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United States District Court,
E.D. Louisiana.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
v.
RITE AID CORPORATION

No. Civ.A. 03–2079. | June 30, 2004.

Attorneys and Law Firms

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Opinion

ORDER AND REASONS

ENGELHARDT, J.

***1** Before the Court is a Motion for Summary Judgment filed by Defendant K & B Louisiana Corporation doing business in Louisiana as Rite Aid ("Rite Aid"). For the foregoing reasons, it is ordered that Defendant's motion is granted in part, in that Plaintiff's and Intervenor's claims against defendant for compensatory damages, injunctive relief and punitive damages arising out of Title VII hostile work environment are dismissed; Defendant's motion is denied in all other respects.

I. *BACKGROUND*

The Equal Employment Opportunity Commission ("EEOC"), Plaintiff herein, and Tiffany R. Blackmon, Intervenor, claim that Blackmon was a victim of continuous sexual harassment and inappropriate conduct while she worked for Rite Aid as a security officer from October 3, 2001 to March 2002,[1] and that Rite Aid retaliated against Blackmon after she reported two incidents of sexual harassment to her immediate supervisor, Maurice Kirksey.

Throughout the relevant time period, Tiffany Blackmon was employed by Rite Aid as a day-shift[2] uniformed security officer at its retail store located at 3401 St. Charles Avenue in New Orleans, Louisiana ("Rite Aid Store No. 7255"). Blackmon's immediate supervisor was Maurice Kirksey, the Security Guard Coordinator; Kirksey's office and base of operations were located on the second floor of Store No. 7255. Kirksey's immediate supervisor was David Neu, a Loss Prevention Manager, whose office and base of operations are located at the Rite Aid Regional Office[3] in Metairie, Louisiana. In addition to supervising Kirksey, Neu also directly supervised an undercover security team in the New Orleans area. Some members of the undercover surveillance team operated a mobile camera system; these members included Lester Perkins, Shedrick Wilson, Amos Nelson and Ed Washington. While the undercover surveillance team was posted in various Rite Aid stores, the team used Rite Aid Store No. 7255 as its base of operations.

Tiffany Blackmon was interviewed and hired by Maurice Kirksey. It is undisputed that, after she was hired, Blackmon, along with a few other new hires, participated in a week-long new hire orientation program. This orientation was held on the second floor of Rite Aid Store No. 7255; Kirksey led the orientation and was assisted by several field training officers (FTO's). That

training included viewing a set of two videotapes and reviewing certain written material. The new hires read these materials during their class time and were tested on their knowledge of those materials.

The EEOC and Intervenor allege that throughout her nearly six months of employment with Rite Aid, Blackmon was subjected to verbal and physical forms of sexual harassment, primarily by Lester Perkins and Ed Washington, two of the undercover security detectives. In her deposition, Blackmon testified that on, about six or seven occasions, while she was standing in the middle of the aisle or walking around the store, Perkins walked up close to her and looked her up and down and "make remarks under his breath, stuff like that, like mm-hmm, how fine [Blackmon] was." Deposition of Tiffany Blackmon, pp. 159–62 (Plaintiff's Exhibit 1; Defendant's Exhibit "A"). Perkins would then "act like ... he made a mistake and he would rub [his hand or body] across [Blackmon's] behind." *Id.* Blackmon also testified that on one occasion Perkins came back to the storeroom and rubbed his finger across the back of her neck, causing Blackmon to jump. *Id.,* pp. 163–65. When she jumped, Perkins pinched her thigh. *Id.* Blackmon also testified that Perkins unsuccessfully tried to kiss her once while she was in the storeroom during lunch break. *Id.,* pp. 165–66.

***2** With respect to the alleged verbal harassment, Blackmon testified that Perkins "would make remarks about how pretty [she] was, how pretty [her] chest was, just things like that that made [her] uncomfortable." Dep. of Blackmon, p. 166. On different occasions, Perkins asked Blackmon what she slept in at night. *Id.,* pp. 168–70. Twice, when Perkins brushed up against Blackmon, he stated, "I wonder what it feel like," which Blackmon believed to be a reference to what it would feel like to sleep with her. *Id.* Blackmon further testified that Perkins suggested two or three times that he was going to Blackmon's house without invitation; however, Perkins never actually did. *Id.,* pp. 167–69.

Blackmon testified that she witnessed inappropriate conduct directed toward other female associates at Rite Aid Store No. 7255. Specifically, she witnessed Lester Perkins make comments of a sexual nature (*i.e.,* "how she was built, how big her chest was") to fellow uniformed security officer Lakeisha Banford. Dep. of Blackmon, pp. 192–94. Blackmon also stated that Perkins would make "nasty jokes" in the presence of both Banford and Blackmon. *Id.* Ms. Blackmon also witnessed Mr. Perkins (i) tell another female employee "these little jokes about he'd F'ed somebody in a freezer in another job", *id.;* and (ii) asked Maurice one day whether "[Maurice} was F-ing [Blackmon]." *Id.,* pp. 214–15.

Also according to Ms. Blackmon, she once witnessed certain undercover security detectives zooming the cameras on the chests and buttocks of women; this occurred during Mardi Gras. Dep. of Blackmon, pp. 208–14. On one other occasion, one female cashier told Blackmon that she had witnessed the undercover detectives zooming cameras on people. *See id.* Maurice Kirksey also testified that, on two separate occasions, he witnessed Lester Perkins zooming the camera in on women in the store—once in July of 1999 during Kirksey's training and later during Mardi Gras in 2002. Dep. of Maurice Kirksey, pp. 106–08, 302–05 (Pl.'s Ex. 4; Def.'s Ex. "B").

