situated employees differently. Townsend does not give evidence that other employees have sent similar emails to Rockwell’s staff who were not disciplined.

Even if Plaintiff had established the similarly-situated element, her claim of race discrimination based on that action would still fail. Rockwell offers a legitimate, non-discriminatory reason for placing Townsend on paid leave. She failed to follow proper reporting procedures and violated Rockwell’s code of conduct.⁶⁰ Townsend offers no evidence that this reason was a pretext for discrimination.

a. Hostile Work Environment

Plaintiff Townsend alleges that Rockwell subjected her to a racially hostile work environment. To succeed on

such a claim, plaintiffs must demonstrate that: (1) she belonged to a protected group; (2) she was subject to unwelcome harassment; (3) the harassment was based on race; (4) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment; and (5) the defendant knew or should have known about the harassment and failed to act.⁶¹

While a plaintiff may provide evidence of past harassment as background, she must also identify acts contributing to the harassment that occurred during the charge period.⁶² The plaintiff must also “show that the work environment was both subjectively and objectively hostile; in other words, that the plaintiff not only perceived the work environment as hostile, but that a reasonable person would have found it hostile or abusive as well.”⁶³

⁵⁰ Section 2000e-2(a) provides: “It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin....” 42 U.S.C. § 2000e-2(a)(1);

⁵¹ See *Kline v. Tenn. Valley Auth.*, 128 F.3d 337, 348 (6th Cir.1997).

⁵² See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), as later clarified by, *Tex. Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

⁵³ *Chattman v. Toho Tenax Am., Inc.*, 686 F.3d 339, 347 (6th Cir. 2012) (quoting *Alexander v. Local 496, Laborers' Int'l Union*, 177 F.3d 394, 404-05 (6th Cir. 1999)).

⁵⁴ *Id.*

⁵⁵ *Logan v. Denny's, Inc.*, 259 F.3d 558, 566-67 (6th Cir. 2001) (internal quotation omitted) (citing *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515 (1993)).

⁵⁶ Doc. 36 at 10.

⁵⁷ *Spees v. James Marine, Inc.*, 617 F.3d 380, 391 (6th Cir. 2010) (quoting *White v. Burlington N. & Santa Fe Ry. Co.*, 364 F.3d 789, 798 (6th Cir. 2004)). See also *White v. Baxter Healthcare Corp.*, 533 F.3d 381, 402 (6th Cir. 2008).

⁵⁸ *Vaughn v. Louisville Water Co.*, 302 F. App'x 337, 345 (6th Cir. 2008) (quoting *Michael v. Caterpillar Fin. Serv. Corp.*, 496 F.3d 584, 594 (6th Cir. 2007)).

⁵⁹ See *Smith v. City of Salem, Ohio*, 378 F.3d 566, 575 (6th Cir. 2004) ("Examples of adverse employment actions include . . . suspensions . . .").

Townsend's complaint alleges that she experienced harassment when her co-workers sent her texts while she was on leave.⁶⁴

This is not objectively sufficient harassment. The content of the text is not hostile.⁶⁵ And no reasonable person would find it hostile or abusive for a co-worker to message her while she was on leave.

Plaintiff has not demonstrated that she was subjected to a hostile work environment during the period identified in her 2018 charge. Plaintiff Townsend alleges that Rockwell constructively discharged her. "To demonstrate a constructive discharge, the plaintiff must show that (1) the employer deliberately created intolerable working conditions, as perceived by a reasonable person;

(2) the employer did so with the intention of forcing the employee to quit; and (3) the employee actually quit."⁶⁶

When considering the first prong of the constructive discharge inquiry, the Sixth Circuit reviews factors such as: "(1) demotion; (2) reduction in salary; (3) reduction in job responsibilities; (4) reassignment to menial or degrading work; (5) reassignment to work under a younger supervisor; (6) badgering, harassment, or humiliation by the employer calculated to encourage the employee's resignation; or (7)

⁶⁰ See Doc. 33 at 16; Doc. 33-4 at 1213.

⁶¹ See *Williams v. CSX Transp. Co.*, 643 F.3d 502, 511 (6th Cir. 2011) (citing *Moore v. KUKA Welding Sys. & Robot Corp.*, 171 F.3d 1073, 1078-79 (6th Cir.1999)).

⁶² See *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113, 122 (2002).

⁶³ *Smith v. Rock-Tenn Servs., Inc.*, 813 F.3d 298, 309 (6th Cir. 2016) (quoting *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21-22 (1993)).

⁶⁴ Doc. 13 at ¶¶ 19, 22.

⁶⁵ Doc. 36-1 (Exhibit 1018).⁶⁶ *Lee v. Cleveland Clinic Found.*, 676 F. App'x 488, 495 (6th Cir. 2017)

Constructive Discharge

offers of early retirement or continued employment on terms less favorable than the employee's former status.”⁶⁷

Plaintiff's only allegation that could support a theory that Rockwell created intolerable working conditions is the increased volume of calls assigned to her in October 2017. But as discussed above, the increase in volume occurred prior to the period the 2018 EEOC covers. Plaintiff has not shown that she was constructively discharged.

b. Retaliation

Title VII prohibits retaliatory actions against employees who oppose, report, or participate in investigations involving conduct that allegedly violates Title VII.⁶⁸ Plaintiff Townsend alleges that Rockwell retaliated against her after she filed her 2017 EEOC charge.

Claims of retaliation are analyzed using the three-part test articulated in *McDonnell Douglas Corp. v. Green*.⁶⁹ “To establish a prima facie case of retaliation a plaintiff must establish that: (1) she engaged in a protected activity; (2) her exercise of such protected activity was known by the defendant; (3) thereafter, the defendant took an action that was ‘materially adverse’ to the plaintiff; and (4) a causal connection existed between the protected activity and the materially adverse action.”⁷⁰

(quoting *Hurt v. Int’l Serv., Inc.*, 627 F. App’x 414, 420 96th Cir. 2015)).

⁶⁷ *Logan v. Denny’s, Inc.*, 259 F.3d 558, 569 (6th Cir. 2001).⁶⁸ See 42 U.S.C. § 2000e-3(a).

⁶⁹ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), as later clarified by, *Tex. Dep’t of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981); see also *rogers v. Henry Ford Health System*, 897 F.3d 763, 771 (6th Cir. 2018) (applying *McDonnell Douglas* to retaliation claim).

⁷⁰ *Rogers v. Henry Ford Health Sys.*, 897 F.3d 763, 775 (6th Cir. 2018) (internal quotations omitted) (citing *Laster*

v. City of Kalamazoo, 746 F.3d 714, 730 (6th Cir. 2014)).

To demonstrate that the defendant took a materially adverse action, “a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”⁷¹

Townsend argues that Rockwell retaliated against her by assigning her a larger call volume than her peers when she returned to work in October 2017 and by cancelling her health insurance.⁷² But as noted above,

Claims of retaliation are analyzed using the three-part test articulated in *McDonnell Douglas Corp. v. Green*.⁶⁹ “To establish a prima facie case of retaliation a plaintiff must establish that: (1) she engaged in a protected activity; (2) her exercise of such protected activity was known by the defendant; (3) thereafter, the defendant took an action that was ‘materially adverse’ to the plaintiff; and (4) a causal connection existed between the protected activity and the materially adverse action.”⁷⁰

(quoting *Hurt v. Int'l Serv., Inc.*, 627 F. App'x 414, 420 96th Cir. 2015)).

⁶⁷ *Logan v. Denny's, Inc.*, 259 F.3d 558, 569 (6th Cir. 2001).⁶⁸ See 42 U.S.C. § 2000e-3(a).

⁶⁹ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), as later clarified by, *Tex. Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981); see also *rogers v. Henry Ford Health System*, 897 F.3d 763, 771 (6th Cir. 2018) (applying *McDonnell Douglas* to retaliation claim).

⁷⁰ *Rogers v. Henry Ford Health Sys.*, 897 F.3d 763, 775 (6th Cir. 2018) (internal quotations omitted) (citing *Laster*

v. City of Kalamazoo, 746 F.3d 714, 730 (6th Cir. 2014)).

To demonstrate that the defendant took a materially adverse action, “a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”⁷¹

Townsend argues that Rockwell retaliated against her by assigning her a larger call volume than her peers when she returned to work in October 2017 and by cancelling her health insurance.⁷² But as noted above,

there is insufficient evidence to show that any change in call volume occurred during the 2018 charge period. And as Townsend did not include the health insurance claim in her complaint, she cannot rely on that allegation now. Plaintiff has therefore failed to demonstrate that Rockwell retaliated against her.

III. Conclusion

Defendant Rockwell has shown that there are no genuine disputes of material facts.

And Plaintiff Townsend has not demonstrated that Rockwell's actions during the charge period violated Title VII.

For the foregoing reasons, the Court GRANTS Defendant's motion for summary judgment.
IT IS SO ORDERED.

⁷¹ *Id.* at 776 (citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 64 (2006)).

⁷² Doc. 36 at 10.

Dated: January 8, 2020 s/James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

Statutory Provisions

Rule 60(b)(1), (2), and (3)

provides that the court may relieve a party from a final judgment and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. F.R.C.P. Rule 60(b)(1)-(b)(6). To be entitled to relief, the moving party must establish facts within one of the reasons enumerated in Rule 60(b).

Fed. Civ. R.15(C)(1)(b)

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading;

FRCP. 37(b)(2)(A)vi

(b) Failure to Comply with a Court Order.

(2) *Sanctions Sought in the District Where the Action Is Pending.*

(A) *For Not Obeying a Discovery Order*

(vi) rendering a default judgment
against the disobedient party

FRCP 56(C)

(c) PROCEDURES.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

FRCP Rule 79. Records Kept by the Clerk

(a) CIVIL DOCKET.

(1) *In General.* The clerk must keep a record known as the “civil docket” in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to be Entered.* The following items must be marked with the file number and entered chronologically in the docket:

JCUS-APR 73

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities (A)

Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Lilly Ledbetter Fair pay act 2009

An act to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

123 Stat. 5, 6 and 7

United States Code Citations

29 U.S.C. 621, 626, 633a, 791, 794 and 794a

42 U.S.C. 12111, 12117, 12203, 1981a, 2000d, 2000e, 2000e-16 and 2000e-5

42usc1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes

of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42USC1981. Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Short Title of 1991 Amendment

Pub. L. 102-166, §1, Nov. 21, 1991, 105 Stat. 1071, provided that: "This Act [enacting section 1981a of this title and sections 601 and 1201 to 1224 of Title 2, The Congress, amending this section and sections 1988, 2000e, 2000e-1, 2000e-2, 2000e-4, 2000e-5, 2000e-16, 12111, 12112, and 12209 of this title, and section 626 of Title 29, Labor; and enacting provisions set out as notes under this section and sections 2000e and 2000e-4 of this title, and section 1a-5 of Title 16, Conservation] may be cited as the 'Civil Rights Act of 1991'."

42USC1981a Damages in cases of intentional discrimination in employment

(a) Right of recovery

(1) Civil rights

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e-5, 2000e-16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e-2, 2000e-3, 2000e-16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

The Civil Rights Act of 1964, referred to in subsec. (d)(1)(A), is Pub. L. 88-352, July 2, 1964, 78 Stat.

241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(1)(B) is Pub. L. 101-336, July 26, 1990, 104 Stat. 327. Title I of the Act is classified generally to subchapter I (§12111 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

42USC1985. Conspiracy to interfere with civil rights

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen

in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. §1980.)

42USC1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of

kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. §1981.)

42USC2000e-2. Unlawful employment practices

(a) Employer practices

Pub. L. 88-352, title VII, §703, July 2, 1964, 78 Stat. 255; Pub. L. 92-261, §8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub. L. 102-166, title I, §§105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074-1076.)

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The Civil Rights Act of 1991

TITLE I - FEDERAL CIVIL RIGHTS REMEDIES

DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

(b) COMPENSATORY AND PUNITIVE DAMAGES.

"(1) DETERMINATION OF PUNITIVE DAMAGES. -

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES. - Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS. - The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party -

"(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or

more calendar weeks in the current or preceding calendar year, \$50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.

