

**BEFORE
THE PRINCE GEORGE’S COUNTY
HUMAN RIGHTS COMMISSION**

IN RE: CARISIA DYSON

Complainant

By

EXECUTIVE DIRECTOR

**vs.
STAFFING ETC.**

Respondent

**HRC Case No.: HRC19-0306
EEOC Case No.: 531-2018-01416**

Human Rights Commission
Clerk Received
March 29, 2022

**THE OPINION AND ORDER
OF
THE PRINCE GEORGE’S COUNTY
HUMAN RIGHTS COMMISSION**

Under the authority of the Prince George’s County Code, Division 12, Subdivision 1 §2-185 et seq. (2021 Edition, as amended), the Prince George’s County Human Rights Commission (“Commission”) adjudicates the charge of discrimination brought by Complainant Carisia Dyson against Respondent Staffing, Etc., for sexual harassment and failure to properly investigate allegations of sexual harassment in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended.

This matter was called for Public Hearing before a three-member Panel (“Panel”) of the Commission on May 20, 2021, June 14, 2021, August 16, 2021, August 17, 2021, and August 18, 2021. After hearing all witnesses, the Panel recommended to the full Commission that the

Respondent violated Title VII of the Civil Rights Act of 1964, because Complainant Carisia Dyson was subjected to sexual harassment while working at Staffing, Etc., and Respondent failed to properly investigate her allegations of sexual harassment; failed to have a well-developed and publicized sexual harassment policy; and failed to properly train and educate managers and employees about their rights and responsibilities under the policy. The Panel, therefore, recommended: (1) a finding in favor of Complainant; (2) an award to Complainant of compensatory damages in the amount of \$10,000.00 for emotional distress; and (3) a fine of \$10,000.00 payable by the Respondent to the Prince George’s County Government. As outlined in detail below, the Commission unanimously accepts the recommendation of the Panel.

I. FINDINGS OF FACT

The following Findings of Fact are derived from the Public Hearings convened on May 20, 2021, June 14, 2021, August 16, 2021, August 17, 2021, and August 18, 2021, including witness testimony and admitted exhibits.

A. BACKGROUND

Complainant Carisia Dyson (“Complainant” or “Ms. Dyson”) is an individual residing in Upper Marlboro, MD, who was hired as a staffing coordinator/scheduler by Staffing, Etc. (“Respondent” or “Staffing, Etc.” or “Company”) in July 2017. *See* Executive Director’s Exhibit (hereafter, cited as “ED Ex.”) 2; *See* Respondent’s Exhibit (hereafter, cited as “RP Ex.”) 1; *See* Dyson Transcript (hereafter, cited as “Dyson Tr.”) vol. 2, 228:13-14, June 14, 2021. The Respondent is located in Lanham, Maryland and specializes in placing health care professionals and administrative staff on assignments at government agencies, hospitals, school systems, health centers, and private corporations. *See* Dyson Tr., vol. 1, 18:20-25; 19:1-5 20:7-9, May 20, 2021; *See* ED Ex. 2; *See* RP Ex. 1. David Porter (“Mr. Porter”) is the owner and president of Staffing,

Etc. *See* Dyson Tr., vol. 1, 18:15-16. Hope Porter (“Ms. Porter”) is Mr. Porter’s wife and CEO of Staffing, Etc. *Id* at 65: 20-25; 66:1; Dyson Tr., vol. 3, 359, August 16, 2021. Ms. Porter is also responsible for, *inter alia*, writing the company’s policies and making sure that the company is operating in compliance with its policies and contracts. Dyson Tr., vol. 1, 65: 20-25; 66:1;70:5-9; Dyson Tr., vol. 3, 359. Patrice Dennis (“Ms. Dennis”) was Carisia Dyson’s supervisor and is the company’s Director of Operations. Dyson Tr., vol. 1, 29:1-4; 80:7-15; Dyson Tr., vol. 2, 230:20-22. Ms. Dennis is responsible for onboarding contracts, hiring, disciplining employees, and ensuring that the company’s human resources and operational policies are in place and current. *See* Dyson Tr., vol. 1, 80:21-25; 81:1-2; 92:16-19; Dyson Tr., vol. 3, 360; 404:21-25; 405:4-10. William Gilmer (“Mr. Gilmer”) was employed by Staffing, Etc. as a maintenance worker and performed maintenance inside and outside of the Respondent’s office. Dyson Tr., vol. 4, 497:20-25; 498:1, August 17, 2021. Rochelle Ross (“Ms. Ross”) is the lead staffing coordinator at Staffing, Etc. Dyson Tr., vol. 3, 407:5; Dyson Tr., vol. 4, 562:17-25. Regina Howard (“Ms. Howard”) was an administrative assistant with Staffing, Etc. *Id.* at 407:6-7; Dyson Tr., vol. 5, 6-12, August 18, 2021. Jean Brown (“Ms. Brown”) was the receptionist at Staffing, Etc. *Id.* at 594:12-14.