Ms. Blackmon testified that another undercover security detective, Ed Washington, also engaged in inappropriate or offensive behavior towards her, beginning with the 2002 Mardi Gras season. *See* Dep. of Blackmon, pp. 220–34. Specific conduct to which Ms. Blackmon testified included Washington (i) backing her into a corner of the store on three separate occasions and trying to flirt with her and asking for her phone number, and (ii) commenting on her figure and telling her that she "better not gain [any] weight" about "four or five times". *Id.* Blackmon also stated that Washington twice told her that he was going to her house; Washington never did go to her house, however. *Id.*

Blackmon also testified that Washington touched her on one occasion when he "cupped" her breast. Dep. of Blackmon, pp. 220–34. Specifically, Blackmon stated that Washington came up to her in the store and said "your radio shouldn't be up like this", *i.e.,* on her left breast pocket; grabbed her breast; and stated "[i]t should be down here." *Id.*

***3** According to Blackmon, she reported each allegedly inappropriate incident to her supervisor Maurice Kirksey. Kirksey has testified that Blackmon complained to him about the behavior of the undercover detectives an estimated ten to twenty times, "pretty much every time [Perkins] was in the store...." Dep. of Kirksey, pp. 211, 213, 229. On March 13, 2002, Kirksey sent an internal e-mail, referred to as a "SYSM", to his supervisor David Neu to report that an unnamed female security officer (Tiffany Blackmon) believed that Amos Nelson, an undercover security detective, was misusing the security cameras by zooming in on the breasts and buttocks of her and other women in the store, and that Ed Washington, another undercover security detective, had asked the guard for her phone number and said that he might come by her house. *See* SYSM, dated March 13, 2002, from Maurice Kirksey to Dave Neu (Def.'s Ex. "E"). It is undisputed that Maurice Kirksey did not report the alleged misconduct to any persons within Rite Aid management, human resources or anyone else, including David Neu (the supervisor of both Kirksey and the undercover security detectives), until March 13, 2002.

In the days and weeks following the March 13, 2002 SYSM, Plaintiff and Intervenor allege that Mr. Neu contacted and spoke

only to his undercover security detectives and simply accepted their word, without having consulted with Ms. Blackmon. Soon thereafter, according to Kirksey, he and Neu met on March 26, 2002, at Rite Aid Store No. 7272[4] to discuss a proposed reduction in the security officer workforce. Dep. of Kirksey, p. 232. At that meeting, when questioned by Kirksey about the status of the complaint concerning Tiffany Blackmon, Neu allegedly told Kirksey that Kirksey had no choice but to remove Tiffany Blackmon and Lakeisha Banford from the schedule if the two female security officers could not work with the surveillance cameras. *Id.,* pp. 232, 241–42. Kirksey stated that Neu then wrote out a schedule for the uniformed officers at Rite Aid Store No. 7255, and that Neu's schedule did not include Blackmon or Banford. *Id.* Kirksey has testified that, following the meeting with Neu, he personally met with Blackmon at Rite Aid Store No. 7255, at which time he informed her that he had been ordered to take her off the schedule and advised her about her rights and that she may want to see an attorney. *Id.,* pp. 256–58

Kirksey went on vacation on or about March 29, 2002, and upon his return, he tendered his resignation to Rite Aid through its Regional Office on April 12, 2002. David Neu executed Blackmon's termination paperwork on April 15, 2002.[5] *See* Separation Notice for Tiffany Blackmon (Pl.'s Ex. 14).

On July 21, 2003, the EEOC filed a Complaint with this Court, alleging that Tiffany Blackmon was subjected to a sexually hostile work environment by Defendant Rite Aid and discharged because she complained to Defendant about the sexually hostile work environment, all in violation of Title VII of the Civil Rights Act of 1964. On August 26, 2003, Blackmon intervened in the proceeding, adopting all of the allegations of the Complaint filed by the EEOC. The EEOC and Blackmon seek compensatory and punitive damages, and Blackmon seeks reasonable attorney's fees. The EEOC also seeks injunctive relief as follows: requiring Rite Aid to conduct training on sexual harassment; precluding David Neu from ever investigating any complaints of discrimination; providing periodic reporting to the EEOC on various subjects to ensure compliance; and prohibiting Rite Aid from engaging in any discriminatory or retaliatory conduct.

II. *LAW AND ARGUMENT*

A. Standard for Summary Judgment

***4** "Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." ' *Kee v. City of Rowlett, Texas,* 247 F.3d 206, 210 (5th Cir.), (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (quoting Fed.R.Civ.P. 56(c))), *cert. denied,* 122 S.Ct. 210 (2001). "The moving party bears the burden of showing ... that there is an absence of evidence to support the nonmoving party's case." *Id.* at 210. If the moving party meets this burden, "the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial." *Id.* "A dispute over a material fact is genuine if the evidence is such that a jury reasonably could return a verdict for the nonmoving party." *Id.* (internal quotations omitted). "The substantive law determines which facts are material." *Id.* at 211. Factual controversies are to be resolved in favor of the non-moving party. *See Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir.1994).

B. Claim of Hostile Work Environment Based on Sexual Harassment

Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of ... sex." 42 U.S.C. § 2000e–2(a)(1). A plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive working environment. *See Shepherd v. Comptroller of Pub. Accounts of the State of Tex.,* 168 F.3d 871, 873 (5th Cir.1999) (quoting *Meritor Sav. Bank, FSB v. Vinson,* 477 U.S. 57, 66, 106 S.Ct. 2399, 2405, 91 L.Ed.2d 49 (1986)). Under Fifth Circuit precedent, to establish a *prima facie* case for a hostile work environment claim based on a co-worker's conduct, a plaintiff must establish that: (1) she belongs to a protected group; (2) she was subject to unwelcome harassment; (3) the harassment was based on sex; (4) the harassment affected a "term, condition, or privilege of the employment;" and (5) the employer knew or should have known of the harassment and failed to take prompt remedial action. *See Jones v. Flagship Int'l.,* 793 F.2d 714, 719–20 (5th Cir.1986), *cert. denied,* 479 U.S. 1065, 107 S.Ct. 952, 93 L.Ed.2d 1001 (1987).

Rite Aid argues that it is entitled to summary judgment on the sexual harassment claim as there exists no genuine issue of

material fact that: (1) Blackmon failed to take steps to adequately report the alleged continuous harassment, with the result that Rite Aid management had no knowledge of the alleged harassment; (2) Blackmon's claims, even if taken as true for purposes of this motion, are not so severe and pervasive that they altered the terms and conditions of her employment; and (3) Rite Aid took "prompt remedial action" as a result of the reported conduct and because Blackmon left Rite Aid's employ soon thereafter, Rite Aid was deprived of any substantial opportunity to show that its corrective action was effective. Thus, Rite Aid contends, Plaintiff and Intervenor cannot establish the fourth and fifth elements of a hostile work environment claim.