"(4) CONSTRUCTION. - Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

123 STAT. 5 PUBLIC LAW 111-2—JAN. 29, 2009

Public Law 111-2

111th Congress

An Act

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid

pursuant to the discriminatory compensation decision or other practice, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Lilly Ledbetter Fair Pay Act of 2009”.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) The Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), significantly impairs statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades. The Ledbetter decision undermines those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.
- (2) The limitation imposed by the Court on the filing of discriminatory compensation claims ignores the reality of wage discrimination and is at odds with the robust application of the civil rights laws that Congress intended.
- (3) With regard to any charge of discrimination under any law, nothing in this Act is intended to preclude or limit an aggrieved person’s right to introduce evidence of an unlawful employment practice that has occurred outside the time for filing a charge of discrimination.
- (4) Nothing in this Act is intended to change current

law treatment of when pension distributions are considered paid.

**SEC. 3. DISCRIMINATION IN COMPENSATION
BECAUSE OF RACE,
COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.**

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended by adding at the end the following:

“(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or 42 USC 2000e-5 note. Lilly Ledbetter Fair Pay Act of 2009. 42 USC 2000a note. Jan. 29, 2009 [S. 181] VerDate Nov 24 2008 06:22 Feb 03, 2009 Jkt 079139 PO 00002 Frm 00001 Fmt 6580 Sfmt 6581 E:\PUBLAW\PUBL002.123 STAT. 6 PUBLIC LAW 111-2—JAN. 29, 2009 when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

“(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the

time for filing a charge.”.

SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF AGE.

Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended—

(1) in the first sentence—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and
(B) by striking “(d)” and inserting “(d)(1)”;

(2) in the third sentence, by striking “Upon” and inserting the following:

“(2) Upon”; and (3) by adding at the end the following: “(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to a discriminatory compensation decision or other practice, or when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.”.

SEC. 5. APPLICATION TO OTHER LAWS.

(a) AMERICANS WITH DISABILITIES ACT OF 1990.—The amendments made by section 3 shall apply to claims of discrimination in compensation brought under title I and section 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e—

5). (b) REHABILITATION ACT OF 1973.—The amendments made by section 3 shall apply to claims of discrimination in compensation brought under sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794), pursuant to—(1) sections 501(g) and 504(d) of such Act (29 U.S.C. 791(g), 794(d)), respectively, which adopt the standards applied under title I of the Americans with Disabilities Act of 1990 for determining whether a violation has occurred in a complaint alleging employment discrimination; and (2) paragraphs (1) and (2) of section 505(a) of such Act (29 U.S.C. 794a(a)) (as amended by subsection (c)).

(c) CONFORMING AMENDMENTS.—

(1) REHABILITATION ACT OF 1973.—Section 505(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)) is amended—42 USC 2000e–5 note.
42 USC 2000e–5 note.

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123 STAT. 7PUBLIC LAW 111–2—JAN. 29, 2009
LEGISLATIVE HISTORY—S. 181 (H.R. 11):
CONGRESSIONAL RECORD, Vol. 155 (2009):
Jan. 15, 21, 22, considered and passed Senate.
Jan. 27, considered and passed House.
DAILY COMPILATION OF PRESIDENTIAL
DOCUMENTS (2009):

Jan. 29, Presidential remarks.

Æ (A) in paragraph (1), by inserting after “(42 U.S.C. 2000e–5 (f) through (k))” the following: “(and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation)”;

and (B) in paragraph (2), by inserting after “1964” the following: “(42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation)”. (2) CIVIL RIGHTS ACT OF 1964.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended by adding at the end the following: “(f) Section 706(e)(3) shall apply to complaints of discrimination in compensation under this section.”.

(3) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—Section 15(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(f)) is amended by striking “of section” and inserting “of sections 7(d)(3) and”. SEC. 6. EFFECTIVE DATE. This Act, and the amendments made by this Act, take effect as if enacted on May 28, 2007 and apply to all claims of discrimination in compensation under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), title I and section 503 of the Americans with Disabilities Act of 1990, and sections 501 and 504 of the Rehabilitation Act of 1973, that are pending on or after that date. Approved January 29, 2009.

APPENDIX F

The Performance and Development Review (PADR) rating, merit increase percentage and Annual Employee Incentive Program (AEIP) bonus percentage for the requested employees from the years 2009 through 2018 have been compiled from available records.

There are 3 possible PADR ratings: Needs Improvement, Achievement and Highest Achievement.

Merit increase and AEIP bonus percentages vary based on business conditions and performance as well as individual contributions. In 2009, due to business conditions and performance, no employees received a merit increase or AEIP bonus. In 2016, due to business performance, no employees received an AEIP bonus.

ROCKWELL-TOWNSEND-001732

APPENDIX F

2009

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	N/A	N/A	N/A	N/A
Steve Kikeli	N/A	N/A	N/A	N/A
Jason Bernard	N/A	N/A	N/A	N/A
Renato Santos	N/A	N/A	N/A	N/A
Daniel Aichele	N/A	N/A	N/A	N/A

2010

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	4.8	3148.41	No data found	Achievement
Steve Kikeli	4.8	3655.62	11.8	Achievement
Jason Bernard	4.8	3446.87	11.8	Achievement

APPENDIX F

Renato Santos	4.8	3134.53	11.8	Achievement
Daniel Aichele	4.8	3208.13	11.4	Achievement

ROCKWELL-TOWNSEND-
001733

2011

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	3.1	2200.00	9.3	Achievement
Steve Kikeli	2.4	2000.00	8.7	Achievement
Jason Bernard	2.7	2100.00	9.3	Achievement
Renato Santos	2.5	1750.00	9.3	Achievement
Daniel Aichele	2.5	1800.00	9.3	Achievement

APPENDIX F

2012

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	3	2200.00	4	Achievement
Steve Kikeli	2.6	2200.00	4	Achievement
Jason Bernard	3	2400.00	4	Achievement
Renato Santos	2.9	2100.00	4	Achievement
Daniel Aichele	2.8	2100.00	3.8	Achievement

ROCKWELL-TOWNSEND-001734

APPENDIX F

2013

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	2.2	1640.20	4.7	Achievement
Steve Kikeli	2.8	2493.26	4.7	Achievement
Jason Bernard	3	2448.15.	5	Achievement
Renato Santos	2.8	1619.80	4.7	Achievement
Daniel Aichele	2.8	1658.48	4.7	Achievement

2014

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	2	1523.90	5.6	Achievement
Steve Kikeli	2.8	2500.00	5.6	Achievement
Jason Bernard	5	4202.66	5.7	Achievement
Renato Santos	2	1504.94	5.6	Achievement
Daniel Aichele	2.5	2000.00	5.6	Achievement

APPENDIX F

ROCKWELL-TOWNSEND-001735

2015

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	2.5	2000.00	2.5	Data not found
Steve Kikeli	2.6	2456.13	2.5	Data not found
Jason Bernard	2.7	2382.91	2.5	Data not found
Renato Santos	2.7	2072.32	2.5	Data not found
Daniel Aichele	2.7	2134.19	2.5	Data not found

2016

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	1.5	1195.78	N/A	Achievement
Steve Kikeli	2.5	2335.60	N/A	Highest Achievement

APPENDIX F

Jason Bernard	1.6	1500.00	N/A	Achievement
Renato Santos	1.6	1261.19	N/A	Achievement
Daniel Aichele	1.7	1420.62	N/A	Achievement

ROCKWELL-TOWNSEND-001736

2017

Employee Name	% Merit Increase	Salary Increase	AEIP Rating	PADR Rating
Faith Townsend	2.7	2200.00	5.2	Achievement
Steve Kikeli	4.5	4309.18	5.7	Highest Achievement
Jason Bernard	2.7	2579.88	5.2	Achievement
Renato Santos	2.6	2122.27	5.2	Achievement
Daniel Aichele	2.9	2477.96	5.2	Achievement

2018

Employee Name	% Merit	Salary	AEIP	PADR
---------------	---------	--------	------	------

APP 76

	Increase	Increase	Rating	Rating
Faith Townsend	1.9	1662.29	5.3	
Steve Kikeli	3.5	3502.41	6.5	
Jason Bernard	1.9	1894.37	6.4	
Renato Santos	1.9	1644.16	6.4	
Daniel Aichele	1.9	1701.53	6.4	

ROCKWELL-TOWNSEND-001737

APPENDIX G

The Performance and Development Review (PADR) rating, merit increase percentage and Annual Employee Incentive Program (AEIP) bonus percentage for the requested employees from the years 2009 through 2018 have been compiled from available records.

There are 3 possible PADR ratings-Needs Improvement, Achievement and Highest Achievement.

Merit increase and AEIP bonus percentages vary based on business conditions and performance as well as individual contributions. In 2009, due to business conditions and performance, no employees received a merit increase or AEIP bonus. In 2016, due to business performance, no employees received an AEIP bonus.

ROCKWELL-TOWNSEND-001209

APPENDIX G

2009

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	N/A	N/A	N/A
Steve Kikeli	N/A	N/A	N/A
Jason Bernard	N/A	N/A	N/A
Renato Santos	N/A	N/A	N/A
Daniel Aichele	N/A	N/A	N/A

2010

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	4.8	No Data found	Achievement

APPENDIX G

Steve Kikeli	4.8	11.8	Achievement
Jason Bernard	4.8	11.8	Achievement
Renato Santos	4.8	11.8	Achievement
Daniel Aichele	4.8	11.4	Achievement

ROCKWELL-TOWNSEND-
001210

2011

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	3.1	9.3	Achievement
Steve Kikeli	2.4	8.7	Achievement
Jason Bernard	2.7	9.3	Achievement
Renato Santos	2.5	9.3	Achievement
Daniel Aichele	2.5	9.3	Achievement

APPENDIX G

2012

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	3	4	Achievement
Steve Kikeli	2.6	4	Achievement
Jason Bernard	3	4	Achievement
Renato Santos	2.9	4	Achievement
Daniel Aichele	2.8	3.8	Achievement

ROCKWELL-TOWNSEND-001211

2013

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	2.2	4.7	Achievement
Steve Kikeli	2.8	4.7	Achievement

APPENDIX G

Jason Bernard	3	5	Achievement
Renato Santos	2.8	4.7	Achievement
Daniel Aichele	2.8	4.7	Achievement

2014

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	2	5.6	Achievement
Steve Kikeli	2.8	5.6	Achievement
Jason Bernard	5	5.7	Achievement
Renato Santos	2	5.6	Achievement
Daniel Aichele	2.5	5.6	Achievement

ROCKWELL-TOWNSEND-

001212

APPENDIX G

2015

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	2.5	2.5	Data not found
Steve Kikeli	2.6	2.5	Data not found
Jason Bernard	2.7	2.5	Data not found
Renato Santos	2.7	2.5	Data not found
Daniel Aichele	2.7	2.5	Data not found

2016

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	1.5	N/A	Achievement
Steve Kikeli	2.5	N/A	Highest Achievement
Jason Bernard	1.6	N/A	Achievement

APPENDIX G

Renato Santos	1.6	N/A	Achievement
Daniel Aichele	1.7	N/A	Achievement

ROCKWELL-TOWNSEND-001213

2017

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
Faith Townsend	2.7	5.2	Achievement
Steve Kikeli	4.5	5.7	Highest Achievement
Jason Bernard	2.7	5.2	Achievement
Renato Santos	2.6	5.2	Achievement
Daniel Aichele	2.9	5.2	Achievement

2018

Employee Name	% Merit Increase	AEIP Rating	PADR Rating
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APPENDIX G

Faith Townsend	1.9	5.3	
Steve Kikeli	3.5	6.5	
Jason Bernard	1.9	6.4	
Renato Santos	1.9	6.4	
Daniel Aichele	1.9	6.4	

ROCKWELL-TOWNSEND-001214

APPENDIX H

Exhibit 700 detailing Fraud in discovery document 58

EXHIBIT 700

If year 2009 of the chart is examined states and shows no one received a merit increase. Plaintiff provided paystub from dec 2008 and 2009 that shows no merit increases resulted for the performance reviews of 2008, not as it is display on the chart of 2009.

Base salaries can be calculated from the chart by dividing the increase amount by the % of increase. Let us test the calculation using the 2017 merit announcement. The increase based on 2% is 1662.29. If divided by .02(2%) the result is 83,114.50 which is the current base salary. And when the two are added you get the next years base salary.

APPENDIX H

**ROCKWELL
AUTOMATION**

Dec 11, 2017

Dear Faith Townsend

Thank you for your contributions for our team and to our company so that we can all support our customers and drive our strategy to bring the Connected Enterprise to life. Here are the details of your merit award for year 2018:

Current Annual Base Pay:	USD 83,114.65
New Annual Base Pay:	USD 84,776.94
Amount Increase:	1,662.29
Percent Increase	2.00%

APPENDIX H

Now apply his to the year 2009 on the chart. Remember the year has been offset so you will be looking at the entry for 2010.