In July 2018, Ms. Dyson initiated this action by filing a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) against the Respondent. *See* ED Ex. 2; *See* RP Ex.1. Ms. Dyson alleges that the Respondent discriminated against her based on sex. *Id.*; *See* Dyson Tr., vol. 2, 144:4-8; *See* ED Ex. 14. Ms. Dyson further alleges that she was terminated from her position at Staffing, Etc. as coordinator/scheduler in retaliation for complaining to the Respondent about sexual harassment by a coworker and harassment and a hostile work environment due to that coworker’s conduct and a second coworker’s conduct. *Id.*

In or about early February 2018, I was subjected to sexual harassment from a co-worker, William Gilmer. The sexual harassment took the form of unwelcomed physical touching. I immediately complained to my employer. Although I was not subjected to any further sexual harassment, I was subjected to harassment and a hostile work environment from Mr. Gilmer. The subsequent harassment consisted of Mr. Gilmer, and another co-worker (Rochelle Ross) calling me names, being rude, and creating hostile work environment. Despite continued complaints of these behaviors to management, no action was taken. On July 23, 2018, without prior warning or notice, I was discharged from my employment.

I was not given a valid reason or explanation for the Respondent's lack of action to address and correct the unlawful conduct to which I was subjected. I was told the reason for my discharge was due to restructuring of the company.

I believe I have been discriminated against....based on my sex, female; and...with regard to harassment and discharge based on retaliation.

Id.; *See* Dyson Tr., vol. 2, 144:4-8, June 14, 2021.

In a letter to Prince George's County Human Rights Commission dated April 5, 2019, the Respondent denied discriminating against Ms. Dyson. *See* ED Ex. 3; *See* Dyson Tr., vol. 2, 145-153. The Respondent contends that "Ms. Dyson failed to timely report to Staffing Etc. management any alleged act of sexual harassment that she experienced." *Id.* The Respondent also claims that "[t]he first time Ms. Dyson mentioned any alleged sexual harassment by Mr. William Gilmer was approximately three (3) weeks after the conduct purportedly occurred" and that "Ms. Dyson only complained of the alleged acts after she herself was disciplined through corrective actions because of her questionable behavior towards Mr. Gilmer." *Id.*

The Prince George's County Office of Human Rights issued a Letter of Determination dated November 25, 2019, finding that Ms. Dyson's complaint of a hostile work environment was general in a nature and not connected to any protected characteristic under Title VII. The Prince

George's County Office of Human Rights also found that Ms. Dyson's claim that her termination was a result of her filing a complaint of harassment was without merit. As such, the issues remaining before the Commission are: (1) whether the Complainant was subjected to sexual harassment; and (2) whether the Respondent failed to investigate or take corrective action when Complainant complained of the alleged sexual harassment.

II. ANALYSIS

A. Applicable Law

Under Prince George's County Code, Subtitle 2, Division 12, Section 2-222, "[n]o employer in the County shall discharge or refuse to hire any person, or act against any person with respect to compensation or other terms and conditions of employment, or limit, segregate, classify, or assign employees because of discrimination". Under Federal law, in accordance with Title VII of the Civil Rights Act of 1964, it is unlawful for an employer 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) (1964). Sexual harassment is a form of sex discrimination under Title VII. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). In addition to prohibiting sexual harassment that is explicitly tied to the grant or denial of an economic *quid pro quo*, Title VII prohibits sexual harassment that creates a work environment that is sufficiently hostile or abusive to affect a term, condition, or privilege of employment. *See Id.* at 67. "An actionably hostile work environment may be created by the sexual harassment of an employee by a co-employee." *See* 29 C.F.R. § 1604.11(d) (1998).

In Maryland, an employer is liable for sexual harassment discrimination for the acts or

omissions toward an employee committed by an individual who undertakes or recommends tangible employment actions affecting the employee or an applicant for employment. Md. Code, State Gov't § 20-611. An employer is also liable for sexual harassment discrimination if the negligence of the employer led to the harassment or continuation of harassment. *Id.*

To determine if an employer is liable for sexual harassment, a two-step analysis must be done. First, the complainant must make a *prima facie* showing that sexually harassing actions took place, and if this is done, the employer may rebut the showing either directly, by proving that the events did not take place, or indirectly, by showing that they were isolated or genuinely trivial. *Katz v. Dole*, 709 F.2d 251, 256 (4th Cir.1983). Second, the complainant must show that the employer knew or should have known of the harassment and took no effectual action to correct the situation. *Id.* The complainant may do this by proving that complaints about the harassment were lodged with the employer or that the harassment was so pervasive that the employer's awareness may be inferred. *Id.* at 255. This showing can be rebutted by the employer directly, or by pointing to prompt remedial action reasonably calculated to end the harassment. *Id.* To avoid liability under Title VII, an employer on notice of sexual harassment must do more than indicate the existence of an official policy against such harassment. *Id.* at 256.