***5** As an initial matter, for summary judgment purposes, the Court finds that the first three elements of a hostile work environment claim have been met, *i.e.,* that Blackmon was subjected to unwelcome verbal comments and physical contact of a sexual nature first by Lester Perkins and later by Ed Washington.[6]

The fourth element of the *prima facie* case questions whether the undercover guards' alleged harassment was so severe and pervasive that it altered the terms and conditions of her employment. The EEOC and Intervenor, at this juncture, must present evidence of an objectively and subjectively abusive work environment. *Harris v.. Forklift Sys., Inc.,* 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295 (1993). Whether an environment is objectively hostile or abusive depends upon the totality of the circumstances, focusing on factors such as "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,* 510 U.S. at 23, 114 S.Ct. at 371. *See accord Weller v. Citation Oil & Gas Corp.,* 84 F.3d 191, 194 (5th Cir.), *cert. denied,* 519 U.S. 1055, 117 S.Ct. 682, 136 L.Ed.2d 607 (1997). "To be actionable, the challenged conduct must be both objectively offensive, meaning that a reasonable person would find it hostile and abusive, and subjectively offensive, meaning that the victim perceived it to be so." *Shepherd,* 168 F.3d at 874 (citing *Harris,* 510 U.S. at 21–22, 114 S.Ct. at 370).

Whether the conduct of Perkins and of Washington rendered Blackmon's working environment objectively hostile or abusive must be considered in light of the totality of the circumstances. *See, e.g., Shepherd,* 168 F.3d at 874. Blackmon alleges that Perkins' harassing comments and actions began in October of 2001, when she was hired by Kirksey, and ended in March of 2002, and that Washington's harassing comments and actions commenced during the Mardi Gras season[7] and ended in March of 2002.[8] Blackmon further alleges that the conduct occurred every time Perkins and/or Washington were in Rite Aid Store No. 7255. Even accepting as true Plaintiff and Intervenor's allegations that this conduct occurred regularly over the course of five to six months, the Court must also consider the other factors that contribute to whether an environment is objectively hostile or abusive.

The Court finds that the comments made to Blackmon were offensive and sophomoric; however, they were not sufficiently severe or pervasive so as to alter a "term, condition, or privilege" of employment. Rather, the Court finds that each comment made by Perkins and by Washington is the "equivalent of a mere utterance of an epithet that engender offensive feelings." *See Shepherd v. Comptroller of Pub. Accounts,* 168 F.3 871 (5th Cir.), *cert. denied,* 528 U.S. 963, 120 S.Ct. 395, 145 L.Ed.2d 308 (1999) (finding that several inappropriate comments, including "your elbows are the same color as your nipples," and touchings, including rubbing his hands down her arm from her shoulder to her wrist, which occurred over the course of two years were "boorish and offensive" but were not objectively severe or pervasive enough to constitute actionable sexual harassment). *See also Jones v. Seago Manor Nursing Home,* 2002 WL 31051027, at *1, 4 (N.D.Tex. Sept.11, 2002) (stating that plaintiff's summary judgment evidence fell short of the type of extreme conduct necessary to establish the hostile work environment when plaintiff alleged that her supervisor told her, "You know, if I stick [my penis] in you, you'll say computer right"; said to her "Ooh, girl, I could stick this long [expletive deleted] in you and you ... go tell your husband that you'll leave him for a white man"; touched plaintiff's buttocks and remarked that "it must be jelly because jam [does not] shake like that"; and grabbed his crotch and looked at plaintiff).

***6** The Court finds similarly that the six to seven alleged instances where Perkins brushed up against Blackmon in the aisles, the three times that Washington allegedly cornered Blackmon in the store, and any other unwelcomed physical touching—allegations of which are relatively few in number over several months—were neither severe nor physically threatening, though quite unwelcome. *See id. See also Hockman v. Westward Communications, L.L.C.,* 282 F.Supp.2d 512 (E.D.Tex.2003) (finding male co-worker's conduct that included commenting about a former employee's nice shape; brushing up against plaintiff; once popping plaintiff on the buttocks with a rolled up newspaper; once attempting to kiss plaintiff and grab her breast at the same time; and making other inappropriate comments of a sexual nature; to be boorish and offensive, but did not create a hostile or abusive work environment); *Weiss v. Coca–Cola Bottling Co.,* 990 F.2d 333, 337 (7th Cir.1993) (finding that conduct that included attempting to kiss plaintiff once at bar and twice at work, several incidents of unwanted touching, placing "I love you" signs in her work area, and asking her out on dates were not sufficient for actionable harassment).

Finally, the Court finds that the conduct of Perkins and of Washington did not unreasonably interfere with Blackmon's work performance, nor did it undermine Blackmon's workplace competence. *See Butler v. Ysleta Indep. Sch. Dist.,* 161 F.3d 263, 270 (5th Cir.1988) (holding that, in addition to other factors, a "plaintiff must show that implicit or explicit in the sexual content is the message that plaintiff is incompetent because of her sex"). Nowhere does Plaintiff or Intervenor provide this evidence. To the contrary, the evidence shows that Tiffany Blackmon competently discharged her duties during the time of the alleged harassment. Blackmon testified that she was Employee of the Week one time, an award given by the store manager Dan Patterson who, according to Blackmon, liked her because she was doing her job and catching the most shoplifters. Dep. of Blackmon, p. 262. Despite the alleged unwelcomed conduct, Blackmon testified that she "liked her little job" and felt as if she could have advanced with the company. *Id.,* pp. 321–22. Maurice Kirksey testified that, in March of 2002, in light of the proposed reduction in security workforce, he had elected to keep Blackmon in part because of her "exemplary" performance. Dep. of Kirksey, pp. 232–33. In fact, in the March 13, 2002 SYSM, Kirksey wrote that the "AM guard at 7255 [presumably, Blackmon] has been doing an outstanding job as of late apprehending and deterring shoplifters at that store." *See* SYSM, dated March 13, 2002.