The increase amount is 3148.41 divided by 4.8% (.048) = 65,591.87 reported as 2010 base salary. This is not correct if it is applied to 2009. The 2009 pay stub indicate a base salary of 32.90 per hour which equal 68432 per year. This is the same as 2008 proving there was no increase for 2008 performance, not 2009.

Now take the calculated yearly salary for 2010(per the chart) 65591.87 and divide it by 52 weeks in the year, then divide it by 40 hours in 1 week you get 31.53. Then compare it to the 12/21/2009 pay stub, the hourly rate was decrease and the merit increase was calculated based on the lesser amount, reducing her merit increase. If no one received a merit increase in 2009(per the chart), where did the 4.8% come from? Since the years of the chart have been shifted, it could only come from 2008 when the plaintiff was told there was no merit increases or bonuses for anyone. It appears she was the only employee in the group that did not receive any merit or bonus.

APPENDIX H

So far with pay stubs for 2009 we have established that 68,432 is the base salary and with the paystub for 2010 showing 33.73 per hour. 32.90 divided by 33.73 Is a 2.46% merit increase.

For each year whether the merit percentage column represents the current year or the previous year the calculation of the salary increase is not correct. Based on the plaintiff's records paystubs, bank records and merit announcement letters.

The entire document is an attempt to conceal how Rockwell embezzled 2,000 to 3,000 dollars from the plaintiffs pay per year.

Lets look at 2016, The US Bank statement shows there was no bonus deposited in Dec 2022. Bonuses are always after Performance reviews in November and comes approximately 1 week before Christmas.

APPENDIX H

2008/2009	MERIT INCREASE	SALARY Increase	AEIP BONUS	PADR RATING
Faith Townsend	N/A	N/A	N/A	ACHIEVE-MENT
Steve Kikeli	N/A	N/A	N/A	ACHIEVEMENT
Jason Bernard	N/A	N/A	N/A	ACHIEVEMENT
Renato Santos	N/A	N/A	N/A	ACHIEVEMENT
Daniel Aichele	N/A	N/A	N/A	ACHIEVEMENT

APP 90

Townsend ACTUAL Base Salary 2008 68,432

2009/2010	MERIT INCREASE FROM PREVIOUS YEAR	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING	REPORTED INCREASE
Faith Townsend	4.8	3148.41	Increase calc'd at 31.39	DATA NOT FOUND	ACHIEVEMENT	65,591.87

APP 91

APPENDIX H

Steve Kikeli	4.8	3655.62	11.8	ACHIEVEMENT	76,158.75
Jason Bernard	4.8	3446.87	11.8	ACHIEVEMENT	71,809.79
Renato Santos	4.8	3134.53	11.8	ACHIEVEMENT	65,302.71
Daniel Aichele	4.8	3208.13	11.8	ACHIEVEMENT	66,836.00

**Townsend ACTUAL Base Salary 2009 Per Paystub is 68,432–End of year MERIT
INCREASE 2.58%–AEIP BONUS 0.0**

APP 92

APPENDIX H

2010/2011	MERIT INCREASE FROM PREVIOUS YEAR	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING	CURRENT SALARY
Faith Townsend	3.1	2200	2033.34	9.3	ACHIEVEMENT	68,307.16
Steve Kikeli	2.4	2000	1827.81	8.7	ACHIEVEMENT	77,986.56
Jason Bernard	2.7	2100	1938	9.3	ACHIEVEMENT	73,748.65

APP 93

APPENDIX H

Renato Santos	2.5	1750	1632.56	9.3	ACHIEVEMENT	66,935.27
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Daniel Aichele	2.5	1800	1670.9	9.3	ACHIEVEMENT	70,044.13
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Townsend ACTUAL Base Salary Per 2010 paystub is 70,262.40—End of Year MERIT INCREASE 2.1%

2011/2012	MERIT INCREASE FROM PREVIOUS YEAR	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING	
Faith Townsend	3	2200	2049.21	4	ACHIEVEMENT	70,356.37

APP 94

APPENDIX H

Steve Kikeli	2.6	2200	2027.65	4	ACHIEVEMENT	80,014.21
Jason Bernard	3	2400	2212.46	4	ACHIEVEMENT	75,961.11
Renato Santos	2.9	2100	1941.12	4	ACHIEVEMENT	68,876.39
Daniel Aichele	2.8	2100	1961.23	3.8	ACHIEVEMENT	72,005.23

Townsend's Actual calculated End of Year Merit increase for 2011 2.1%

APP 95

APPENDIX H

2012/2013	MERIT INCREASE	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING	
Faith Townsend	2.2	1640.2	1547.84	4.7	ACHIEVEMENT	71,904.21
Steve Kikeli	2.8	2493.26	2240.4	4.7	ACHIEVEMENT	82,254.61
Jason Bernard	3	2448.15	2278.83	5	ACHIEVEMENT	78,238.83
Renato Santos	2.8	1619.8	1928.54	4.7	ACHIEVEMENT	70,804.93

APP 96

APPENDIX H

Daniel Aichele	2.8	1658.48	2016.15	4.7	ACHIEVEMENT	74,021.38
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Townsend's Actual calculated End of Year Merit increase for 2012 1.9%

2013/2014	MERIT INCREASE	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING	
Faith Townsend	2	1523.9	1438.08	5.6	ACHIEVEMENT	73,342.29
Steve Kikeli	2.8	2500	2303.12	5.6	ACHIEVEMENT	84,557.74

APP 97

APPENDIX H

Jason Bernard	5	4202.66	3811.94	5.7	ACHIEVEMENT	82,150.77
Renato Santos	2	1504.94	1416.09	5.6	ACHIEVEMENT	72,221.03
Daniel Aichele	2.5	2000	1850.53	5.6	ACHIEVEMENT	75,871.91

Townsend's Actual calculated End of Year Merit increase for 2013 2.43%

APP 98

APPENDIX H

2014/2015	MERIT INCREASE	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING	
Faith Townsend	2.5	2000	1833.56	2.5	ACHIEVEMENT	75,175.85
Steve Kikeli	2.6	2456.13	2198.5	2.5	ACHIEVEMENT	86,756.24
Jason Bernard	2.7	2382.91	2218.07	2.5	ACHIEVEMENT	84,368.84
Renato Santos	2.7	2072.31	1949.97	2.5	ACHIEVEMENT	74,171.00

APP 99

APPENDIX H

Daniel Aichele	2.7	2134.19	2048.54	2.5	ACHIEVEMENT	77,920.45
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Townsend ACTUAL Base Salary Per 2014 Merit Announcement Letter 77,718.77– End of Year MERIT INCREASE 1.25%

2015/2016	MERIT INCREASE	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING
Faith Townsend	1.5	1195.76		N/A	ACHIEVEMENT

APP 100

APPENDIX H

Steve Kikeli	2.5	2335.6	N/A	ACHIEVEMENT
Jason Bernard	1.6	1500	N/A	ACHIEVEMENT
Renato Santos	1.6	1261.19	N/A	ACHIEVEMENT
Daniel Aichele	1.7	1420.62	N/A	ACHIEVEMENT

Townsend ACTUAL Base Salary for 2015 Per the 2014 End of year Merit
Announcement Letter 79,718.77

APP 101

APPENDIX H

2016/2017	MERIT INCREASE	SALARY Increase	Corrected by calculation	AEIP BONUS	PADR RATING
Faith Townsend	2.7	2200		5.2	ACHIEVEMENT
Steve Kikeli	4.5	4309.18		5.7	HIGHEST ACHIEVEMENT
Jason Bernard	2.7	2579.88		5.2	ACHIEVEMENT
Renato Santos	2.6	2122.27		5.2	ACHIEVEMENT

APP 102

2017/2018

Daniel
Aichele

2.9 2477.96

5.2 ACHIEVEMENT

Faith
Townsend

1.9 1662.29

5.3 ACHIEVEMENT

Steve
Kikeli

3.5

6.5 ACHIEVEMENT

Jason
Bernard

1.9

6.4 ACHIEVEMENT

Renato
Santos

1.9

6.4 ACHIEVEMENT

Daniel
Aichele

1.9

6.4 ACHIEVEMENT

APPENDIX I

Paycheck Information

Faith Townsend – 10026840 ENGR SR,
TECHNICAL SUPPORT, 8144, MVI - US-
Mayfield Village, Currency displayed in USD.

Funds are not available until your actual day
date. Net amount for

12-19-2008 ▼

Redisplay

Current

Year to Date

3,055.17

51,667.39

Net Distribution

APPENDIX I

Type	Account Number	Amount
Checking Account	XXXX2039	3,055.17

Choose Delivery PreferenceDetails

	Hours/Units	Rate	Current	Year to Date
Earnings				
Regular Pay	80.00	32.9056	2,632.45	68,443.70
OT Straight	24.00	32.9054	789.73	1,184.60
Overtime 2x	24.00	65.8108	1,579.46	9,608.44
Imputed Income			5.61	145.86
EIP BONUS			0.00	2,600.86
Subtotal (Gross Pay)			5,007.25	81,983.46

APPENDIX I

Paycheck Information

Faith Townsend – 10026840 ENGR SR,
TECHNICAL SUPPORT, 8144, MVI - US-
Mayfield Village, Net Amount for

01-16-2009 Redisplay **Current**

Year to Date

3,942.38

5,607.27

Net Distribution

Type	Account Number	Amount
Checking Account	XXXX2039	3,942.38

APP 106

APPENDIX

I

Choose Delivery reference

Details

	Hours/Units	Rate	Current	Year to Date
<hr/>				
Earnings				
<hr/>				
Regular Pay	80.00	32.9056		2,632.45
				5,264.90

APP 107

APPENDIX I

OT Straight	40.00	32.9055	1,316.22	
			1,316.22	
Overtime 2x	40.00	65.8110	2,632.44	
			2,632.44	
Imputed Income			6.02	12.04
<hr/>				
Subtotal (Gross Pay)			6,587.13	9,225.60
<hr/>				
Before-Tax Deductions				
<hr/>				

APP 108

APPENDIX J

USBANK

Account Number: Village, Currency 2039

P.O. Box 1800

Saint Paul, Minnesota 55101-0800

9155 TRN X ST01



000047494 1 SP

106481437051782 S

FAITH TOWNSEND 803 E 155TH ST

CLEVELAND OH 44110-3032



By Phone:

To Contact U.S. Bank

*1-800-US BANKS
(1-800-872-2657)*

Uni-Statement

Statement Period:

Nov. 25, 2009

through

Dec. 22, 2009

Page 1 of 2

APPENDIX J

Cincinnati Metro Area:

513-632-

Telecommunications Device for the Deaf:

4141

Internet:

1-800-685-

5065

usbank.com

NEWS FOR YOU

Give the perfect gift! The U.S. Bank Visa® Gift Card. Available at usbank.com/gift or any U.S. Bank branch.

Order your Annual Check Card Summary today! The summary provides a comprehensive record of all your 2009 transactions organized into categories for easy identification. It's a great tool for household budgeting, tax preparation and expense management. To order, login to your account

APPENDIX J

at usbank.com, select your check card account from "My Accounts" and click "Order 2009 Annual Account Summary" by December 31, 2009.

INFORMATION YOU SHOULD KNOW

Effective February 16, 2010, the Express Delivery Fee (for a new or replacement check or ATM card) will be \$25.

FREE CHECKING*Member FDIC*

U.S. Bank National Association

Account Number **xxxxx-2039****Account Summary**

Number of Days in Statement Period

28

Beginning Balance on Nov. 25 \$ 1,325.16

Deposits / Credits 5,731.35

Other Withdrawals 4,158.00

Checks Paid 100.00

APP 111

APPENDIX J

Ending Balance on Dec. 22, 2009 \$ 2,798.51

Deposits / Credits

<u>Date</u>	<u>Description of Transaction</u>	<u>Ref Number</u>	<u>Amount</u>
Nov. 27	Electronic Deposit	From US TREASURY	
		220	624.42
	REF=09328003863683 N	TAX	
		REFUND3111036170	
Nov. 30	Deposit	5028502285	656.54
Dec. 3	Electronic Deposit	From ADJUSTMENT	175.00

APP 112

APPENDIX J

REF=09337013746390

Y PROV CR TIME

WARNER

PROV CR

5911111111

Dec. 4 Electronic Deposit

From Rockwell

Automat

1,476.88

REF=09336009143922 N

PAYROLL

8601886104

Dec. 18 Electronic Deposit

From Rockwell

Automat

2,798.51

REF=09351008575183 N

PAYROLL

8601886104

Total

\$

Deposits/ Credits 5,731.35

APPENDIX K

Paycheck Information

Faith Townsend – 10026840 ENGR SR, TECHNICAL SUPPORT, 20507, MVI - USMayfield Village, OH-MVI.

