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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

Civil No. 03-64-HA

and

OPINION AND ORDER

WENDY BAKER, CHRISTINE THOMPSON,  
LAURIE DAMETZ, and DONNA EMERSON,

Intervenors,

v.

UNITED STATES BAKERY,

Defendant.

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HAGGERTY, Chief Judge:

The Equal Employment Opportunity Commission (EEOC) filed this action on January 16, 2003, alleging unlawful employment practices by defendant United States Bakery (USB) in violation of 42 U.S.C. §§ 2000e-2(a) and 3(a) (Title VII). The EEOC asserts that an employee of the defendant sexually harassed Wendy Baker, Donna Emerson, Laurie DaMetz, and Christine Thompson. On June 18, 2003, these four individuals filed a Motion to Intervene in the federal claims, which this court granted on July 15, 2003. On December 17, 2003, the EEOC filed a Motion to Compel Discovery and for a Limited Discovery Extension (Doc. #48) on the grounds that USB refuses to produce documents in response to EEOC's Second Set of Requests for Production (Second Requests).

### **FACTUAL BACKGROUND**

Plaintiff and plaintiff intervenors allege that one of defendant's employees, Jeff Fahlman, sexually harassed Dametz, Baker, Emerson, and Thompson via verbal comments and gestures of a sexual nature. On October 2, 2003, EEOC served its Second Requests to USB. First, USB

requested documents relating to the employment history of certain USB officials, including their promotions, demotions, performance appraisals, and any discipline action taken against them. EEOC seeks these records for three former USB Human Resource Managers, Lynette Hansen, Lisa Kane, and Susan Ingram, and Diana Rak, the current Human Resource manager who began working after Fahlman was terminated. USB avers that it has produced all requested documents and that no disciplinary reports or records exist for Hansen, Kane, Ingram, or Rak. In light of this representation, this request is denied as moot.

EEOC also seeks limited personnel records of three management officials, Bill McCarthy, Claude Sammons, and Mike Dower. McCarthy hired Fahlman and was his direct supervisor. McCarthy was involved in prior investigations regarding allegations that Fahlman was harassing other women employees besides plaintiff intervenors. *See McCarthy's Dep.*, at 63:17-78:9. Sammons is the supervisor to whom plaintiff intervenors complained about Fahlman sexually harassing them and Sammons was present when Fahlman allegedly made sexual comments. *See Dametz's Dep.*, at 12:25-16:6; 75:3-82:25; *Thompson Dep.*, at 45:25-53:18. Dower is a foreman who witnessed Fahlman allegedly making sexual comments to female employees. *Dametz's Dep.*, at 26:4-32:22.

EEOC claims USB refused to produce the personnel records of McCarthy, Sammons, and Dower because the documents are corollary to the matters in issue and impeachment was insufficient for obtaining the documents. EEOC now seeks an order compelling the limited personnel records of McCarthy, Sammons, and Dower.

EEOC also seeks production of all documents relating to any discrimination complaints against Bob Albers, USB's Chief Executive Officer. This request is based on the testimony of

Albers' son, Marc Albers, USB's General Manager, as well as the testimony of Human Resource Manager Hansen. Marc Albers testified that his father may have been accused of sexual harassment by a female employee in the late 1980s. Albers' Dep., at 18:6-19:22. Hansen testified that she investigated a complaint brought by Birdie Lowery, a USB office worker, who alleged that Bob Albers forced her to engage in oral sex in his office. Hansen's Dep., at 28:5-49:12. Hansen stated that she may have taken notes of her investigation. *Id.* at 37: 18-38:14. USB refused to produce any documents based on relevancy grounds.

### **STANDARDS**

The federal rules allow discovery of "any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Fed. R. Civ. P. 26(b). This rule is interpreted to allow liberal discovery of all information reasonably calculated to lead to the discovery of admissible evidence, although the discoverable information itself need not be admissible at trial. *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993). Requests for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action. *See id.* Courts are generous in providing broad discovery parameters and refusing to allow "procedural technicalities [to] impede the full vindication of guaranteed rights." *Trevino v. Celanese Corp.*, 701 F.2d 397, 405 (5th Cir. 1983).