The Court is cognizant of and guided by controlling jurisprudence indicating that "Title VII was only meant to bar conduct that is so severe and pervasive that it destroys a protected classmember's opportunity to succeed in the workplace." *Shepherd,* 168 F.3d at 874 (quoting *Weller v. Citation Oil & Gas Corp.,* 84 F.3d 191, 194 (5th Cir.1996), *cert. denied,* 519 U.S. 1055, 117 S.Ct. 682, 117 U.S. 682, 136 L.Ed.2d 607 (1997). The harassing actions of Pekrins and Washington, while offensive, are not the type of extreme conduct that would prevent Blackmon from succeeding in the workplace. *See Faragher v. City of Boca Raton,* 524 U.S. 775, 118 S.Ct. 2275, 2284, 141 L.Ed.2d 662 (1988) ("[C]onduct must be extreme to amount to a change in the terms and conditions of employment"). *See also DeAngelis v. El Paso Mun. Police Officers Assoc'n.,* 51 F.3d 591, 593 (5th Cir.1995) (stating that courts must always bear in mind that an ultimate goal of Title VII is to "level the playing field for women who work by preventing others from impairing their ability to compete on an equal basis with men", and that this goal of equality is not served by "[a]ny lesser standard of liability, couched in terms of conduct which sporadically wounds or offends but does not hinder a female employee's performance...."). Based upon a consideration of all the circumstances, the Court finds that the alleged conduct of Perkins and Washington did not render Shepherd's work environment objectively "hostile" or "abusive."

***7** The allegations here involve far less objectionable circumstances that those for which courts afford relief. *See, e.g., Farpella–Crosby v. Horizon Health Care,* 97 F.3d 803 (5th cir.1996) (finding a hostile environment where plaintiff's supervisor made frequent egregious comments about plaintiff's sexual proclivity to her and, on numerous occasions, threatened plaintiff with her job when she asked him to stop making these comments; *Waltman v. International Paper Co.,* 875 F.2d 468 (5th Cir.1989) (reversing summary judgment for employer, concluding hostile environment existed where female employee was sexually harassed frequently and by many co-workers and supervisors over a period of nearly three years; the harassment there, which was not denied, included repeated groping of and sexually suggestive comments made to plaintiff; plaintiff's having received over thirty pornographic notes in her locker; sexually explicit pictures and graffiti, some directed at plaintiff, drawn on the walls where plaintiff worked; one occasion of a co-worker dangling plaintiff over a stairwell; and one coworker having told plaintiff he would cut off her breast and shove it down her throat).

The same holds true with the cases Plaintiff has cited in its Opposition—*Pollard v. E.I. DuPont de Nemours Company,* 213 F.3d 933 (6th Cir.2000), *cert. granted,* 531 U.S. 1069, 121 S.Ct. 756, 148 L.Ed.2d 659, *rev'd on other grounds,* 532 U.S. 843, 121 S.Ct. 1946, 150 L.Ed.2d 62 (2001); and *Doe v. City of Belleville, Illinois,* 119 F.3d 563 (7th Cir.1997) *cert. granted and judgment vacated on other grounds,* 523 U.S. 1001, 118 S.Ct. 1183, 140 L.Ed.2d 313 (1998), *abrogated by Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998). Plaintiff cites these two cases in support of its argument that the conduct here was sufficiently severe and pervasive so as to create an objectively hostile work environment. However, the conduct alleged herein, while offensive (and should surely subject the alleged perpetrators to prompt disciplinary action by their supervisors), is far less objectionable than the egregious circumstances found in the *Pollard*[9] and *Doe*[10] cases.

The Court finds that, in light of the pronouncements of the Supreme Court and the Fifth Circuit, there is no basis from which a jury could reasonably find that Tiffany Blackmon was subjected to harassment which affected a "term, condition, or privilege" of her employment. Therefore, the Court does not reach the question of whether Defendant knew or should have known of the harassment and failed to take prompt remedial action. Accordingly, Defendant is entitled to summary judgment dismissing the sexual harassment hostile work environment claim.

C. Retaliation Claim

Title VII makes it unlawful for any employer to retaliate against an employee for bringing a charge under Title VII. *See* 42 U.S.C. § 2000e–3(a). Retaliation claims based upon circumstantial evidence are evaluated under the burden-shifting framework established in *McDonnell Douglas Corporation v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *See Evans v. City of Houston,* 246 F.3d 344, 352–54 (5th Cir.2001). Under the *McDonnell Douglas* framework, the plaintiff must first establish a *prima facie* case of retaliation. *See Haynes v. Pennzoil Co.,* 207 F.3d 286, 299 (5th Cir.2000). To establish a *prima facie* case, the EEOC and Intervenor must show: (1) Ms. Blackmon engaged in an activity protected by Title VII; (2) Rite Aid carried out an adverse employment action; and (3) a causal nexus exists between Blackmon's protected activity and Rite Aid's adverse action. *See Chaney v. New Orleans Pub. Facility Mgmt., Inc.,* 179 F.3d 164, 167 (5th Cir.1999), *cert. denied,* 529 U.S. 1027, 120 S.Ct. 1429, 146 L.Ed.2d 327 (2000). If the plaintiff establishes a *prima facie* case, then a presumption of discrimination arises and the burden shifts to the defendant to articulate—but not prove—a legitimate nondiscriminatory reason for the adverse employment action. *See Evans,* 246 F.3d at 350; *Haynes,* 207 F.3d at 299. If the defendant meets its burden of production, then the presumption of intentional discrimination is rebutted and the burden shifts back to the plaintiff to show that the reason proffered by the defendant is merely a pretext for discrimination. *See Evans,* 246 F.3d at 350; *Haynes,* 207 F.3d at 299.

***8** Based on the foregoing, the first issue is whether Blackmon has shown a *prima facie* case of retaliation. It is clear that Blackmon has met the first element of a *prima facie* case because she has demonstrated that she engaged in protected activity by complaining to Kirksey about the undercover security detectives' conduct towards her. *See Long v. Eastfield College,* 88 F.3d 300, 304 (5th Cir.1996) (stating that an "employee has engaged in activity protected by Title VII if she has either (1) 'opposed any practice made an unlawful employment practice' by Title VII or (2) 'made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing' under Title VII") (quoting 42 U.S.C. § 2000e–3(a)).

Rite Aid argues that the EEOC and Blackman cannot establish the second and third elements of a *prima facie* case because Blackmon was not subjected to an adverse employment action while she was still employed by Rite Aid. Rite Aid argues that the company could not have retaliated against Blackmon because (1) Blackmon's last date of employment with the company was four days before the alleged retaliatory act; and (2) Lakeisha Banford testified that she quit working for Rite Aid on her own accord and was not terminated.[11]

The second element of a *prima facie* case requires that Plaintiff and Intervenor demonstrate that Blackmon suffered an adverse employment action. "Title VII was designed to address ultimate employment decisions, not to address every decision made by employers that arguably might have some tangential effect upon those ultimate decision." *Dollis v. Rubin,* 77 F.3d 777, 781–82 (5th Cir.1995). "[T]ypical examples of ultimate employment decisions that can support a claim of retaliation include hiring, granting leave, discharging, promoting and compensating." *Hernandez v. Crawford Bldg. Material Co.,* 321 F.3d 528, 531 (5th Cir.2003).