Currency displayed in USD.

Funds are not available until your actual pay date.

	Current	Year to Date
	1,544.02	47,176.78
Type	Account Number	Amount
Checking Account	XXXX2039	1,544.02

APPENDIX K

	Hours/Units	Rate	Current	Year to Date
Earnings				
Regular Pay	80.00	31.3920	2,511.36	67,896.47
OT Straight			0.00	2,446.33
Overtime 2x			0.00	4,892.66
Imputed Income			0.00	156.52
 Subtotal (Gross Pay)			2,511.36	75,391.98
Before-Tax Deductions				
Medical			0.00	1,934.50
Dental			0.00	97.00
STD - Pretax			0.00	96.25
401K-BT PRIM 1			25.11	678.86
 Subtotal			25.11	2,806.61
Taxes				

APPENDIX K

Federal W/H Tax	319.33	10,297.11
FICA-HI	36.41	1,062.33
FICA-OASDI	155.70	4,542.38
Mayfield Villag (OH)	37.67	1,098.91
Ohio (OH)	109.26	3,296.73
Subtotal	658.37	20,297.46
After-Tax Deductions		
Imputed Income	0.00	156.52
401K-LOAN 1	283.48	4,568.36
AD&D	0.00	55.50
LTD	0.00	264.00
Café Mayfld Hts	0.00	56.49
	Current	Year to Date
United Way	0.38	10.26

APP 116

APPENDIX K

Subtotal	283.86	5,111.13
Net Amount	1,544.02	47,176.78

	Filing Status	Exemptions	Add'l Tax
Federal	Single or Married, but withhold at higher Single 4 rate		25.00
Ohio	Same as Federal	2	25.00

Pay Period Start 12-21-2009

Pay Period End 01-03-2010

Check Number 91344764
XXXXXX-9223

	Townsend, Faith
Name	1422 Som Center,
Address	Mayfield Hts, OH
Pay Frequency	Biweekly
	SSN/National ID

APP 117

APPENDIX K

44124

Employer Name RCH - Rockwell

Automation, Inc.

Employer 1201 S Second Street,

Address Milwaukee, WI 53204 - US

APP 118

APPENDIX L

USBANK

P.O. BOX 1800	Account Number
St. Paul Minnesota 55101-0800	xxxx-2039
	Statement Period:
9155 TRN X ST01	Nov 24, 2011
	Through
	Dec 22, 2011
	Page 1 of 4
	<u>To Contac U.S. Bank</u>
	By Phone: 1-800-USBANKS
	1-800-872-2657
	Cincinnati
	Metro Area: 513-632-4141


APP 119

	Telecommunications device
	For the def 1-800-685-5065
	Internet usbank.com

APPENDIX M

Paycheck Information

Faith Townsend – 10026840 ENGR SR, TECHNICAL SUPPORT, 20507, MVI · US·
Mayfield Village, OH·MVI. Currency displayed in USD. Funds are not available until
your actual pay date

Net Amount for 

[View Previous](#) [View Next](#)

Current

Year to Date

1,740.86

35,447.29

[Manage Accounts Net Distribution](#)

APP 121

Type	Account Number	Amount
Checking Account	XXXX2039	1,740.86

APPENDIX M

Choose Delivery Preference

Details

	Hours/Units	Rate	Current	Year to Date
Earnings				
Regular Pay	80.00	33.7283		2,698.26
				50,411.41
OT Straight				0.00 1,579.47
Overtime 2x				0.00 3,948.67
Lump Sum Award				0.00 855.55

APP 123

APPENDIX M

Group Term Life	5.61	106.59
-----------------	------	--------

Subtotal (Gross Pay)	2,703.87	
	56,901.69	

**Before-Tax
Deductions**

Medical	17.92	440.45
Dental	4.19	79.61
STD - Pretax	3.85	73.15
401K-BT PRIM 1	26.98	504.04

APP 125

APPENDIX N

USBANK

P.O. Box 1800

Saint Paul, Minnesota 55101-0800

9155 TRN X ST01

000044405 01 SP 106481822759662 E

FAITH TOWNSEND

803 E 155TH ST

CLEVELAND OH 44110-3032

Account Number

xxxxx-2039

Statement Period:

Nov 24, 2016

through

Dec 22, 2016

To Contact U.S. Bank

By Phone

1-800-USBANKS

(1-800-872-2657)

Cincinnati

Metro Area:

513-632-4141

APPENDIX N

Telecommunication

Device for the deaf 1-800-686-5065

Internet usbank.com

NEWS FOR YOU

Protecting your accounts is our highest priority. As a security precaution, we may close Debit Cards and ATM Cards after 12 months of inactivity. Please call us with any questions at 800-USBANKS (800-872-2657).

EASY CHECKING

U.S. Bank National Association

Account Summary

APPENDIX N

Account Number xxxxx-2039

Beginning Balance on Nov 24	\$349.5	Number of Days in Statement Period	29
Deposits / Credits	4,877.47	Average Account Balance	\$1,816.13
Card Withdrawals	- 2,963.47-		
Other Withdrawals	781.22-		
Checks Paid	25.00-		
Ending Balance on			
Dec 22, 2016\$	1,457.31		

APPENDIX N

Protection

The following account(s) are linked to your checking account for Overdraft Protection. The account(s) are listed in the order that they would be Used to transfer funds to your checking account if the available account balance is negative. If you wish to make changes to your Overdraft protection account order; log in to your account at usbank.com, visit your local-U.S. Bank branch or call U.S. Bank 24-Hour Banking at the number listed above.

1st Position: Standard Savings account ending in 5768

Deposits / Credits

<i>Date</i>	<i>Description of Transaction</i>	<i>Ref Number</i>	<i>Amount</i>
Nov 25	Electronic Deposit	From Rockwell Automat PAYROLL	\$ 1,864.97
	REF=163270178959	8601886104	

APP 129

	800N00		
Dec 9	Electronic Deposit	From Rockwell	2,975.07
		Automat	
	REF=163430007190	PAYROLL	
	740N00	8601886104	
Dec 19	Debit Purchase Ret -	On 121516 EUCLID	37.43
	VISA	OH1010191340	
	THE HOME DEPOT#	REF#	
		7461043635101019134	
		0 US1	
Total Deposits/ Credits			\$4,877.47

APPENDIX O

ROCKWELL
AUTOMATION

From: Robert Rodriguez
Sent: Monday, December 11,
2017 10:49 AM
To: Faith Townsend
Subject: Thank you for your
contributions for our team and to our company

Faith,
Here are you Merit and Incentive letters.
Congratulations!

ROCKWELL
AUTOMATION

December 11, 2017

Dear Faith Townsend

Thank you for your contributions for our team and to
our company so that we can all support our
customers and drive our strategy to bring the
Connected Enterprise to life.

Here are the details of your merit award for FY 2018:

Current Annual Base pay	83,114.65
New Annual Base Pay	84,776.94
Amount increase	1,662.29
Percent increase	2.00 %

APPENDIX O

This award will appear on the first pay period of January 2018. Please be aware that the actual amount may vary based on rounding

ROCKWELL
AUTOMATION

December 11, 2017

Dear Faith Townsend,

Rockwell Automation achieved a solid year of performance for FY 2017, thank you for your

contribution. You helped enable our company to drive our priorities and serve our customers as we bring the Connected Enterprises to life.

In recognition of your efforts, I am pleased to share your incentive for FY 2017 based on:

- AEIP AND CP&S SSB & CSM NA
- Your AEIP incentive payout is USD 4226.38

Together we succeed when each of us bring our best to our company every day, for our company and each other. Let's continue to stay focused for a successful FY 2018.

Sincerely, Robert Rodriguez, PMP
Rockwell Automation
Supervisor, Remote Technical Support
6680 Beta Drive, Mayfield Village, Ohio 44143 USA
Email: rodriguez@ra.rockwell.com
Office: 440-646-6888, Mobile: 440-804-6358

APPENDIX Q

Hi Faith,

FYI:

December 15 2014

Dear Faith Townsend,

Congratulation! I'm happy to share the results of your merit award. Your merit increase reflects your individual performance and contribution to our Growth and Performance strategy.

Here are the details:

Current Annual Base Pay:	USD 77,718.87
New Annual Base Pay:	USD 79,718.87
Amount Increase:	USD 2,000.00
Percent Increase:	USD 2.57%

This award will appear on the first pay period in January 2015. Please be aware that the actual amount may vary slightly, based on rounding.

Thank you for brining your best to help Rockwell Automation achieve another strong year. Let's continue to focus on delivering results for a successful FY 2015.

If you have any questions, please do not hesitate to contact me.

Brian Murphy, Rockwell Automation
Application Supervisor, Remote Technical Support
66680 Beta Drive, Mayfield Village, Ohio 44143
Email: bmurphy@ra.rockwell.com
Office: 440-646-7549

APPENDIX R

Phone: Service Level Metrics: Achieve a Support Center Average Max Time : 16 min with Average Range of 8 min

Start Date 10/01/2009

End Date 09/30/2009

Self Rating

Manager Rating: (3) Met

Comments

Mid-year: The center currently has an Average Max wait time of 13:39 minutes====EOY: The center achieved an average Max Waith Time of 10.3 minutes with an average range of 7.1 min.

Goal Type (1) business

Deliverables of the Goal

13.39

1.4 Goal

Phone: Service Level Metrics: Achieve an availability level = to 80% of the logged in time (12 hours).

Start Date 10/01/2009

End Date 09/30/2009

Self Rating

Manager Rating and Met

comments

lower than the group abating (3)

Mid-Year: Faith's availability was 6.26% below the group average which equates to approximately 28 minutes,====EOY: Faith's availability was 5.23% lower than the group average but was within the 10% goal. In addition, Faith is the acting Team Leader for the group which requires her at times to get engaged in other business activities.

Goal Type (1) Business

Deliverables of the Goal

APP 134

Availability is the sum of available, hold, AuxIn, AuxOut, and talk time measured on the phone switch while the engineer is logged into the ACD system, as

APPENDIX R

measured by the ACD system, engineers will log in at assigned time and answer calls in an appropriate and efficient manner. Taking approx. 50% mor calls to other group members Taking approx. 50% more calls to other group members

Achieve an availability level within 10% of the group average.

1.5 Goal

Instruct a minimum of 2 knowledge transfer sessions for the year

Start Date 10/01/2009

End Date 09/30/2009

Self Rating

Manager Rating and

Comments

Goal Type (1) business

Accomplishments of the Goal

1.6 Goal

Knowledge Centered Support (KCS) use

Start Date 10/01/2009

End Date 09/30/2009

APPENDIX S

UNKNOWN

From: Robert Rodrigues

Sent: Friday, July 14, 2017

To: Jeffery Cicero, Thabet Y. Malkawi, Mark Bizily,
Simon R. Medina, John D Redella Martin T. Hughes

Cc: RA TSC NA After Hours

Subject: Additional Staffing Schedules for July 15/16 &
July 22/23

Saturday July 15

-Jeff Cicero & Thabet Malkawi	7am-1pm
-Mark Bizily & John Redella	1pm-7pm

Sunday July 16

-Jeff Cicero & Thabet Malkawi	7am-1pm
-Mark Bizily & Simon Medina	1pm-7pm
-Marty Hughes	1pm-7pm

Saturday July 22

-Jeff Cicero & Mark Bizily	7am-1pm
-Thabet Malkawi & John Redella	1pm-7pm
-Marty Hughes	1pm-7pm

Sunday July 23

-John Redella & Thabet Malkawi	7am-1pm
-Mark Bizily & Simon Medina	1pm-7pm
-Marty Hughes	1pm-7pm

Please let me know if there are any questions.