B. Ms. Dyson's Sexual Harassment Complaint

To plead a sexual harassment cause of action successfully, the complainant must allege “(1) the subject conduct was unwelcome; (2) it was based on the sex of the plaintiff; (3) it was sufficiently severe or pervasive to alter the plaintiff's conditions of employment and to create an abusive work environment; and (4) it was imputable on some factual basis to the employer.” *Spicer v. Virginia, Dept. of Corrections*, 66 F.3d 705, 708, 710 (4th Cir.1995). In determining

whether the alleged harassment of an employee is sufficiently severe or pervasive to bring it within Title VII's scope, a court must examine “all the circumstances, [including] 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”. *Beardsley v. Webb*, 30 F.3d 524, 529 (4th Cir.1994).

(1) Unwelcome Conduct

Ms. Dyson testified that around the second week in February 2018, she was subjected to unwelcomed physical touching by William Gilmer. *See* ED Ex. 2; *See* Dyson Tr., vol. 2, 247-250. Specifically, Ms. Dyson reported to the Prince George’s County Office of Human Rights investigator, V’Hesspa Glenn (“Ms. Glenn”) that:

“[A]round early February 2018, she was working at her desk when the Respondent's Maintenance Specialist (Male) snuck behind her and put his tongue in her ear. She stated that this caused her to feel uncomfortable and nasty...[S]he yelled out for him not to talk to, touch, or come near her again.”

See ED Ex. 14.

Ms. Dyson testified:

25 I
1 was working, and all of a sudden he walked up behind
2 me and I had a wet tongue in my ear.
3 I was just, like, I think, are you kidding
4 me? I hit him. I told him get the F away from me.
5 He bust out laughing with the same broom and little
6 sweeper he had he bust out laughing. He thought it
7 was funny. I said don't you ever touch me. If you
8 ever touch me again I will kill you and sit here and
9 wait for 9-1-1 is what I told him.
10 I have never been with anybody in 18
11 years -- well with my ex I was with and the last
12 five plus years nobody. I'm sorry to be upset and
13 emotional. I'm not being rude to anyone but doing
14 this and going through it is just a nightmare to me

15 because that's what he did, and he thought it was a
16 joke.

See Dyson Tr., vol. 2, 246:25; 247:1-16.

Ms. Glenn” testified that Ms. Dyson was “hysterical”, “frustrated”, “shaking”, “crying”, “very, very angry”, and “distraught” when she recounted the February 21, 2018 incident. *See* Dyson Tr., vol. 2, 187:5-13.

Ms. Glenn further testified that Ms. Dyson reported:

16 there
17 weren't very many people in the office if anyone at
18 all, and he came up behind her. She was on the
19 computer. Her back was to him, and he kind of
20 reached around and put his tongue inside of her ear.
21 And she turned around -- she was very
22 frustrated about it and said don't you ever do that
23 to me again. Don't touch me. She may have said a
24 bad word or two, but essentially that was it.

See Dyson Tr., vol. 2, 186:16-25.

Based on the testimony of Ms. Dyson and Ms. Glenn, the Commission finds that the action of Mr. Gilmer putting his tongue in Ms. Dyson’s ear was unwelcomed.

(2) Based on Ms. Dyson’s Sex

Ms. Dyson identifies as a woman and alleges that the conduct was based on her sex as a female.

(3) Severe or Pervasive

Mr. Porter testified that there was only one report in 2018 of Ms. Dyson being sexually harassed by Mr. Gilmer. Dyson Tr., vol. 1, 64:5-12. However, according to Ms. Dyson, in 2017, she reported to Ms. Dennis, her direct supervisor, that she was in a hostile work environment. *See* Dyson Tr., vol. 2, 246:15-19; *See* ED Ex. 16. Ms. Dennis testified that Ms. Dyson came to her

office on February 12, 2018 to report that Mr. Gilmer called her out of her name. Dyson Tr., vol. 3, 413: 7-12. Additionally, Ms. Dennis testified that on February 13, 2018, Ms. Dyson also sent her an email reporting a hostile work environment caused by Mr. Gilmer calling her a “stupid bitch” but that she did not receive any emails from Ms. Dyson complaining about Mr. Gilmer sticking his tongue in her ear. Dyson Tr., vol. 1, 107:13-25; 108:1-6; 21-23;1107-12: *See* RP Ex. 3; ED Ex. 17; *See* Dyson Tr., vol. 2, 255:1-11.

Ms. Dyson testified that Mr. Gilmer made comments to her every day that made her uncomfortable. Dyson Tr., vol. 1, 232:24-25; 233: 1-7. According to Ms. Dyson, prior to the incident of Mr. Gilmer sticking his tongue in her ear, Mr. Gilmer “started being fresh mouthed”. *See Id.* at 231-232. Specifically, Ms. Dyson testified that Mr. Gilmer would comment on her looks or ask, “who was taking care of [her]”. *Id.* at 233:1-5. Ms. Dyson further testified that she told Mr. Gilmer to “stop being fresh” and changed the location of where she parked her car during the work day. *See Id.* at 231:20-25.