Blackmon claims that she suffered an adverse employment decision when, at the March 26, 2002 meeting, Neu instructed Kirksey to terminate her, and Neu thereafter took her off the work schedule. Rite Aid, on the other hand, argues that Plaintiff and Intervenor cannot establish that Rite Aid carried out an adverse employment action. Rite Aid directs the Court's attention to a Punch Detail History which shows that Tiffany Blackmon last clocked into work at Store No. 7255 on Friday, March 22, 2002. However, the Court does not find Defendant's arguments persuasive. As Plaintiff correctly states, the record is void of undisputed testimony that Blackmon quit or resigned prior to being informed that she was removed from the guard schedule; Defendant's termination paperwork shows that she remained an employee until April 15, 2002; and Defendant lacks any other personnel paperwork for Blackmon during the last one or two days prior to her removal from the schedule because it lost her personnel file.

In her deposition, Blackmon testified that she was told by Kirksey that she and Lakeisha Banford "were being terminated because [the two women] reported the sexual harassment." Dep. of Blackmon, p. 290. According to Blackmon, Kirksey told her that Neu had instructed him to terminate Blackmon and Banford. *See id.* Kirksey has testified that on March 26, 2002, he met with Neu at Rite Aid Store No. 7272 to discuss Kirksey's suggestions regarding the proposed reduction in security workforce. Dep. of Kirksey, pp. 231–33. Prior to discussing the reduction, Kirksey inquired into the status of Neu's investigation of Blackmon's complaint, at which time Neu told Kirksey that he had spoken to his detectives and that he did not want the two women to work at Rite Aid anymore. *Id.,* pp. 241–242, 353–54 ("They're liars. I don't want them working here no more."). Kirksey has stated that after Neu made those comments, Neu drafted a new work schedule which did not include Blackmon or Banford. *Id.,* pp. 232, 241–42. While Neu denied that he was at Rite Aid Store No. 7272 on March 26, 2002, Neu has admitted that he told Kirksey to talk to Blackmon and see if he could resolve the issue. Dep. of David Neu, pp. 197–98, 282 (Pl.'s Ex. 6; Def.'s Ex. "C"). Neu also told Kirksey that Kirksey did not have much choice "if this young lady, Blackmon, felt so uncomfortable that she could not work in a store where there were cameras." *Id.,* pp. 199–200. Viewing the

evidence in the light most favorable to Plaintiff and Intervenor, the Court finds that genuine issues of material fact exist regarding the second element of the prima facie case, specifically with respect to the circumstances under which Blackmon left the employ of Rite Aid.

***9** The third element in establishing Blackmon's *prima facie* case is whether there is a causal connection between Blackmon's complaints to her supervisor and Blackmon's alleged termination. "In order to establish the causal link between the protected conduct and the illegal employment action as required by the prima facie case, the evidence must show that the [adverse employment action] was based in part on knowledge of the employee's protected activity." *Sherrod v. Am. Airlines,* 132 F.3d 1112, 1122 (5th Cir.1998). The causal connection can be inferred from circumstantial evidence, such as showing that the employer had knowledge that the plaintiff engaged in a protected activity, and showing the temporal proximity of that activity to the alleged retaliatory action. *See Evans,* 246 F.3d at 354. "[A] plaintiff need not prove that her protected activity was the sole factor motivating the employer's challenged decision in order to establish the 'causal link' element of a prima facie case." *Id.* at 355.

In this case, according to Kirksey, Neu instructed him to terminate Blackmon and Banford because "they're liars". Dep. of Kirksey, pp. 241–42. Although Neu denies having met with Kirksey on March 26, 2002, Neu admits that he told Kirksey that Kirksey did not really have any choice but to terminate Blackmon if she could not work in a store with surveillance cameras.[12] Dep. of Neu, pp. 199–200. Should a jury conclude that Rite Aid carried out an adverse employment action with respect to Blackmon, it would not be unreasonable, in light of the summary judgment evidence, for a juror to find the existence of a causal link between the protected activity (*i.e.,* lodging her complaints) and the adverse employment action.

Assuming *arguendo* that Plaintiff and Intervenor have established a *prima facie* case of retaliation here, the burden would consequently shift to Rite Aid to articulate a legitiamte nondiscriminatory reason for the adverse employment action. Rite Aid argues that in March of 2002, economic circumstances forced Rite Aid management to consider various ways to reduce security costs. Although, according to Rite Aid, no determination had yet been made, Kirksey gave his security guards a "heads-up" and told them to keep their eyes open for any other employment opportunities that may come their way. Rite Aid contends that it had made no such decision, but as a result of Kirksey's unauthorized forewarning, several security guards unilaterally quit working for Rite Aid. Rite Aid also states that, if it had implemented a reduction in force, it is likely that Blackmon, who had only worked for the company for several months, would have been layed off. Having reviewed the record, however, the Court finds that the testimony of Kirksey, if taken as true, suggests that definitive decisions were being made in late March of 2002 and that Neu had opted to retain certain guards, such as Andrea Hill, who were hired months after Blackmon was hired. *See* Dep. of Kirksey, pp. 232–33.

***10** Viewing the facts and all the inferences in favor of Blackmon, the Court concludes that genuine issues of material fact exist regarding the circumstances under which Tiffany Blackmon left the employ of Rite Aid and as to Rite Aid's nondiscriminatory reasons.[13] It will be up to the trier of fact, the jury, to hear the testimony and weigh the credibility of the witnesses to determine those facts. Accordingly, Rite Aid is not entitled to summary judgment on the claim of retaliation.