APP 136

Regards,

Robert Rodriguez, PMP

Rockwell Automation, Supervisor, Remote Technical
Support, 6680 Beta Drive,

Mayfield Village, Ohio 44143 USA

APPENDIX S

From: Robert Rodriguez

Sent: Thursday, July 13, 2017 11:56

To: Efran Ahmad <eahmad@ra.rockwell.com> ;

Jeffery cicero <jcicero@ra.rockwell.com> Mark

bizily <mbizily@ra.rockwell.com>; Philip

Micech <pmicech@ra.rockwell.com> Joseph

Gutierrez <jgutierrez@ra.rockwell.com>;

Thabet Y. Malkawi <tmalkawi@ra.rockwell.com

>; Simon R. Medina <smedina@ra.rockwell.com

>; Martin T Hughes <

mhughes@ra.rockwell.com>

Subject: Need of coverage the weekend of July 7/8,
14/15, 21/22

Gentlemen,

Faith has taken a leave of absence and we are in need of
some coverage during these upcoming weekends, please
let me know if you are able to work any of these days, I
will try to accommodate everyone, even if splitting into
half days, Note: the expectation is that you are logged in

fielding all calls the entire time scheduled and if
necessary, engage the correct engineer if necessary.

Robert Rodriguez, PMP

Rockwell Automation

Supervisor, Remote Technical Support

6680 Beta Drive

APP 137

Mayfield Village, Ohio 44143 USA

Email: rodriguez@ra.rockwell.com

Office: 440-646-6888

Mobile: 440-804-6358

APPENDIX S

Unknown

From: Steven P. Kikeli

Sent: Saturday, October 07, 2017 7:32 AM

To: RA TSC MA After Hours

From: Robert Rodriguez

Sent: Friday, October 06, 2017 3:13 pm

To: John D. Redella <jdredella@ra.rockwell.com>; Philip J. Micech<pjmicech@ra.rockwell.com>; Martin T. Hughes<mthughes@ra.rockwell.com>; Joseph A. Gutierrez<jtgutierrez@ra.rockwell.com>; Mark Bizily<mbizily@ra.rockwell.com>; Thabet Y. Malkawi<tmalkawi@ra.rockwell.com>; Jeffery Cicero<jccicero@ra.rockwell.com>; Simon R. Medina<srmedina@ra.rockwell.com>; Jon J. Heideman<jjheideman@ra.rockwell.com>

Subject: REMINDER: Weekend Support Oct 7/8 Schedules

Importance: High

Sat Oct 7 SAP will be unavailable from Friday, October 6 beginning at 9 p.m. through Sunday, October 8 at approximately 12 p.m. Central Time.

APP 138

Name

EST. Time

John Redella

1pm-7pm

Phil Michech

1pm-7pm

Marty Hughes

7am-1pm

APPENDIX S

Jose Gutierrez	7am-1pm
Mark Bizily	7am-1pm
Thabet Jalkawi	7am-1pm

Sun Oct 8 SAP will be unavailable from Friday, October 6 beginning at 9 p.m. through Sunday, October 8 at approximately 12 p.m. Central Time.

Jeff Cicero	1pm-7pm
Simon Medina	7am-1pm
Jose Gutierrez	7am-1pm
Mark Bizily	1pm-7pm
Thabet Malkawi	7am-1pm
Phil Micech	1pm-7pm
Jon Heideman	7am-1pm

Anyone that will be working this weekend will need to use RightNow console to create service tickets (SAP planned outage). Please, make sure you can log into your RightNow account prior to this weekend. If you have any issues, please contact Kurt Helfrich. Attached is the process for creating Service Tickets in RightNow. Steve has also added a link to SharePoint site.

https://rockwellautomation.sharepoint.com/teamsCPS_CAM_RSS/NA/layouts/15/WopIFrame.aspx?sourcedoc=%7BFC805749-FFDC-4E36-8852-EDC75CEB923F%7D&file=RNT%20SOP%20V2.DOC&action=default

Best Regards.

APPENDIX S

Steve Kilili

Sr. Technical Support Engineer

Rockwell Automation

6680 Beta Dr.

Mayfield Village, OH 44143

www.rockwellautomation.com

Email: spkikeli@ra.rockwell.com

Phone: +1 440-646-3434

Unknown

From: Robert Rodriguez

Sent: Wednesday, October 18, 2017 3:59 PM

To: Philip Micech, Joseph A. Gutierrez' Jeffery
Cicero, Mark Bizily, Thabet Y. Malkawi,
Martim T Hughes, John D Redella, Simon R.
Media' Jon J. Heideman, Robert A. Cheney
Jr. .

Cc: RA TSC NA After Hours, Steven Sweiven,
Ethan Frounfelker, Coman Young Melissa
Boskocevic, Misty R. Marchica, John T.
Ciszewski

Subject: Weekend supplemental staffing schedule for
Oct 21/22, Oct 28/29, Nov 4/5, Nov 11/12

Importance: High

Thank you all again for volunteering to assist the
Afterhours team. Below is the schedule for Oct
21/22, Oct 28/29, Nov 4/5, Nov 11/12

APPENDIX S

Sat Oct 21 Afterhours Stem (Steve, Faith, Jason, Ren, Dan) will also be taking chats for Katowice this weekend.

Name	EST. Time
Phil Micech	1pm-7pm
Jose Gutierrez	1pm-7pm
Mark Bizily	7am-7pm
Thabet Malkawi	7am-1pm

Sun Oct 22 Afterhours Stem (Steve, Faith, Jason, Ren, Dan) will also be taking chats for Katowice this weekend.

Name	EST. Time
Jeff Cicero	1pm-7pm
Jose Gutierrez	7am-7pm
Mark Bizily	7am-7pm
Thabet Malkawi	7am-1pm
Marty Hughes	7am-7pm

Sat Oct 28

Name	EST. Time
John Redella	7am-1pm
Jon Heideman	1pm-7pm
Marty Hughes	7am-7pm
Jose Gutierrez	1pm-7pm
Mark Bizily	1pm-7pm
Thabet Malkawi	7am-1pm

APP 142

APPENDIX S

Oct 29

John Redella	1am-7pm
Simon Medina	7am-1pm
Robert Cheney	7am-1pm
Jose Gutierrez	1am-7pm
Mark Bizily	1am-7pm
Thabet Malkawi	7am-1pm
Phil Micech	1am-7pm
Marty Hughes	7am-1pm

Nov 4

Name	EST. Time
Phil Micech	1am-7pm
Jeff Cicero	7am-1pm
Marty Hughes	7am-1pm
Robert Cheney	7am-1pm
Jose Gutierrez	1am-7pm
Mark Bizily	1am-7pm
Thabet Malkawi	7am-1pm

Nov 5

Name	Est. Time
Jeff Cicero	1am-7pm
Simon Medina	7am-1pm
Robert Cheney	7am-1pm
Jose Gutierrez	1am-7pm
Thabet Malkawi	7am-1pm
Phil Micech	1am-7pm
Marty Hughes	7am-1pm

APPENDIX S

Nov 11

Name	EST. Time
Jon Heideman	1am-7pm
Jeff Cicero	7am-1pm
John Redella	1am-7pm
Marty Hughes	7am-1pm
Jose Gutierrez	1am-7pm
Robert Cheney	7am-1pm
Mark Bizily	1am-7pm
Thabet Malkawi	7am-1pm

Nov 12

Name	EST. Time
Jeff Cicero	1am-7pm
Simon Medina	7am-1pm
Jose Gutierrez	1am-7pm
Robert Cheney	7am-1pm
Mark Bizily	1am-7pm
Thabet Malkawi	7am-1pm
Phil Micech	1am-7pm
Marty Hughes	7am-1pm

Regards,

Robert Rodriguez, PMP
Rockwell Automation
Supervisor, Remote Technical Support
6680 Beta Drive
Mayfield Village, Ohio 44143 USA
Email: rodriguez@ra.rockwell.com
Office: 440-646-6888
Mobile: 440-804-6358

APPENDIX T

Faith Townsend

From: Steven P. Kikeli

Sent: Thursday, October 06, 2016 4:28pm

To: RA TSC NA After Hours

Cc: Robert Rodriguez, Martin T. Hughes

Subject: Steve Vacation Saturday 8-October-2016 2pm to 7pm Marty Hughes is Covering.

Thank you,

Steve Kikeli

Sr. Technical Support Engineer

Rockwell Automation

6680 Beta Drive

Mayfield Village OH 44143

www.rockwellautomation.com

Email spkikeli@ra.rockwell.com

Phone: +1 440-646-3434

APPENDIX U1

Received
Oct 10 2017
EEOC-CLFO

EEOC FORM

Charge of Discrimination This form is affected by the privacy act of 1964. See enclosed privacy act statement and other information before completing this form	Charge presented to <div style="display: flex; align-items: center;"> <div style="width: 20px; height: 20px; border: 1px solid black; margin-right: 5px;"></div> FEPA <div style="width: 20px; height: 20px; background-color: black; margin-right: 5px;"></div> EEOC </div> <div style="text-align: center;"> Agency(ies) charge No(s) 846-2017-35978 </div>		
Name (indicate Mr. Ms. Mrs.) Ms. Faith Townsend	Home phone (incl. area code) 216-647-1697	Date of birth 1961	
Street Address 803 E. 155th Street Cleveland, OH 44110		City, State and Zip Code	

APPENDIX U1

Named is the Employer, Labor Organization Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below)		
Name	No. Employees Members	Phone no. Incl. Area Code
Rockwell Automation	500 or more	(440)646-7900
Street Address		City, State and Zip Code
1201 South Second Street, Milwaukee, WI 53204		
Name	No. Employees Members	Phone no. Incl. Area Code
Street Address		City, State and Zip Code

<p>DISCRIMINATION BASE ON (check appropriate box(es))</p> <p><input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN</p> <p><input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFO.</p> <p><input type="checkbox"/> OTHER</p>	<p>Date(s)</p> <p>DISCRIMINATION TOOK PLACE</p> <p>Earliest Latest</p> <p>01/02/2017 08/24/2017</p>
<p>THE PARTICULARS ARE (If additional paper is needed attach extra sheet(s))</p> <p>On or about April 1, 1996 I was hired by Rockwell Automation (Respondent) as an Engineering Analyst.</p> <p>On or about January of 2017 my supervisor made a comment about why don't black people educate their kids. On or about April of 2017 during a performance review with my Supervisor, I complained about racial tension within the team and nothing has been done.</p> <p>I believe I am being discriminated against because of my race (African American), in violation of Title VII of the Civil Rights Act of 1964, as amended</p>	

APPENDIX U1

<p>I want this charge filed with the EEOC and the State or Local Agency if any. I will advise the agencies if I change my address or phone number and will cooperate fully with them in the processing of my charge in accordance with their procedures.</p>	<p>Notary – When necessary for State and Local Agency Requirements</p>
<p>I declare under penalty of perjury that the above is true and correct.</p> <p><u>10/6/2017 s/Faith Townsend</u></p>	

APPENDIX U2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
INTAKE QUESTIONNAIRE

RECEIVED SEP 07 2017 EEOC- CLFO
--

Please immediately complete the entire form and return it to the U.S. Equal Opportunity Commission ("EEOC"). REMEMBER, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. Answer all question as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "Unknown". If a question is not applicable, write n/a. Please print.

1. Person Information

Last Name: Townsend First Name: Faith Mi:
Street or Mailing Address: 803 E. 155th
City: Cleveland County: Cuyahoga State: Ohio Zip: 44110
Phone Numbers Home: 216-647-1697 Work: 440-646-6856

APPENDIX U2

Cell: 216-647-1697

Email:

Date of Birth: 8/11/1961 sex: Male ☐ Female ☒ Do you have a disability? Yes ☒ No ☐Please answer each of the next three questions. I. Are you Hispanic or Latino ☐ Yes ☒ NoII. What is your race? Please choose all that apply. ☐ American Indian or Alaska Native☐ Asian ☐ White ☒ Black or African American ☐ Native Hawaiian or other PacificIslander. III. What is your National Origin? (Country of origin or ancestry)? USA

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You.

Name: Dana Townsend Relationship: DaughterAddress: 803 E. 155 City: Cleveland State: OH Zip Code: 44110Home Phone: (216) 3362 Other Phone: ()- -

2. I believe I was discriminated against by the following organizations:

☒ Employer ☐ Union ☐ Employment Agency ☐ Other (Please Specify)

Organization Contact Information (if the organization is an employer provide the address where you actually worked. If you worked from home, check here ☐ and provide the address of the office to which you reported). If more than one employer is involved attach additional sheets.