Ms. Dyson also testified about other instances of physical contact and threats Mr. Gilmer made that made her uncomfortable:

21 I used to orient the new nurses that would
22 come. I would do orientation and I had one nurse in
23 the boardroom and I came back to the desk to pick up
24 a timesheet for her to fill out for the actual
25 orientation, and as I'm walking down the hall he
1 walks down the hall and bumps me.
2 That's when I went crazy. I started
3 cursing. Ms. Jean Brown was standing -- she come
4 running. Patrice come running out of her office,
5 all of that. They called him in the office. They
6 sent him home.

See Id. at 247:21-25; 248:1-6.

23 Because he was there every day. He was
24 too close to me. He was bumping me in the hall. He

25 was sitting in the break room. If I'd go to have
1 lunch he's sitting at the table. He had already
2 threatened me. He told me his nieces were going to
3 get me¹. I didn't know if they were going to follow
4 me home, so I would just sit at my desk or sit in my
5 car.

Id. at 260:23-25; 261:1-5.

17 he would come too close to me, and he would
18 walk down the hall and laugh or he would pretend to
19 clean the ladies bathroom and I would have to get
20 somebody to stand outside the bathroom or come in
21 with me while I used it because I didn't want him to
22 come in there pretending not to know that I was in
23 there.

Id. at 263:17-23.

Ms. Dyson testified that she was “going crazy over it because [she] [was] feeling like he’s going to do it again. *Id.* at 249: 11-12. She was “scared” to return to work because “the way that the suite is located it’s hard to see other people. You’re isolated in where you work in all the departments”. *Id.* at 251:9-12.

C. Staffing Etc.’s Liability

Except in situations where an employer participates personally in the harassing behavior, the complainant will have the additional responsibility of demonstrating the propriety of holding the employer liable under some theory. *See Katz, at 255.* In a “condition of work” [i.e., hostile work environment] case, the complainant must demonstrate that the employer had actual or constructive knowledge of the existence of a sexually hostile working environment and took no prompt and adequate remedial action. *Id.* The complainant may do this by proving that complaints

¹ Mr. Gilmer admitted to calling Ms. Dyson a derogatory name and threatening to have someone “come and take her out” on February 12, 2018. *See Dyson Tr.*, vol. 3, 378:14-20; 417:3-14.

about the harassment were lodged with the employer or that the harassment was so pervasive that employer awareness may be inferred. *Id.* The employer may rebut the showing either directly, by proving that the events did not take place, or indirectly, by showing that they were isolated or genuinely trivial. *Id.* at 256.

(1) Staffing Etc.’s Knowledge of the Sexual Harassment Conduct

Ms. Dyson testified that she emailed her direct supervisor, Ms. Dennis, on December 28, 2017, to inform Ms. Dennis of the harassment and hostile work environment² she encountered in the office and how the harassment was affecting her health. Dyson Tr., vol. 2, 234:6-25; 235:1-2; 242:19-25; 243:25;244:5-25; 245:1-7; *See* ED Ex. 16. In the email, Ms. Dyson asked to whom she should report her concerns. Dyson Tr., vol.2, 245:8-14. Ms. Dyson was directed to report her concerns to Ms. Dennis. *Id.*

As previously stated, Ms. Dennis testified that Ms. Dyson reported in person, as well as by email, that Mr. Gilmer called her a “stupid bitch” on February 12, 2018. *See* Dyson Tr., vol. 1, 107:13-25; 108:1-6; 21-23;1107-12: *See* RP Ex. 3; ED Ex. 17; *See* Dyson Tr., vol. 2, 255:1-11. Mr. Porter testified that on February 21, 2018, Ms. Dyson reported an incident of sexual harassment at the end of a meeting for which Ms. Dyson was being reprimanded for taking pictures of her coworkers. *See* Dyson Tr., vol. 1, 34:9-22; 35:1-12; 47:12-18; 50:9-20;70: 10-12; 101:12-20; *See* Dyson Tr., vol. 2, 174:7-17; *See* Dyson Tr. 3, 418:3-8; *See* Dyson Tr., vol. 4, 10-

² The Executive Director’s counsel argued that only the alleged harassing conduct by Mr. Gilmer was relevant in this matter. The Respondent’s counsel argued that because the Executive Director introduced an email about the alleged harassing conduct of “coworkers” in the case, the interaction between Ms. Dyson and all coworkers was relevant in this matter. *See* Dyson Tr., vol. 3, 423-440. However, as discussed above, the Prince George’s County Office of Human Rights found that Ms. Dyson’s complaint of a hostile work environment was not connected to any protected characteristic under Title VII and, therefore, not an issue before the Commission. Accordingly, the alleged harassing conduct of other coworkers is not relevant to the findings in this Opinion and Order.