D. Injunctive Relief

The EEOC is vested with broad authority to remedy unlawful discrimination. *See E.E.O.C. v. Frank's Nursery & Crafts, Inc.,* 177 F.3d 448, 445 (6th Cir.1999). Part of that authority includes the EEOC's right to file suit over the subject matter of a charge that does not conciliate in order to vindicate the public interest and to obtain relief for an aggrieved individual. *Id.* at 457–58. *See also E.E.O.C. v. Waffle House, Inc.,* 534 U.S. 279, 122 S.Ct. 754, 151 L.Ed.2d 755 (2002). Unlike private litigants, the EEOC is not constrained by certain procedural requirements, and it may recover injunctive relief upon a showing of intentional discrimination. *See* 42 U.S.C. § 2000e–5(g)(1); *see also Frank's Nursery,* 177 F.3d at 467. In the matter before the Court, should the trier of fact find that Defendant has intentionally discriminated in the past (*i.e.,* retaliation in violation of Title VII), then this Court has broad discretion to craft an injunction that will ensure the employer's compliance with the law. *See* 42 U.S.C. § 2000e–5(g)(1); *Frank's Nursery,* 177 F.3d at 467. "Thus, the EEOC may obtain such general injunctive relief, under the equitable discretion of the court, even where the EEOC only identifies one or a mere handful of aggrieved employees." *Frank's Nursery,* 177 F.3d at 467–68 (citations omitted).

Defendant argues that the EEOC is not excused from its burden of satisfying the constitutional requirements of an "actual case or controversy that warrants injunctive relief by proving a real and immediate risk of future harm." Def.'s Mem., p. 27. Defendant argues that the Court should grant summary judgment on this claim because the EEOC has not presented any evidence of a real and actual risk of future violations by Rite Aid or that there is any immediate or threatened risk of harm to others. However, Defendant loses sight of the particular remedies afforded Title VII litigants and the EEOC, and instead cites

cases such as *Great–West Life & Annuity Insurance Company v. Knudson,* 534 U.S. 204, 122 S.Ct. 708, 151 L.Ed.2d 635 (2002).[14] Indeed, the law is clear that "the EEOC may seek injunctive relief to correct discrimination uncovered during its investigation of the charge of just one individual." *Frank's Nursery,* 177 F.3d at 468 (citing *E.E.O.C. v. McLean Trucking,* 525 F.2d 1007, 1010 & n. 8 (6th Cir.1975). Moreover, "[t]he EEOC may obtain a permanent injunction even where it does not allege a pattern or policy of discrimination." *Id.* (citing *E.E.O.C. v. HBE Corp.,* 135 F.3d 543, 557 (8 th Cir.1998); *E.E.O.C. v. Ilona of Hungary,* 108 F.3d 1569, 1578 (7th Cir.1978)).

***11** Furthermore, as Plaintiff correctly states, defendant's argument "misses the mark and disregards the underlying reason for granting equitable relief based on a finding of even one instance of past discrimination—to vindicate the public interest and provide a measure of public insurance of employer compliance with the law where it has failed." Pl.'s Opp. Mem., pp. 21–22 (citing *Frank's Nursery,* 177 F.3d at 467).

Because the Court has granted summary judgment in favor of Defendant on the sexual harassment hostile work environment claim, summary judgment must also be granted in Defendant's favor insofar as the EEOC seeks injunctive relief relative to sexual harassment. On the other hand, should the jury find in favor of the EEOC and Blackmon on the retaliation claim, then the Court will possess broad discretion to fashion appropriate equitable relief. Here, although there is evidence that, at all times relevant, Rite Aid implemented certain policies and trained all of its employees, should a jury find in favor of Plaintiff and Intervenor on the claim of retaliation, then this Court has the discretion to "provide a measure of public insurance" that Defendant will comply with the law in the future. Here, assuming *arguendo* that the jury does find the retaliatory action occurred, the summary judgment evidence reveals that there may be genuine issues regarding the propriety of (i) the training of Tiffany Blackmon, Maurice Kirksey and/or David Neu regarding complaint-reporting procedures and retaliation;[15] (ii) the apparent absence of any specific contact names and phone numbers and of the "1–800–RITE CALL" telephone number in defendant's posted anti-discrimination and complaint-reporting policies; (iii) the absence of any written policy issued by Defendant that is devoted solely to retaliation;[16] (iv) the absence of any written policy that would have prevented any retaliatory termination of an employee without involving a representative of Defendant's human resources department;[17] and (v) the delay between the time that Rite Aid's posters addressing anti-discrimination policies and complaint-reporting procedures were created and/or modified (September of 2001) and the time that the policies were certified as posted by the manager of Rite Aid Store No. 7255 (March 15, 2002).[18]

Accordingly, the Court will preserve its discretion to render injunctive relief and other affirmative relief in this case until after the parties have presented their cases and the jury has rendered its verdict.

E. Punitive Damages

A complaining party may recover punitive damages under Title VII against a defendant such as Rite Aid "if the complaining party demonstrates that [defendant] engaged in a discriminatory practice or discriminatory practices *with malice or reckless indifference* to the federally protected rights of an aggrieved individual." 42 U .S.C. § 1981a(b)(1) (emphasis added). "The terms 'malice' or 'reckless indifference' pertain to the employer's knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination." *Kolstad v. Am. Dental Assoc.,* 527 U.S. 526, 535, 119 S.Ct. 2118, 2124, 144 L.Ed.2d 494 (1999). "[A]n employer must at least discriminate in the face of a perceived risk that its actions will violate federal law to be liable in punitive damages. 527 U.S. at 535, 119 S.Ct. at 2125. "The inquiry does not end with a showing of the requisite 'malice or ... reckless indifference' on the part of certain individuals, however. 42 U.S.C. § 1981a(b)(1); *Kolstad,* 527 U.S. at 535, 119 S.Ct. at 2126. "[I]n the punitive damages context, an employer may not be vicariously liable for the discriminatory decisions of management agents where these decisions are contrary to the employer's good faith efforts to comply with Title VII." 527 U.S. at 535, 119 S.Ct. at 2129 (internal quotation omitted).