APPENDIX U2

SIDE 1A

If Job Applicant, What Date Did You Apply For The Job _____ Job Title Applied For _____

4. What is the reason (basis) for you claim of employment discrimination?

FOR EXAMPLE, If you feel you were treated worse than someone else because of race you should check the box next to race. If you feel you were treated worse for several reasons such as your sex, religion, and natural origin you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination and a negative action was threatened or taken you should check the box next to Retaliation.

☒ Race ☐ Sex ☐ Age ☐ Disability ☐ Natural Origin
 Religion ☐ Retaliation ☐ Pregnancy

Color (typically a difference in skin shade within the same race) ☐ Genetic Information,
 choose which type(s) of genetic information is involved:

- ☐ i. Genetic testing ☐ ii. Family medical history ☐ iii. genetic service (genetic service means counseling education or testing)

APPENDIX U2

Organization Name: Rockwell Automation

Address: 6680 Beta Drive County: Cuyahoga

City: Mayfield Village State: OH Zip: 44124 Phone: () _____

Type of Business: Automation Job Location if different from Org. Address: _____

Human Resource Director or Owner: _____

Number of Employees at all Locations. Please check one.

☐ Fewer than 15 ☐ 15-100 ☐ 101-200 ☐ 201-500 ☒ More than 500

3. **Your Employment Date** (Complete as many items as you can) Are you a Federal Employee? ☐ Yes ☒ No

Date Hired: April 1, 1996

Job Title At Hire: Engineering Analyst

Pay Rate When Hired: 36K per year

Last or Current Pay Rate: 72K per year

Job Title at Time of Alleged Discrimination: Sr. Eng. Analyst Date Quit or Discharged: _____

Name and Title of Immediate Supervisor : Robert Rodriguez/Supervisor

If you checked color, religion or national origin, please specify: _____

APPENDIX U2

Other reason (basis) for discrimination (Explain) _____

5. What happened to you that you believe was discriminatory? Include the dates of harm, the action(s) and the name (s) and (titles) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.

(Example: 10/02/06 discharged by Mr. John Sota, Production Supervisor)

A.) <u>11/2016</u>	Action: <i>Made negative statement about all black people. Attempted to create circumstances with would cause my termination</i>
Name and Title of Person(s) responsible: <i>Robert Rodriguez/Supervisor</i>	

6. Why do you believe these actions were discriminatory? Please attach addition pages if needed. *Because of the alliance with other employees that have made racial remarks which*

were reported to HR in the past. Supervisors and department has a history of racial problems and statements he has made.

7. What reasons were given to you for the acts you consider discriminatory? By whom? His or Her Job Title? *I was told that the coach that was assigned to me could be difficult but the*

APPENDIX U2

proof I provided that she was deliberate savataging. I was refused a coach reassignment, 2 wks after this coach was on eternity leave 2 other coaches looked over previous work and certified me.

8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if know and if it relates to you claim of discrimination. For the sex of each person: and so on. Use additional sheet if needed.

Of the persons in the same or similar situation as you, who was treated than you?

A. <u>Full Name</u> <i>Luella Westerfield</i>	<u>Race, sex, age, national origin, religion, or disability</u> <i>Black/African American</i>	<u>Job Title</u> <i>Sr. Eng. Analyst</i>
<u>Description of Treatment:</u> <i>Fired without cause</i>		

B. Full Name <i>Ester Hovis</i>	<u>Race, sex, age, national origin, religion, or disability</u> <i>Black</i>	<u>Job Title</u> <i>Eng. Analyst</i>
<u>Description of Treatment:</u> Demoted without cause		

APPENDIX U2

Side 1B

My situation has been ongoing for 8 yrs. In 2009 I reported an incident to the HR department. Since then I was slowly demoted from my Team lead position. No Supervisor would interact with me as the team Leader. Then finally the title was changed to team coordination and the person whom I replaced as team leader was returned essentially to the team lead position.

The original incident centered around 2 employee that mad direct racial comments 1 of which I have in an email. Since I reported to HR the following has occurred.

- 1. Received email that all merit pay increases would be base on performance, but when my performance was best in my department, I was asked by my supervisor Brian "Do you want me to take from the other white men's increase and give it to you?"*
- 2. Paid a different rate than anyone else for the same job/special task.*
- 3. Ignored by H.R. when I expressed not feeling safe in special event with my co-workers*

4. *Deliberately left out of equipment orders and more.*

APPENDIX U2

Of the persons in the same or similar situation as you, who was treated worse than you?

A. <u>Full Name</u>	<u>Race, sex, age, national origin, religion, or disability</u>	<u>Job Title</u>
<u>Description of Treatment</u>		
B. <u>Full Name</u>	<u>Race, sex, age, national origin, religion, or disability</u>	<u>Job Title</u>
<u>Description of Treatment</u>		

Of the persons in the same or similar situation as you who was treated the same as you?

A. <u>Full Name</u>	<u>Race, sex, age, national origin, religion, or disability</u>	<u>Job Title</u>
---------------------	---	------------------

<u>Description of Treatment</u>		
<u>B. Full Name</u>	<u>Race, sex, age, national origin, religion, or disability</u>	<u>Job Title</u>
<u>Description of Treatment</u>		

APPENDIX U2

Answer questions 9-11 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.

9. Please check all that apply

- ☐ Yes, I have a disability
☐ I do not have a disability now but I did have one
☐ No disability but the organization treats me as If I am disabled

10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g. lifting , sleeping, breathing, walking or taking care of yourself, working, etc.)

11. Do you use medication, medical equipment, or anything else to lessen or eliminate the symptoms of your disability?

☐es ☐o

APPENDIX U2

If "Yes" what medication, medical equipment or other assistance do you use?

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

☐ Yes ☐ No

If "yes" what did you ask? _____ How did you ask? (verbally or in writing)?

Who did you ask? (Provide full name and job title of person)

Describe the changes or assistance that you asked for

How did your employer respond to your request?

APPENDIX U2

SIDE 2A

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response.)

Full Name <i>Gary Walker</i>	Job Title <i>Sr. Eng. Analyst</i>	Address and Phone
What do you believe this person will tell us? <i>As much as possible, He knows there was a racial incident and since then I was demoted</i>		

14. Have you filed a charge previously in this matter with the EEOC or another agency?

☐ Yes ☒ No

15. If you have filed a complaint with another agency provide name of agency and date of filings

APPENDIX U2

16. Have you sought help about this situation from a union an attorney or any other source?

☐ Yes ☒ No Provide name of organization, name of person you spoke with and date of contact, Results, if any?

Please check on of the boxed below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to EEOC's laws. If you do not file a charge of discrimination within the time limits

you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union or employment agency, you may wish to check box 1. If you want to file a charge, you should check box 2.

Box 1	<input type="checkbox"/> I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.
Box 2	<input checked="" type="checkbox"/> I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination the information about the charges including my name. I also understand the can only accept job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.

s/Faith Townsend

Signature

8/7/2017

Today's Date

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

1.FORM NUMBER/TITLE DATE: EEOC Intake Questionnaire(9/2008).

2. AUTHORITY: 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626 42 U.S.C. 12117(a), 42 U.S.C. § 2000ff-6

3. PRINCIPAL PURPOSE. The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims and provide charge filing counseling as appropriate. Consistent with 29 CFR 1626.8(c). This questionnaire may serve as a charge if it meets the elements of a charge.

4. ROUTINE USES: EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the congressional offices in response to inquiries from parties to the charge to disciplinary committees investigating complaints against attorneys representing the parties to the charge or federal agencies inquiring about hiring or security clearance matters.

5. WHETHER DISCLOSURE IS MANDATORY OR VOLUTARY AND EFFECT ON INDIVIUAL FOR NOT PROVIDING INFORMTION. Pending of this information in voluntary but the failure to do so may hamper the Commisioner's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

APPENDIX U2

SIDE 2B

My work environment is isolated. I work weekend with 4 white men and occasionally the supervisor might stop in. Mr. Gary Walker just happened to be someone I confided in when I was upset about their racial remark, but he can verify that I was team leader and for some unknown reason I was no longer team leader.

APPENDIX U3

EEOC Form 5 (11/09)

<p>CHARGE OF DISCRIMINATION</p> <p>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>	<p>Charge Presented To: Agency(ies)</p> <p>Charge No(s):</p> <p><input type="checkbox"/> FEPA</p> <p><input checked="" type="checkbox"/> EEOC 532-2018-02669</p>
<p>Ohio Civil Rights Commission and EEOC</p>	

State or local Agency, if any

Name (<i>indicate Mr., Ms., Mrs.</i>)	Home Phone (<i>Incl. Area Code</i>)	Date of Birth
Ms. Faith Townsend	(216) 647-1697	1961
Street Address City, State and ZIP Code 803 East 155th Street, Cleveland, OH 44110		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (<i>If more than two, list under PARTICULARS below.</i>)		
Name	No. Employees, Members	Phone No. (<i>Include Area Code</i>)
ROCKWELL AUTOMATION	500 or More	(440) 646-6800
Street Address City, State and ZIP Code 6680 Beta Drive, Mayfield Village, OH 44143		

Name	No. Employees, Members	Phone No. <i>(Include Area Code)</i>
Street Address City, State and ZIP Code		
DISCRIMINATION BASED ON <i>(Check appropriate box(es).)</i> <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 08-07-2018

<input checked="checked" type="checkbox"/> <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> RETALIATION <input type="checkbox"/> GENETIC INFORMATION OTHER (<i>Specify</i>)	<input type="checkbox"/> CONTINUING ACTION
--	---

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s))*:

I began employment with Respondent in or around April 1996. My most recent position was Senior Engineering Analyst in the After Hours dept. I previously filed EEOC Charge #846-2017-35978. During my employment, I was subjected to different terms and conditions of employment, including, but not limited to, being placed in all of the phone queues, 20 queues, while my four White male co-workers were only assigned to one queue, placing an unfair work load onto me and creating an unfair positive advantage for the rest of my work group. I have been demoted since my original complaint to Respondent concerning racial slurs and harassment from these co-workers. I believe this queue assignment is another instance of the harassment since my current supervisor has also participated in making derogatory racial remarks. Even after filing the EEOC charge mentioned above the harassment has continued and progressed to the co-workers contacting me by text. Subsequently, I was suspended. On or about August 7, 2018, I was constructively discharged.

I believe that I was discriminated against because of my race, Black, and in retaliation for engaging in

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the

NOTARY – *When necessary for State and Local Agency Requirements*

agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	
I declare under penalty of perjury that the above is true and correct.	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE <i>(month, day, year)</i>
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <i>Date</i> </div> <div style="width: 45%; text-align: center;"> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <i>Charging Party Signature</i> </div> </div>	

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION	Charge Presented To: Agency(ies) Charge No(s):
---------------------------------	--

<p>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>	<p><input type="checkbox"/> FEPA</p> <p><input checked="" type="checkbox"/> EEOC</p> <p>532-2018-02669</p>
<p>Ohio Civil Rights Commission and EEOC</p> <hr/> <p><i>State or local Agency, if any</i></p>	
<p>protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.</p>	

APPENDIX UZ

Notes from CMC meeting July 30th 2017

Faith Townsend <ftownsend2009@hotmail.com>

Tue 8/20/2019 10:04 am

To: Faith Townsend (via Google Drive) <ftownsend2009@gmail.com>

I asked, while being seated, If I could use my recorder? Judge Gwin answered "No". Judge Gwin immediately informed me that the 2017 EEOC filing would be "Time Barred" meaning the majority of my evidence would not be heard. Then he proceeded to ask me about the length of time I was suspended and how much my wages were and proceeded to calculate how much money would have been made during that suspension. I informed him the suspension was paid. Afterwards he inquired into my current employment status, asking if I am currently employed, I replied "No", then he asked if I was applying, I replied "No". Then he proceeded to ask if I believed Robert Rodriguez attended my son's funeral with mal-intent? I replied "yes".

The Rockwell Automation Lawyer then spoke about Rockwell's position on the case uninterrupted. Afterwards the judge asked me why I didn't have a lawyer. I explained most

APPENDIX UZ

lawyers aren't interested in a case where the employee resigned. I was then informed I was going to have a hard time proving constructive termination and that I would need to construct a demand letter and provide it to the defendant. The judge then asked if anything else happened in the 07/17/2017 to 8/18/2018 time frame. Since the rug had essentially been pulled out from under my case, I briefly mentioned that Rockwell put money into my bank account as pay for 8/6 and 8/7/2018 and reported to the unemployment agency that I worked those days and provided false information on how I departed my employment there. Also, that during the meeting at Rockwell in March 2018 I suspected that Steve Ostrom was armed. He asked me if I saw the gun? I answered No. The Judge then asked me about the email (case document) that caused my suspension the attorney said she had a copy but did not provide it at that time.