24; *See* ED Ex. 8. Ms. Dennis contends that, both, she and Mr. Porter were present during the meeting. *See* Dyson Tr., vol. 1, 118:18-25; *See* Dyson Tr., vol. 2, 182:6-25; 183:1-10. According to Ms. Dennis, Ms. Dyson stated that she was taking pictures of Mr. Gilmer to document his activity because he had stuck his tongue in her ear, she was afraid, and she needed records in case she decided she needed to make a police report. Dyson Tr., vol. 1, 83:6-20; *See* Dyson Tr., vol. 2, 182: 19-24; 189:12-13; *See* Dyson Tr., vol. 4, 492:12-19. Ms. Dennis testified that Ms. Dyson had not reported the incident of Mr. Gilmer sticking his tongue in her ear prior to being called in to the meeting on February 21, 2018³. Dyson Tr., vol. 1, 92:6-15; 101:21-24; 102:1; 106:9-12; Dyson Tr., vol. 3, 446:5-22. According to Ms. Dennis, when asked when the incident occurred, Ms. Dyson was not sure of the date and did not inform anyone at the time the incident occurred. Dyson, Tr., vol. 1, 103:15-21; Dyson Tr., vol. 3, 443:18-21; 481:7-11.

It is unclear exactly who was present when the incident occurred, and who was present when Ms. Dyson reported the conduct of Mr. Gilmer sticking his tongue in her ear. Mr. Porter testified that the report was made at the end of a meeting where both, he and Ms. Dennis were present from the beginning of the meeting. However, Mr. Porter later testified that Ms. Dyson initially reported the conduct to Ms. Dennis when he was not present and Ms. Dennis then requested Mr. Porter to join the meeting because of the seriousness of what was being discussed. Dyson Tr., vol. 4, 539:2-25.

2 **MS. NOAH-HOPE:** Okay. So just to get some clarification, was
3 there a meeting with just Ms. Dennis and Ms. Dyson where
4 she reported it to Ms. Dennis and then Ms. Dennis said,
5 can you come in because this is a serious conversation?

6 **MR. PORTER:** Yes, I do remember that, mm-hmm.

³ Ms. Dennis testified that had Ms. Dyson reported the incident prior to the February 21, 2018 meeting, she would have remembered and documented the conversation. Dyson Tr., vol. 3, 447:1-5.

7 **MS. NOAH-HOPE:** Okay. All right. So the initial conversation
8 that was supposed to be had with Ms. Dyson regarding
9 whatever infraction she may have had with another
10 employee, you were not part of that conversation for that
11 meeting on February 21st. Is that correct?

12 **MR. PORTER:** That -- that's the meeting I'm talking about.

13 **MS. NOAH-HOPE** Yes. So it's your testimony that you were not
14 there for the beginning of that meeting.

15 **MR. PORTER:** I was there for that meeting. Ms. Patrice called
16 me in. Ms. Dyson reported it to Patrice, and Ms. Patrice
17 said, David, because of this, can you just sit in on this.
18 And so I was -- you know, I was there. Was I there right
19 when they walked in the room? No. But I was at that -- I
20 was accountable for that, yes, ma'am.

21 **MS. NOAH-HOPE:** Okay. So had the meeting already began at the
22 point in time that you came in?

23 **MR. PORTER:** I honestly don't remember.

Id.

When interviewed by Ms. Glenn, Mr. Porter stated that the incident “was reported to Patrice and [Ms. Dennis] informed me.” *See* ED Ex. 9; *See* Dyson Tr., vol. 2, 174:18-25; 175:1-7; *See* Dyson Tr., vol. 4, 538: 9-13. Ms. Porter testified Ms. Dennis notified her of the incident. Dyson Tr., vol. 3, 383:10-23. Although it is unclear how Mr. Porter was informed of the incident on February 21, 2018, it is clear that, as of that date, the Respondent had knowledge of the alleged sexual harassment.

Respondent argues that Ms. Dyson was motivated to make a false allegation that Mr. Gilmer stuck his tongue in her ear because she had been reprimanded, verbally and in writing, several times for inappropriate interaction with her coworkers. The first verbal reprimand was the result of Ms. Dyson having a “verbal heated exchange” with Ms. Ross in November 2017, where Ms. Dyson “got into [Ms. Ross'] personal space. *See* Dyson, Tr., vol. 3, 440: 14-25. Both, Ms.

Dyson and Ms. Ross were verbally reprimanded for this incident. *Id.* at 441:3-6. Ms. Dennis also testified that on February 15, 2018, Ms. Ross and Ms. Howard⁴ reported that Ms. Dyson was videotaping and taking pictures of them without their permission. *Id.* at 441:9-21. Ms. Howard did not recall reporting the concern to management at Staffing, Etc. *See* Dyson Tr., vol. 5, 588:7-13. According to Ms. Dennis, Ms. Dyson was given a verbal warning to stop taking pictures of her coworkers. *See* Dyson Tr., vol. 3, 442:1-2; 443:2-5. Ms. Dennis contends that, after receiving another complaint about Ms. Dyson taking pictures of her coworkers on February 21, 2018, she called Ms. Dyson into a meeting with Mr. Porter to discuss a written disciplinary action. *Id.* at 442:3-25. Ms. Dennis testified that at this meeting, Ms. Dyson accused Mr. Gilmer of sticking his tongue in her ear. *Id.* at 443:4-15.

