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United States District Court, W.D. Virginia.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
PENTMAN, LLC, D/B/A Arby's of Wise, VA, Defendant.

No. 2:01CV00043. | April 12, 2002.

Attorneys and Law Firms

Stacey Turner Caldwell, Trial Attorney, Equal Employment Opportunity Commission, Richmond, for Plaintiff.

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Opinion

OPINION AND ORDER

JONES, District J.

***1** The Equal Employment Opportunity Commission ("EEOC") brought this case pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e to 2000e–17 (West 1994 & Supp.2001) ("Title VII"), against Pentman, LLC ("Pentman"), which operates an Arby's fast food restaurant in Wise, Virginia. After discovery, Pentman has moved for summary judgment, based on deposition transcripts, an affidavit, and exhibits. The EEOC opposes the motion and has submitted additional evidence. The motion is ripe for decision.[1]

[1] Neither party has requested oral argument on the motion for summary judgment, a prerequisite under the Scheduling Order. I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

The EEOC alleges that Pentman is liable under Title VII because one of its female managers, Tina Collins, subjected female employees to a hostile work environment, retaliated against them for their complaints about her behavior, and caused their constructive discharge. According to female employees, Collins subjected them to constant graphic comments and questioning about sex, propositions for sex with Collins and her boyfriend, and slapping and touching of their bodies. When they complained to Collins and her superiors about the conduct, Collins allegedly required the complaining female employees to stay later at work than male employees, to do chores of male employees, as well as to do unnecessary work, such as cleaning the floor with a toothbrush.

Some of the charging parties heard or saw Collins touch or make sexual comments to male employees, but they contend that the inappropriate behavior and work requirements were directed more toward female than male employees.

Summary judgment is appropriate when there is "no genuine issue of material fact," given the parties' burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *see* Fed.R.Civ.P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *See Ross v. Communications Satellite Corp.,* 759 F.2d 355, 364 (4th Cir.1985).

Same-sex sexual harassment is actionable under Title VII, so long as the offensive conduct actually constituted discrimination because of sex. *See Oncale v. Sundowner Offshore Servs., Inc.,* 523 U.S. 75, 80–81 (1998). Pentman contends that Collins was an "equal-opportunity" harasser who did not discriminate by gender in her offensive conduct. If that were true, it would be an obstacle to the EEOC's case. *See Lack v. Wal–Mart Stores, Inc.,* 240 F.3d 255, 262 (4th Cir.2001). However, I find a genuine issue of material fact exists as to whether men and women were treated alike in this regard, and thus summary judgment is not appropriate. *See EEOC v. R & R Ventures,* 244 F.3d 334, 338–39 (4th Cir.2001); *Smith v. First Union Nat'l Bank,* 202 F.3d 234, 242 (4th Cir.2000).

Pentman also argues that the retaliation claim is not viable, because there is inadequate proof of opposition to the harassment or adverse employment action as a result of the retaliation.[2] Again, however, I find that there is sufficient evidence in the summary judgment record to allow the case to go forward on this claim.

[2] Title VII makes it illegal for "an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter ...." 42 U.S.C.A. § 2000e–3(a) (West 1994).

***2** For these reasons, it is ORDERED that the motion for summary judgment by the defendant [Doc. No. 15] is denied.