Judge Gwin and the Rockwell Attorney then proceeded to quietly discuss the deadline for amending the complaint, discovery etc...I heard him tell her "I will set this for today for you". I advised him I could not hear, I said "I am missing some of those dates" He replied "you will get them in the filing". Afterwards the meeting was dismissed and the Rockwell attorney and Steve Ostrom remained in the room to speak with the judge in private, myself and the interns left.

APPENDIX UZ

Mandatory participants for the meeting were not there. Rockwell only provided the Attorney In Son Loving and Steve Ostrom. The court provided a tall man with black hair that seem to be taking notes for the court and two interns. Later that day I logged into Pacer so see the filing at the end of the day only the Notice that the meeting had been held was there. When I checked the next day, the Filing showing the Deadline dates was posted showing that the deadline to amend the complaint was July 30th, the same day as the CMC meeting. Given the opportunity I would have included the false information provided to the insurance company. Rockwell informed the insurance company that I left May 22 2018 which blocked any FLMA I was entitled to and later falsified insurance payments.

[HTTP://outlook.live.com/mail/0/serch/id/AQQkADAwATZiZmYAZC1hYjdhLWRKAGeXLTAwAi0wAOAEABYiFDYJfrmjlWAAIMS0OZcw%3D%3D](http://outlook.live.com/mail/0/serch/id/AQQkADAwATZiZmYAZC1hYjdhLWRKAGeXLTAwAi0wAOAEABYiFDYJfrmjlWAAIMS0OZcw%3D%3D)

APPENDIX UZ

Case 1:18-cv-02742-JG Dock # 28 Filed 07/31/19 1 of 1. PageID #:129

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

Faith Townsend

Plaintiff

-vs-

Rockwell Automation Inc.

Defendant

) Case no. 1:18-cv-02742

)

) JUDGE: James S. Gwin

) Mag. Judge: Jonathan D. Greenberg

)

) Plaintiff's Memorandum in Opposition to

) Defendant's Answer and Motion to Dismiss

)

)

The Court has determined the portion of the complaint outlined in the September 2017 EEOC filing #846-2017-35978 will be time barred. I would like some understanding from the court. To understand that although I was able to go to the eeoc office I was in no condition to think

clearly. My mental state was indescribable., and I could barely speak when it was time to explain what was going on with my employer. The trauma of the actions of Robert Rodriguez and the other people who showed up at my Sons funeral was too much to handle and I would break down in tears when confronted with the recollection of that day, because as I sat there with my son, hate showed up. Even as I construct this response I struggle.

I didn't follow through with a lawsuit simply because I didn't have the mental fortitude to do so. It was all I could do at the time to make it through each day and try to get back to normal which involved going back to work, where the harassment started again immediately upon my return.

The portion of the complaint that the court has barred, demonstrates the severity of the racism I suffered at Rockwell Automation and the lengths it would go to reject any mention that its employees caters to it. In the CMC meeting I mentioned that Mr. Ostrom was armed at the meeting held at Rockwell Automation. This is not something I am bringing up all of a sudden. I have attached a copy of my resignation letter.

I Pray that you will reconsider your position on this matter and consider the unprecedented circumstances of this case. You have the power to waive the time restriction. I Pray for Fairness and justice

s/Faith Townsend/ProSe

APPENDIX UZ
Mail-Faith Townsend - Outlook

EMPLOYMENT

Faith Townsend

Tue 8/7/2018 7:22 am

To: Stconti@ra.rockwell.com

Hi Sal,

I am contacting you because I have no interest in further conversation with Steve Ostrom. It is difficult to end a position that for many years you have enjoyed, have excelled at and have been proud to do, because there are people who simply do not want people like you there. There are many reasons why I would want to continue the fight to stay there but there is only that I will not.

Twice has been reported, my concern about my safety to the HR department. The meeting with Mr. Blakemore and Ostrom made it clear that I need to understand and accept that No One at Rockwell Automation will admit y that there is a "cancer" in the Tech Support department. It became clear that everyone has confessed to their actions and that Mr. Blakemore and Ostrom helped them construct new lies, then created a situation that would cause Mr. Ostrom to take extreme precaution for the investigation overview meting as if I

was a threat. I guess one would be scared to call someone a liar when it's clear that they know you are not but choose to collaborate with the people you complained about in an effort to disprove everything you have said, instead of acknowledging the evidence and construction a solution. I thought I was safe, at least on the premises, but now the game is "She's Angry I feared for my safety". And I should be angry, but I have never threatened anyone, cursed, or even raised my voice to anyone. I reported people that has done these things toward me, now here I am. The snide insinuating remarks that I complained about are now coming to my cell phone which is proof that when Mr. Ostrom said "nothing would change" he meant it and expressed that to all concerned. Now the people who I complained about can use that "She's Angry, I feared for my safety" excuse a well. When someone express that they want to use their guns against people like you, and "The good thing about using a gun is that you don't leave any witnesses, you should take them seriously. And now I know if they follow through, Rockwell's INVESTIGATION will be no different. I stand by everything I have said. To have some of your employees harassing others, then injecting themselves into their personal lives because of information they were able to get from the internet or because someone has gained access to their Rockwell email makes a situation dangerous. You will address this cancer, in no voluntary, involuntary like all cancers.

My financial well being is a concern to me, no different from anyone else, which has caused me to struggle with my decision, but my Safety and Health outweighs that. So I will not return to work for your complaint.

I will contact the HR department for my exit instructions,
Faith Townsend
Sr. Engineering Analyst/Rockwell Automation

[HTTP://outlook.live.com/mail/0/serch/id/AQQkADAwATZiZmYAZC1hYjdhlWRKAGeXLTAwAi0wAOwMAoARGAAA%2Fn63vZ5HW1ltGRQi8ORL8HAFXmw...](http://outlook.live.com/mail/0/serch/id/AQQkADAwATZiZmYAZC1hYjdhlWRKAGeXLTAwAi0wAOwMAoARGAAA%2Fn63vZ5HW1ltGRQi8ORL8HAFXmw...)

APPENDIX W

Rockwell Automation

Townsend, Faith

SL 15

26840

PERIOD BEGINNING 01-11-99		PERIOD ENDING 01-24-99		CHECK DATE 01-22-99		SOCIAL SECURITY NUMBER XXX-XX-9223	
EMPLOYEE NUMBER 26840		CHECK NUMBER 3173205		MARITAL STATUS FEDERAL/STATE EXEMPTIONS FED STATE EX S 6 00 EX S 3 00			
Earnings	Rate	Hours	Current Earnings	Year to Date	TAX/DEDUCTIONS	CURRENT	YEAR TO DATE
Regular			1533.48	3066.96	FED TAX	112.58	225.16
MED/FLEXX			122.85	245.70	SOC.SEC TAX	92.27	184.47
D&V			22.20	44.40	MEDICARE TAX	21.58	43.14
STD FLEX			4.08	8.16	OHIO	49.78	99.56

LOCAL TAX GR INS INCOME			46.37	92.74	MAYFIELD HTS	15,33	30.66		
					CAFÉ	29.25	32.30		
			1.08	1.08	LOCAL TAX	46.37	92.74		
					MEDICAL	163.81	327.62		
					DEN&VIS	22.19	44.78		
					STD-BT	6.13	12.26		
					LTD-BT	3.37	6.74		
					U.W.CLEVE	-10.00	0.00		
					FIT CLUB	8.00	16.00		
					GR INS INCOME	1.08	1.08		
					UNITED WAY	10.00	10.00		
					DIRDEPCHECKING	1158.32	2332.93		
		Earnings		Taxes		Deductions		Net pay	
Current		1,730.06		291.54		280.20		1,158.32	
Year to date		3,459.04		582.99		543.12		2,332.93	
PIT Taxable			Current				Year to Date		
			1,488.19				2,975.30		

APPENDIX W

Rockwell Automation

Townsend, Faith

SL 15

26840

PERIOD BEGINNING 01-24-00		PERIOD ENDING 02-06-00		CHECK DATE 02-04-2000		SOCIAL SECURITY NUMBER XXX-XX-9223	
EMPLOYEE NUMBER 26840		CHECK NUMBER 3465877		MARITAL STATUS FEDERAL/STATE EXEMPTIONS FED STATE EX S 6 00 EX S 3 00			
Earnings	Rate	Hours	Current Earnings	Year to Date	TAX/DEDUCTIONS	CURRENT	YEAR TO DATE
Regular			1,645.88	4,937.64	FED TAX	129.88	389.64
MED/FLEXX			108.62	325.86	SOC.SEC TAX	100.06	300.31
D&V			22.85	68.55	MEDICARE TAX	23.20	70.23

STD FLEX			4.08	12.24	OHIO	55.92	167.79
LOCAL TAX			0	31.22	MAYFIELD HTS	24.21	73.09
GR INS			0	1.78	CAFÉ	0	31.22
INCOME					LOCAL TAX	143.65	430.95
					MEDICAL	12.92	38.76
					DEN&VIS	6.58	19.74
					STD-BT	4.28	12.84
					LTD-BT	1.87	5.61
					GR INS INCOME	0	1.78
					DIRDEPCHECKING	1,278.65	3,835.33
Earnings			Taxes		Deductions		Net pay
Current			1,781.43		333.48		169.30
Year to date							1,278.65
PIT Taxable			Current			Year to Date	
			1,614.00			4,843.78	

APPENDIX X

ROCKWELL
AUTOMATION

May 16, 2003

Dear Faith,

I am pleased to inform you that you have been awarded with a developmental salary increase. Following are the details of the increase and how it will adjust your base salary.

Current Base Salary	49,043.88
Developmental Increase	3%
New Base Salary	50,515.20

This developmental increase is effective May 19, 2003, and you will see this increase reflected in your May, 30 2003 paycheck.

Please keep in mind that all salary data is strictly confidential and should not be discussed with other personnel except you supervisor or Human Resource representative.

We thank you for your valued contribution. Your dedication to the team is appreciated and does not go unnoticed. Keep up the good work!!

Sincerely,

John T. Ciszewski

APPENDIX Y

TITLE: Engineering Analyst, Technical Support (Programmable Controller System Support

SALARY GRADE: C

REPORTS TO: Supervisor, Technical Support

SUMMARY OF POSITION:

The primary responsibility of this position is to provide technical support to Allen-Bradley field personnel, distributors, and customers who use Control System products. The position requires a basic knowledge of Control System products as well as other Allen-Bradley products and other manufacturer's equipment that is interfaced with PLC's/SLC's. In most cases this support is provided via phone, technical notes, technical bulletins, and occasional visits to customer locations when necessary.

PRINCIPAL DUTIES AND RESPONSIBILITIES:

Develop and verify reported product problems in hardware, firmware, software, and documentation. Document the problem via the appropriate vehicle and follow-up with the A-B representative or customer when the problem is solved.

Provide troubleshooting assistance for Control System products to A-B field personnel and customers. Be knowledgeable in the operation of hardware and software of the Control System product line. In addition, a good working knowledge of other A-B products and other manufacturer's equipment that interface with the Control System products is necessary. In some cases, it may be necessary to take calls at home. Outside normal work week. Field trips may be required when the problem can't be resolved locally.

Initiate, document, and follow up on an action or activity needed to resolved a problem being experienced by a customer. This may involve replacement assemblies, parts, software, firmware, Support Division Service or Application assistance, or Control System Marketing or Engineering Involvement.

Follow-up new products through the development process and work closely with Engineering, Marketing, and Q.A to ensure serviceability is designed into new products, that the products

can be integrated and started up easily, and that sufficient service stock and information is available to the Support Division to support the products.

Review product documentation prior to release to ensure essential information is present, accurate, and understandable for integration, start-up and serviceability. Write Technical Notes, Technical Bulletins, and other documentation to inform A-B personnel, domestic or international, of solutions to commonly experienced problems, work arounds, installation practices that create problems, etc., to improve customer satisfaction and acceptance.

Maintain current technical knowledge of Control System products, associated equipment, and technologies by attending internal and external training classes, reading industry journals, establishing key contacts in Control System Engineering and Marketing, and establishing contacts at vendors who not only supply product to us but also vendors who interface with our products.