Ms. Porter testified that her office was approximately 30-40 feet from where Ms. Dyson sat, and that she never heard Ms. Dyson scream out around the time that Ms. Dyson reports that Mr. Gilmer stuck his tongue in her ear. Dyson Tr., vol. 3, 374:1-6. Ms. Dyson testified that the incident occurred “towards the end of the day” and no one else was present because the rest of the office had gone out to see a movie. *See* Dyson Tr., vol. 2, 249:23-25; 250:1-8; Dyson Tr., vol. 3, 333:3-5.

Mr. Porter testified about the exchange he had with Ms. Dyson after Ms. Dyson informed him of the alleged sexual harassment on February 21, 2018.

21 **MR. JENKIN:** So when she -- when she said that, what do you
22 recall your -- saying to her?

23 **MR. PORTER:** I just remember asking her, you know, did she --
24 can she give us a date as to when it happened. And so I
25 remember inquiring to her about, you know, expressing

⁴ Ms. Howard testified that she was not sure that Ms. Dyson was taking pictures or making recordings. However, based on how the camera was positioned, she asked Ms. Dyson to stop taking pictures and/or recording her. *See* Dyson Tr., vol. 5, 588: 3-25; 589: 14-25.

1 remorse, like, oh, my goodness, what? Man, you know, when
2 did this happen? Trying to get a date from her and she --
3 at that time, she did not indicate the specific date in
4 which it happened.

5 **MR. JENKINS:** Okay. And did you -- did you ask her why she
6 didn't bring it up before?

7 **MR. PORTER:** We did.

8 **MR. JENKINS:** What was her response?

9 **MR. PORTER:** You know, she just responded -- she just let it
10 go. You know, she just thought she would just let it go.
11 That's what her response was. And, you know, we
12 reiterated how important that is, to tell us something of
13 that nature; that's very important and that's important to
14 our organization. But unfortunately, it came up as a
15 result of, you know, her, you know, getting a potential
16 punitive action against her.

Dyson Tr., vol. 1, 50:21-25;51:1-16.

In the Charge of Discrimination, Ms. Dyson reported that she "immediately complained to [her] employer". ED Ex.2; RP Ex. On cross examination, Ms. Dyson admitted that in her interview with Ms. Glenn, she reported that she could not remember when she reported the incident, but she did not think it was reported on the same day. *See* Dyson Tr., vol. 2, 272-273; *See* ED Ex. 13; *See* RP Ex. 2.

(2) Policies and Procedures

(a) Policies

To comply with sexual harassment laws, an employer is required to have a well-developed and publicized sexual harassment policy and training for managers and employees on their rights and responsibilities under the policy to ensure their compliance with the policy. Having a sexual harassment policy is not enough to protect an employer from liability if the employer fails to properly investigate an employee's complaint.

With regard to policies, Mr. Porter acknowledged that he was familiar with and reviewed the company's written Equal Employment Opportunity ("EEO") policy. Dyson Tr., vol. 1, 21:4-11. However, when asked about the company's sexual harassment policy, Mr. Porter testified that the company did not have a written sexual harassment policy when Ms. Dyson was employed with the company. *Id.* at 21:12-14; 22:17-18.

Mr. Porter further testified that a written sexual harassment policy was created "maybe a year or two ago". *Id.* at 22:1-3. Ms. Dennis confirmed that the company's written sexual harassment policy only went into effect in 2019. *Id.* at 81:3-5;82:5-11; 111:19-25.; Dyson Tr. 3, 388:1-6. Ms. Glenn testified that the company's sexual harassment policy was not in effect at the time Ms. Dyson made her complaint about sexual harassment. Dyson Tr., vol. 2, 155:11-14; *See* Dyson Tr., vol. 3, 380:19-21.

Mr. Porter testified, and Ms. Dennis confirmed, that the topic of sexual harassment is addressed, orally, during orientations for new staff and in meetings. Dyson Tr., vol. 1, 21:14-24; 22:8-19; *See* Dyson, Tr., vol. 3, 387:4-8.

7 And so we are a small business and, you know, as
8 such, I don't -- you know, we didn't have a formal written
9 policy. But as a small business and as an organization
10 that valued people, that was something that was clearly
11 expressed, and people knew what our stance on that was,
12 based on, you know, the scope of what was highlighted in
13 our orientation and how we conducted our business

Dyson, Tr., vol. 1, 24: 7-13.

Mr. Porter further testified about what is discussed with new staff during orientation.