If during discovery a party refuses to permit requested discovery that is relevant and not otherwise subject to privilege, the requesting party may seek an order compelling discovery. Fed. R. Civ. P. 34; 37(a)(2)(B). In response to such an order, the party resisting discovery has a

heavy burden of showing why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975); *Cable and Computer Tech. Inc. v. Lockheed Saunders, Inc.*, 175 F.R.D. 646, 650 (C.D. Calif., 1997) (the party resisting discovery must clarify, explain, and support its objections). If the information sought is deemed by the court to be irrelevant, the court should restrict discovery to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense . . . ." Fed. R. Civ. P. 26(c); *see also Herbert v. Lando*, 441 U.S. 153, 177 (1979).

### **ANALYSIS**

EEOC asserts its requests properly seek relevant information regarding USB's enforcement of its sexual harassment policy. USB argues that it has already produced relevant documents, including documents showing work, pay and promotion/demotion history of the identified USB employees. USB also agreed to produce any performance evaluations for these individuals, as well as documents pertaining to Marc Albers limited to the period of time he worked as General Manager.

The documents now in dispute are: (1) disciplinary reports for supervisors Dower, Sammons, and McCarthy; and (2) documents relating to a possible allegation of sexual harassment against Bob Albers.

EEOC argues that the limited personnel records of supervisors Dower, Sammons, and McCarthy are relevant because these individuals were responsible for enforcing USB's sexual harassment policy. The personnel records are also relevant because they can yield potentially important impeachment evidence.

The court finds documents pertaining to the managers' promotions or demotions, disciplinary actions, work performance reviews, and complaints to be relevant as to whether the managers knew of the alleged hostile work environment. *See Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 604 (C.D. Cal. 1995). These documents also pertain to the credibility of the managers if they are called as witnesses and provide a means to evaluate testimony given in depositions. *See id.* (recognizing that non-party personnel files are discoverable for impeachment purposes). Contrary to USB's assertion, such evidence is not collateral to the matters in issue, but relates specifically to the managers' job performance at USB. Therefore, the court directs USB to produce all such documents pertaining to Dower, Sammons, and McCarthy's promotions or demotions, disciplinary actions, work performance reviews, and complaints.

Second, EEOC seeks production of all documents concerning the sexual harassment allegations against Bob Albers. USB objects on relevancy grounds. EEOC argues that any such evidence is a necessary factual predicate to establish that USB could have prevented Fahlman's sexual harassment had USB taken reasonable steps to strengthen its sexual harassment policy and training after the allegations against Bob Albers arose. EEOC also claims that this evidence is relevant to USB's liability for punitive damages because it may show that USB failed to act in good faith compliance with Title VII by ignoring these allegations and making appropriate changes to its sexual harassment policy or training. In addition, EEOC contends that information about the allegations against Bob Albers is admissible background evidence because it is relevant to the present sexual harassment claims against USB.

An employer is liable under Title VII if it knows, or should know, of a hostile work environment and fails to take any actions to prevent future sexual harassment. *Fuller v. City of*

*Oakland, Cal.*, 47 F.3d 1522, 1527 (9th Cir. 1995). An award of punitive damages is allowed in a Title VII action when the plaintiffs can prove that the employer engaged in intentional discrimination with reckless indifference to the plaintiffs' protected rights. 42 U.S.C. §1981a(a)(1), (b)(1); *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 534 (1999). Evidence of an employer's prior discriminatory acts may constitute relevant background evidence in a case where the status of a current practice is at issue. *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558 (1977).


The court finds that the requested documents are relevant to the question of whether USB knew, or should have known, of a hostile work environment and failed to take any preventive actions. The documents may also be relevant as to whether USB is liable for punitive damages for failing to make good faith efforts to remedy a possible hostile work environment. In addition, the documents are relevant background evidence. For these reasons, USB is ordered to produce all such documents relating to the sexual harassment allegations against Bob Albers.

### **CONCLUSION**

For the foregoing reasons, plaintiffs' Motion to Compel Discovery and for a Limited Discovery Extension (Doc. #48) is GRANTED in part and DENIED in part.

IT IS SO ORDERED.

DATED this 10 day of February, 2004.

  
ANCER L. HAGGERTY  
United States District Judge