EDUCATION REQUIREMENTS: BSEE and/or BSEET and/or BSCS or equivalent experience

PRIOR EXPERIENCE REQUIRED:

1-3 years experience troubleshooting, application, and/or design of PLC/SLC computer based industrial control systems. Working knowledge of IBM PC-DOS, Ladder Diagram Programming, and systems is preferred. Must be able to work with people, both customers and Allen-Bradley. Must be able to operate in high pressure situations. Must be able to manage multiple problems with changing priorities.

PERSONNEL SUPERVISED:

SCOPE OF POSITION:

REPORTING RELATIONSHIPS:

INTERFACE RELATIONSHIPS:

TS1-1-9(11/19/93)

APPENDIX Z

TITLE: Engineering Analyst, Technical Support (Programmable Controller System Support

SALARY GRADE: 8E/9

REPORTS TO: Supervisor, Technical Support

SUMMARY OF POSITION:

The primary responsibility of this position is to provide technical support to Allen-Bradley field personnel, distributors, and customers who use Control System products. The position requires a basic knowledge of Control System products as well as other Allen-Bradley products and other manufacturer's equipment that is interfaced with PLC's/SLC's. In most cases this support is provided via phone, technical notes, technical bulletins, and occasional visits to customer locations when necessary.

PRINCIPAL DUTIES AND RESPONSIBILITIES:

Develop and verify reported product problems in hardware, firmware, software, and documentation. Document the problem via the appropriate vehicle and follow-up with the A-B representative or customer when the problem is solved.

Provide troubleshooting assistance for Control System products to A-B field personnel and customers. Be knowledgeable in the operation of hardware and software of the Control System product line. In addition, a good working knowledge of other A-B products and other manufacturer's equipment that interface with the Control System products is necessary. In some cases it may be necessary to take calls at home. Outside normal work week. Field trips may be required when the problem can't be resolved locally.

Initiate, document and follow up on an action or activity needed to resolved a problem being experienced by a customer. This may involve replacement assemblies, parts, software, firmware, Support Division Service or Application assistance, or Control System Marketing or Engineering Involvement.

Follow-up new products through the development process and work closely with Engineering, Marketing, and Q.A to ensure serviceability is designed into new products, that the products

can be integrated and started up easily, and that sufficient service stock and information is available to the Support Division to support the products.

Review product documentation prior to release to ensure essential information is present, accurate and understandable for integration, start-up and serviceability. Write Technical Notes, Technical Bulletins, and Other documentation to inform A-B personnel, domestic or international, of solutions to commonly experienced problems, work arounds, installation practices that create problems, etc., to improve customer satisfaction and acceptance.

Maintain current technical knowledge of Control System products, associated equipment, and technologies by attending internal and external training classes, reading industry journals, establishing key contacts in Control System Engineering and Marketing, and establishing contacts at vendors who not only supply product to us but also vendors who interface with our products.

EDUCATION REQUIREMENTS: BSEE and/or BSEET and/or BSCS or equivalent experience

PRIOR EXPERIENCE REQUIRED:

1-3 years experience troubleshooting, application, and/or design of PLC/SLC computer based industrial control systems. Working knowledge of IBM PC-DOS, Ladder Diagram Programming, and systems is preferred. Must be able to work with people, both customers and Allen-Bradley. Must be able to operate in high pressure situations. Must be able to manage multiple problems with changing priorities.

PERSONNEL SUPERVISED:

SCOPE OF POSITION:

REPORTING RELATIONSHIPS:

INTERFACE RELATIONSHIPS:

TS1-1-9(8/28/97)

APPENDIX AZ

PREVIOUS ARGUMENTS AND CASE CITATIONS
cv-22-3244 DOC: 6 Filed 05/05/2022

Argues Claim preclusion only operates on the matter at issue

1. Lucky Brand Dungarees Inc., v Marcel Fashions grp. Inc., 140 s. ct. 1589 pg. 12
2. Taylor v Sturgell, 553 U.S. 880, 892, n. 5(2008) pg. 12
3. Davis v Brown 94 U.S.423, 428 (1877) pg.12
4. Wright & Miller 4406

Argues wage discrimination didn't mature until after discovery. In the final hour Judge decided not to litigate the claim.

5. State of Ohio ex rel. Susan Boggs, et al. v City of Cleveland, 655 P F. 3d. 516 (6th Cir. 2011) pg12
6. City Communications, Inc., v City of Detroit, 888 F. 2nd 1081,1089, (6th Dir. 1989) pg.12

Res judicata does not apply to unripe claims.

7. Katt v. Dykhous, 983 F. 2nd 690, 693 (6th Circuit 1992) Pg.12

8. Blanchette v Connecticut Ins. Corps., 419, U.S. 102, 139, 95 S. Ct. 335, 356, 42 L.ED 2d 320(1974) Pg.13

9. Wright, A. Miller E. Cooper, Federal Practice and Procedures 3532 (1984) pg.13

10. Dames Moore v Regan, 453 U.S. 654, 689, 101 @. Ct. 2972, 2991-92, 69 L. Ed 2d 918 (1981) pg.13
11. Pacific Gas Elec. Co. v State Energy Resources Conserv. Devel. Comm'm, 461 U.S. 190, 200 - 01,103 S.Ct. 1713, 1721, 75 L. Ed 2d 752 (1983) pg.13
Argued Wage discrimination could not be Time-Barred
12. 42U.S.C. 2000e-5 and 42 U.S.C.1981 pg.15
13. 42U.S.C. 2000e-5 and 42 U.S.C.1981a pg.15
14. 42U.S.C. 2000e Lilly Ledbetter Fair Pay Act of 2009 pg15
15. 42 U.S.C.2000e-5(3)(a)(b) pg.15
Argued She did not receive a "Full and Fair Opportunity" to litigate the Wage discrimination claim
16. Vinson v. Campbell County Fiscal 820 F. 2d 194

APPENDIX AZ

Court 6th Circuit 1987 Pg. 14

17. Allen v McCurry, 449U.S.90, 101, 101, S.Ct. 411, 418, 66, L.Ed. 2d 308 (1980) Pg. 14
18. Haring v. Prosise, 462 U.S, 306 313, 103, S.Ct. 2368, 2373 76 L.ed.2d 595 (1983) Pg. 14

19. Thorburn, 758 F.2d at 1144. Pg.
14

Plaintiff's Claim would have been litigated if not
for the surprise of "Dixon v Ashcroft".

20. Johnson v Lucent 42USC 1981, 28
U.S.C. section
1658

Contrary to "Tucker v Needletrades" Plaintiff did
include the wage discrimination in her claims to
the court.

21. Tucker v Needletrades Indus. & Textile
Emp., 407

F.3rd 784, 788, (6th Circuit 2005)

Dixon v Ashcroft, 392 F.3d, 212, 217 (6th circuit
2004) pg.2

Cv22-3244 document:14

Argued Judge did not properly apply "Dixon" and
it was improper to introduce this argument.

1. Dixon v Ashcroft, 392 F.3d, 212, 217 (6th
circuit
2004)

2. Rule 79(a)(1) and (2)

3. Guide to Judiciary Policy

Case 1:21-cv-02226-JPC DOC#: 6 Filed: 01/22/22;

All

Arguments are based on Judges accounting of
18CV02742

Restating Judges Argument

Tucker v. Union of Needletrades, Indus. & Textile
Emp., 407 F.3d 784, 788 (6th Cir. 2005)
pg.6

Court Rule Contrary to Supreme-Arguing Both
EEOC filing were included in "Terms and
Conditions of Employment"

McDonnell Douglas Corp. v. Green, 411 US 792 -
Supreme Court 1973 pg5

Chandler v. Roudebush, 425 US 840 - Supreme Court

1976 pg.5 and 7

Beverly v. Lone Star Lead Construction Corp., 437 F.

2d 1136 (CA5 1971) pg.6

Flowers v. Local 6, Laborers International Union of North America, 431 F. 2d 205 (CA7 1970) pg.6

Fekete v. U. S. Steel Corp., 424 F. 2d 331 (CA3 1970) 510 u.s. 17 21 pg.6

Arguing that case II – 02226 has new facts that did not arise from previous case

Lawlor v. National Screen Service Corp., 349 U.S. 322

APPENDIX AZ

(1955) pg.7

Storey v. Cello Holdings, LLC, 347 F.3d 370 (2d Cir. 2003)

29 C.F.R. Section 1614.110(a) pg.7

Argued if the EEOC investigation is too narrow, claim can still be pursued

Robinson v. Dalton 107 F. 3d 1018, 1026 (3rd Cir 1997)

Doan v. NSK Corp. 266 F. Supp. 2d 629, 633 (E.D. Mich 2003)

Tipler v. E.I. DuPont De Nemours & Co., 443 F. 2d 125, 131 (6th Cir. 1971)

Pearson, 2002 WL 32060142, at *5

Arguing Intentional Discrimination with evidence and proof of fraud

279 F.515-516 pg.9

Section 706(g), 42 U.S.C. § 2000e-5(g) pg.8

279 F.Supp. at 515-516

29 section C.F.R 1614.110(a) pg.8

Robinson v. Lorillard Corp., 444 F. 2d 791, 800 (CA4 1971); citing Local 189, United Papermakers and Paperworkers, AFL-CIO, CLC v. United States, 416

F.2d at 996 Pg.9

Case:20-3079 Doc # 9-1 filed: -3/05/2020

Argued EEOC charge filing is non-jurisdictional to file suit.

1. Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 102 S. Ct. 1127 (1982)

2. Fort Bend Cnty., Tex., v. Davis, 139 S. Ct. 1843

(2019) No. 587 U.S.18-18-525(2019)

Argued Time Barring is not mandatory -There was room for consideration of her mental illness.

3. Barnell v. Paine Webber Jackson & Curtis, Inc., 614

F. Supp. 373 (S.D.N.Y. 1985) 614 F. Supp. 373 (S.D.N.Y.)

4. Lopez v. Citibank, N.A., 808 F.2d 905 (1st Cir. 1987)

5. Oubichon v. North Am. Rockwell Corp., 482 F.2d

569, 571 (9th Cir. 1973)

Argued the wage discrimination was a continuing violation

6. Sosa, F.2d at 1455

7. Green v. Los Angeles County, 883 F.2d 1472, 1480, (9th Cir. 1989)

8. Green v Los Angeles County, 883 F.2d, 1472, 1480

9. Title VII 609 F. Supp. at 1469

10. Sec. 2000e-3. [Section 704](a)

11. Sec. 2000e-2. [Section 703](j)

12. Felty 785 F.2d at 519

13. McDonnell Douglas Corp. v Green 411 US 792,

Supreme Court 1973
APPENDIX AZ

Case:20-3079 Doc # 11 filed: 04/29/2020

Argued the initial complaint lined up with discovery showing her pay was impacted by discrimination, should not have been time barred but a continuing violation! Applies to the wage and hostile environment claims

1. Harris v. Forklift Systems Inc. 510 U.S 17, 21 pg.4, 8

2. National Railroad Passenger Corporation v. Morgan, 536 U.S. 101(2002) pg.4

3. Brooks, San Mateo, 229 F. 3d 917930 (CA9 2000) pg.8, 9

4. Burlington Industries, Inc. v Ellerth, 524 U.S. 742 (1998) 118 S.ct. 2257 pg.8; 9

Case 1:18-cv-02742-JG Doc#: 36 Filed 10/18/2018

Arguing Continuing violations of hostile work environment

1. Brooks, San Mateo, 229 F. 3d 917930 (CA9 2000) pg.9

2. Burlington Industries, Inc. v Ellerth, 524 U.S. 742 (1998) 118 S.ct. 2257 pg.9

3. Meritor Savings Bank, FSB v. Vinson, 477 U.S. 5765 -Harris v. Forklift Systems Inc. 510 U.S 17, 21 pg.9

Arguing Wage Discrimination a continuing violation

4. Faragher v. City of Boca Raton, 118, S. Ct. 2275 (1998)

5. Pennsylvania state Police v. Suders, 542 U.S. 129,

141, 147, n.8 144m 124 S. Ct. 2342, 159 L.Ed. 2d 204(2004))

6. Title VII 2000e(b)

Arguing Protected Class and Retaliation

7. 42U.S.C 2000e-3

Arguing Time Barred

8. Douglas v Your County, 360 F. 3d 286

Arguing Unlawful Employment Practices

9. 42U.S.C. 2000e-a(1),SEC. 2000e-2[703](d) pg.8

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;...