24 I would basically, first of all, tell you
25 about our company and who we are and how long we've been

1 around. And I would also tell you that we respect each
2 and every individual; that we treat each person like we
3 want to be treated. We do not approve, endorse of -- any

4 form of sexual harassment, whether that's touching or
5 talking or any type of pursing of any individual in that
6 light. And so that's something that, you know, we
7 highlight and we feel like it's very important.
8 You know, we talk about our atmosphere at
9 Staffing, Etc., a very jovial atmosphere, but it's an
10 atmosphere of professionalism, atmosphere of respect. You
11 come into our offices, right on the front door you'll see
12 a big board of a lot of the principles that we go by.
13 Now, sexual harassment isn't one of them that's listed on
14 that, but it talks about respect and pioneering and
15 professionalism and truth.
16 And so specifically to your question, that's
17 what we do. You know, we highlight that in that
18 discussion.

Id. 22:24-25, 23:1-18.

Mr. Porter later testified that the company has several written policies. *Id.* at 69:15-25; 70; 71:1-4. Specifically, he testified that the company, from its inception, has always had an EEOC policy in its handbook. *Id.*; *See* ED Ex.6⁵. However, he informed that after Ms. Dyson's sexual harassment complaint, the company added a written sexual harassment policy. *Id.*

Mr. Porter testified that Mr. Gilmer only received verbal notification of the sexual harassment policy. *Id.* at 76:20-25; 77:1-9. Ms. Dyson testified that she did not receive any documentation or policies regarding sexual harassment. *See* Dyson Tr., vol. 2, 260:1-3.

When asked on direct examination about the company's harassment reporting systems, Mr. Porter testified that there is no human resources department or written policy to inform an employee of the steps to take when sexual harassment takes place.

11 **MS. NOAH-HOPE:** Okay. So my question specifically was -- going
12 back to it -- is there any written policy of the reporting
13 system that says if you experience sexual harassment, step

⁵ The EEOC policy does not contain details of prohibited conduct, examples of sexual harassment, a description of the company's complaint procedure, or training on sexual harassment. *See* Dyson Tr., vol. 2, 157.

14 one, do this; step two, contact this person; step three.
15 Is there a specific human resources office or agency that
16 has all of the specific steps that need to be taken?

17 **MR. PORTER:** Thank you very much. I'm going to -- so to be
18 quite clear, we don't have a human resources department.
19 That doesn't mean we don't have human resources policies
20 or we don't -- we don't respond or direct to -- or direct
21 in terms of -- that we don't respond or direct our
22 attention to items of importance.
23 So specifically to your question, we didn't --
24 we did not have a step one, do this; step two, do this;
25 step three, do this. If you're asking that in terms of
1 sexual harassment, no, we didn't have that. But to your
2 question, are you saying would an individual know exactly
3 100 percent what to do if something happened -- and I will
4 tell you 100 percent, yes, they would know what to do.

Dyson Tr., vol. 1, 26:11-25; 27:1-4; *See Id.* at 77:1-21.

Ms. Porter testified that employees have always been made aware that Ms. Dennis is the person with whom to speak regarding human resources related concerns. Dyson Tr., vol. 3, 366:7-14. However, she testified that she had an "open door policy" for employees to also come to her with their concerns. *Id.* at 362:9-21. Ms. Porter testified that Ms. Dyson primarily spoke with Ms. Dennis about her concerns. *Id.* at 368:19-24. If Ms. Dennis was not available, Ms. Dyson would speak to Mr. Porter. *Id.* If Mr. Porter was not available, Ms. Dyson would speak to her. *Id.*

(b) Procedures

Like the sexual harassment policy, Mr. Porter testified that the reporting system was not written because during orientation, employees are informed of the expectations and guidelines. Dyson, Tr. vol. 1, 25:17-25.

17 **MS. NOAH-HOPE:** So when you say everyone knows, was this not
18 written? How would everyone know?

19 **MR. PORTER:** No, because when we hire you and you meet with
20 us, and we go over in our orientation what the
21 expectations and what the guidelines are, you know, who to
22 talk to in regards to an issue of sexual harassment, in
23 regards to an issue of pay, in regards to any type of item
24 -- and I will say this: You know, we have a great
25 process. We've got a great system, great people, and we
1 are a great organization to work for to the extent that,
2 you know, we're not a Fortune 500 company and don't have
3 -- and, you know, may not have, you know, formal policies
4 in certain areas, but I think our process is great. I
5 think our process is great.

Id. 25:17-25; 26:1-5

Mr. Porter also elaborated on the unwritten procedure an employee should follow if sexual harassment takes place.

2 **MS. NOAH-HOPE:** Now, can you outline for me what -- since you
3 said everyone knows, what is the process and procedure
4 that everyone knows if they're subject to sexual
5 harassment, what is the process at Staffing, Etc?

6 **MR. PORTER:** If are you subject to sexual harassment at
7 Staffing, Etc., you first are supposed to report that to
8 your supervisor. Okay? So that's number one. Number
9 two, there is a person that handles grievances within our
10 organization. It's our -- it's currently our vice
11 president, Patrice Dennis. And we do indicate that, and
12 that's what I mean.