***12** The Fifth Circuit has explained that "[a]n employer is liable for punitive damages in a Title VII action if: (1) its agent is employed in a position of managerial capacity; (2) the agent acts within the scope of employment; and (3) the agent acts with malice or reckless indifference towards the federally protected rights of the plaintiff." *Green v. Adm'r of the Tulane Educ. Fund,* 284 F.3d 642, 653 (5th Cir.2002). "However, such liability may not be imputed if the agent's actions are contrary to the employer's good faith effort to comply with Title VII." *Id.*

The Fifth Circuit has likewise commented on what constitutes a "good faith defense" to punitive damages:

> In the present case, Bally's has made out the "good faith" defense to punitive damages. Davidson was arguably an agent in a managerial capacity, and she may have acted with malice or reckless indifference to the rights of plaintiffs within the scope of her employment. However, these actions

> were contrary to Bally's good faith effort to prevent sexual harassment in the workplace, as is evidenced by the fact that Bally's had a well-publicized policy forbidding sexual harassment, gave training on sexual harassment to new employees, established a grievance procedure for sexual harassment complaints, and initiated an investigation of the plaintiff's complaints. These actions evidence a good faith effort on the part of Bally's to prevent and punish sexual harassment. As a result, an instruction on punitive damages was not required.

Hatley v. Hilton Hotels Corp., 308 F.3d 473, 477 (5th Cir.2002).

Because the Court granted summary judgment in favor of Defendant on the sexual harassment hostile work environment claim, summary judgment must also be granted in Defendant's favor insofar as Plaintiff and Intervenor seek punitive damages on the sexual harassment claim. On the other hand, *assuming arguendo* that the jury finds in favor of the EEOC and Blackmon on the retaliation claim, then the Court must determine whether or not the alleged retaliatory actions of David Neu are contrary to the Rite Aid's asserted good faith effort to comply with Title VII.

While there is evidence that, at all times relevant, Rite Aid implemented certain policies and trained all of its employees, Plaintiff's summary judgment evidence creates genuine issues of material fact regarding Defendant's good faith efforts to comply with Title VII. Although Rite Aid's Employee Relations Administrator, Charlene Nash, has testified in her deposition that the company strives to protect its associates and their interests at the company, there is also testimony and other evidence in the record, when taken in the light most favorable to Plaintiff and Intervenor, that suggests that the Defendant may not have acted in a prompt and thorough manner to comply with Title VII.[19]

Accordingly, the Court denies Defendant's motion for summary judgment insofar as it seeks a dismissal of the claims for punitive damages on the retaliation claim. The Court does note that, in light of the summary judgment evidence produced by Rite Aid, it finds Plaintiff's and Intervenor's claim for punitive damages to be doubtful. However, the Court will entertain a Rule 50 motion for judgment as a matter of law on the issue of punitive damages at the conclusion of Plaintiff's case, in the event the evidence (or lack thereof) warrants.

III. *CONCLUSION*

***13** Accordingly, for all of the foregoing reasons, IT IS ORDERED that

(1) Defendant's Motion for Summary Judgment is GRANTED IN PART, dismissing Plaintiff's and Intervenor's claim for damages arising out of Title VII hostile work environment;

(2) Defendant's Motion for Summary Judgment is GRANTED IN PART, dismissing Intervenor's claim for injunctive relief based upon Title VII hostile work environment;

(3) Defendant's Motion for Summary Judgment is GRANTED IN PART, dismissing Plaintiff's and Intervenor's claim for punitive damages arising out of Title VII hostile work environment; and

(4) Defendant's Motion for Summary Judgment is DENIED in all other respects.

Footnotes

1 The exact date that Ms. Blackmon last reported to work is in dispute. Rite Aid contends that Ms. Blackmon's last day of work with the company was March 22, 2002. *See* Rite Aid Punch Detail History for Tiffany Blackmon (Defendant's Exhibit "G"). Based upon certain deposition testimony and the fact that Ms. Blackmon's work file is lost, the EEOC and Blackmon argue that Blackmon was possibly employed at least through March 26, 2002.

2 Rite Aid's payroll records do indicate that Blackmon worked an evening shift during the first few weeks of her employment with Rite Aid. *See* Rite Aid Punch Detail History for Tiffany Blackmon. Starting in November of 2001, Blackmon primarily worked the day-shift, which generally began at 7:00 a.m. and ended at 3:00 p.m. *See id.*

3 Rite Aid Store No. 7255 is part of Rite Aid Region 50, which includes Rite Aid stores in Louisiana, Mississippi and Alabama; the

regional office is located at 7060 Veterans Boulevard in Metairie, Louisiana.

[4] Rite Aid Store No. 7272 is located at the intersection of Claiborne and Napoleon Avenues.

[5] Blackmon's termination paperwork was completed on the same day as the termination paperwork for fourteen other Rite Aid uniformed security officers.

[6] Both Lester Perkins and Ed Washington deny the allegations of misconduct directed toward Blackmon, as well as the allegations of misuse of the surveillance cameras. Dep. of Lester Perkins, pp. 124, 170–73 (Pl.'s Ex. 11 *in globo*); Affidavit of Lester Perkins (Def .'s Ex. "M"); Dep. of Ed Washington, pp. 81–82 (Pl.'s Ex. 12 *in globo*); Aff. of Ed Washington (Def.'s Ex. "O").

In addition, Maurice Kirksey has testified that he witnessed the undercover security detectives, including Perkins and Washington, "flirt" with the new hires and security guards. Dep. of Kirksey, p. 101. Kirksey explained this flirting to mean "brushing up against [the new hires and guards]", asking them out and asking them to lunch. *See id.* While Kirksey did witness the undercover detectives flirt with Blackmon, he never personally witnessed any of the behavior that was the subject of Blackmon's complaints. *Id.,* pp. 211–13, 334–35.

[7] Mardi Gras day in 2002 was February 12th.

[8] The Court must consider the conduct of Perkins and Washington together in determining whether the alleged harassment created an actionable hostile work environment. *See, e.g., Pollard v. E.I. DuPont de Nemours Co.,* 213 F.3d 933 (6th Cir.2000), *cert. granted,* 531 U.S. 1069, 121 S.Ct. 756, 148 L.Ed.2d 659, *rev'd on other grounds,* 532 U.S. 843, 121 S.Ct. 1946, 150 L.Ed.2d 62 (2001) ("Each alleged act of harassment must not be viewed in a vacuum, but must be considered together with other acts").

[9] The undisputed evidence before the Sixth Circuit in *Pollard* established that plaintiff, a female operator in the hydrogen peroxide area in defendant's plant, was subjected to constant harassment from male operators and from the males who worked under her supervision and that said harassment was based solely on the fact the plaintiff was a woman. 213 F.3d 933. The undisputed evidence established that many of the men in the peroxide area did not approve of women working in the department; the men would frequently make, in plaintiff's presence, degrading comments about women, including comments about women's inability to accomplish tasks as well as men. *Id.* at 938. After the defendant company asked plaintiff to give a speech to girls participating in the national Take Your Daughter To Work program, all of the men of plaintiff's shift, with one exception, stopped talking to plaintiff. *Id.* Soon thereafter, one male operator directed all the men under plaintiff's supervision to consult him first prior to following any instructions from plaintiff. *Id.* That same male operator would set off false alarms in plaintiff's area, causing her to run around in search of a non-existent problem. *Id.* at 939. When the false alarms occurred when plaintiff was cooking her dinner, the men would turn up the stove to burn her food while she was searching for the problem. *Id.* Some of the real alarms were not brought to plaintiff's attention, causing plaintiff to appear incompetent to the operator on the next shift. *Id.* When plaintiff transferred to a different shift, the entire shift, including a supervisor, held a party, admittedly to celebrate plaintiff's departure. *Id.* at 941. Following a bench trial, the Court found that the conduct amounted to severe and pervasive harassment, which—along with the proven knowledge of management and the lack of an effort to remedy the situation—created an abusive work environment under Title VII.

[10] In *Doe v. City of Belleville, III.,* the Seventh Circuit was presented with the issue of whether same-sex harassment was actionable under Title VII, which the Court ultimately answered in the affirmative. 119 F.3d 563. In reversing summary judgment in favor of the defendant, the Court found that there was more than enough evidence to permit the factfinder to conclude that each of the brothers subjectively experienced his workplace as hostile. *Id* . at 595. The *Doe* plaintiffs were two sixteen-year old brothers hired by the defendant to cut grass in the municipal cemetery during one summer. *Id.* at 566. As the appellate court described, "both young men were subjected to a relentless campaign of harassment by their male co-workers", all of whom were significantly older than plaintiffs. *Id.* To differentiate the two brothers, the men nicknamed J., who was overweight, the "fat boy", and H., who wore an earring, the "fag" or the "queer." *Id.* One of the older co-workers called H. his "bitch" and, in the presence of others, said that he was going to take H. "out to the woods" and "get [him] up the ass." *Id.* at 567. Other male co-workers encouraged this behavior and made similar derogatory comments. *Id.* The verbal taunting of H. turned physical one day when the same co-worker walked toward H. saying, "I'm finally going to find out if you're a girl or guy," and then grabbed H. by the testicles. *Id.* In his deposition testimony, H. testified that the atmosphere during his summer employment was "very abusive" and that he had felt threatened. *Id.* at 595.

[11] Maurice Kirksey has testified that, at the March 26, 2002 meeting, David Neu instructed him to terminate both Blackmon and Banford. Dep. of Kirksey, pp. 231, 241–42.

[12] The Court notes that this evidence might constitute direct evidence of retaliation such that the *McDonnell Douglas* test would be inapplicable. *See Fierros v. Texas Dept. of Health,* 274 F.3d 187, 192 (5th Cir.2001) (finding that if a "plaintiff presents direct evidence that the employer's motivation for the adverse action was at least in part retaliatory, then the McDonnell Douglas framework does not apply"). Because the Court concludes that Rite Aid is not entitled to summary judgment on the retaliation claim, regardless of the method of proof, the Court will not address this issue at this time.

[13] Rite Aid argues that Blackmon's failure to timely report suspected retaliation serves as an additional basis for this Court to grant Rite Aid's motion for summary judgment. Rite Aid, however, directs the Court to no jurisprudence holding or suggesting such. Evidence of Blackmon's failure to report and immediate retention of an attorney, if admissible and supported by law, will be simply another factor for the jury to consider.

[14] The question presented to the Supreme Court in *Knudson* was whether a provision of the Employee Retirement Income Security Act of 1974 (ERISA), authorizing plan participants and fiduciaries to bring civil action to obtain "appropriate equitable relief", authorized an action for specific performance by an employee benefit plan to enforce a reimbursement provision of the plan, 534 U.S. at 206, 122 S.Ct. at 711. The Court held that because the plan was seeking legal relief—the imposition of personal liability on the plan beneficiaries for a contractual obligation to pay money—the ERISA provision did not authorize the action. 534 U.S. at 221, 122 S .Ct. at 719. Throughout the opinion, the Court addressed the plan's various arguments "struggl[ing] to characterize the relief sought as 'equitable" ' so as to fit within ERISA's authorization of a civil action to obtain "appropriate equitable relief." 534 U.S. at 210, 122 S.Ct. at 713.

[15] For example, Kirksey has testified that he did receive any training on Rite Aid's anti-retaliation policy; Kirksey stated that the emphasis during his training was loss prevention and security procedures. Dep. of Kirksey, pp. 318–21. While he stated that he would not tolerate retaliation, Neu was not aware whether Rite Aid had a policy against retaliation toward employees who complained of discrimination. Dep. of Neu, p. 119. In addition, Blackmon testified that she did not recall whether, during new hire orientation, she was told about the 800 telephone number. Dep. of Blackmon, pp. 123–24.

[16] Rite Aid's retaliation policy is found at the end of its complaint resolution policy. *See* Rite Aid Associate Handbook (Pl .'s Ex. 10.1, Def.'s Ex. "P"); Rite Aid Associate Atlas (Def.'s Ex. "Q"); Rite Aid "Associate Complaint Resolution" poster (Pl.'s Ex. 10.4, Def.'s Ex. R).

[17] While Rite Aid has a verbal policy originating from its Corporate Office that no one in the company can be fired without having human resources as a partner, Rite Aid does not have a written policy requiring same. Dep. of Keith Lovett at 69–74 (Pl.'s Ex. 9, Def.'s Ex. "S").

[18] *See* Rite Aid's "Discrimination", "Harassment in the Workplace" and "Associate Complaint Resolution" posters, each dated "09/2001" (Pl.'s Ex. 10.2—10.4, Def.'s Ex. "R"); *cf.* Rite Aid Posting Certification for Store NO. 7255, "Date Posted: 3/15/02" (Pl.'s Ex. 10.6).

[19] As set forth earlier, the deposition testimony reveals the existence of genuine issues regarding the propriety and completeness of matters such as the Rite Aid's training of its associates and supervisors, and the delays associated with the creation, publication and dissemination of policies and procedures related to discrimination and complaint resolution.