13 **MS. NOAH-HOPE:** And is that the end of the process? Nothing
14 else happens after that?

15 **MR. PORTER:** When you say nothing else happens, what do you
16 mean?

17 **MS. NOAH-HOPE:** What is the next step? I want to know what's
18 the entire process? If the complainant reports it to
19 their supervisor, what happens next?

20 **MR. PORTER:** If a complainant reports it to their supervisor,
21 it's investigated. It's investigated.

22 **MS. NOAH-HOPE:** Who investigates it?

23 **MR. PORTER:** Who investigates it?

24 **MS. NOAH-HOPE:** Yes.

25 **MR. PORTER:** Our director of operations will investigate it.

1 **MS. NOAH-HOPE:** Is that Patrice Dennis?

2 **MS. NOAH-HOPE:** That would Patrice Dennis.

3 **MS. NOAH-HOPE:** Okay. So she's the supervisor, the director of
4 operations, and the investigator?

5 **MR. PORTER:** In an instance where -- in an instance where it
6 comes to the attention that a sexual harassment has been
7 brought up, we get that information and, you know, she
8 would investigate it. When I say supervisor, she's
9 Carisia's supervisor. She was Carisia's supervisor. But
10 in an instance where it is brought to the attention of
11 Patrice, who is our person that manages that, then she
12 would bring it to our executive team and it would be
13 investigated, yes, ma'am.

14 **MS. NOAH-HOPE:** Okay.

15 **MR. PORTER:** It would be investigated in the form of
16 questions, in the form of talking to the individuals
17 within our organization, and validating that information.

18 **MS. NOAH-HOPE:** Okay. And after you come to a conclusion, what
19 happens? Do you follow up with the persons involved?

20 **MR. PORTER:** We follow up with the persons involved and we
21 take necessary steps. We take necessary steps, whether
22 that's termination, whether that's suspension, whether
23 that is, you know, any training, you know, that's
24 necessary, that's what we do.

25 **MS. NOAH-HOPE:** And is any information provided to the reporting
1 person?

2 **MR. PORTER:** Excuse me?

3 **MS. NOAH-HOPE:** Is any information, further information,
4 provided to the person who reported that they were

5 sexually harassed or sexually assaulted?

6 **MR. PORTER:** When you say any information –

7 **MS. NOAH-HOPE:** Do you take any further steps with that person
8 to let them know what is happening or what the results of
9 your investigation are?

10 **MR. PORTER:** Yes. Yes, to the extent that we stay engaged in
11 that.

Id. 28- 30:1-11; *See* Dyson, Tr. vol. 3, 388:17-22.

According to Mr. Porter, the results of a sexual harassment investigation would not necessarily come directly from him, but he would “do [his] best to inform the person of what the ultimate outcome would be”. Dyson, Tr. vol. 1, 32:1-11.

Ms. Dennis further testified about the company’s nonwritten procedure for reporting sexual harassment complaints.

15 **MS. NOAH-HOPE:** When -- what’s the process
16 and the procedure if someone has a sexual harassment
17 complaint in Staffing, Etc?

18 **MS. DENNIS:** Currently, if there is any sort of sexual
19 harassment allegations, that information is to come to me.
20 And then, of course, in our policy -- if it’s anything in
21 regards to myself, if I’m involved with that, then it
22 would go to my colleague, David Porter.

23 **MS. NOAH-HOPE:** Okay. And what are the -- what are the steps
24 that you take when a sexual harassment complaint is
25 brought to you? What do you do after that?

1 **MS. DENNIS** Then I would investigate the -- those particular
2 allegations with the party or parties that’s involved and
3 try to get a general understanding of what occurred, and
4 then have a conversation with my colleague, and then, in
5 turn, have a meeting with both parties to get a general
6 understanding of what all transpired before we would take
7 action.

8 **MS. NOAH-HOPE:** And is there any written investigation or

9 finding after this?

10 **MS. DENNIS** After the incident with Carisia?

11 **MS. NOAH-HOPE:** After you speak to the parties, is there any
12 written -- are there any written findings that you keep in
13 regards to sexual assault allegations?

14 **MS. DENNIS** Yes. If we did have that occur, then I would do
15 so.

Id. at 93:15-25; 94:1-15.

Ms. Dennis testified that, after an investigation, if disciplinary action is warranted, she would prepare an employee disciplinary action form. *Id.* at 94:24-25. If an employee had been suspended after an allegation of sexual harassment, the next step “would be, depending on how egregious it was at our investigation, it could be another, a written and final warning, and then a third incident with us would be termination.” *Id.* at 121:1-4. She then testified that corrective actions include “a verbal warning, then a first written warning, and then a second written, and then a final or termination.” *Dyson, Tr.*, vol. 4, 486:19-23.

With regard to the harassment reporting procedures, Ms. Dyson testified that while employed at Staffing, Etc., she was not informed of any avenues to report sexual harassment to EEOC or the Human Rights Commission nor was she given any internal procedures or guidance on what to do if she was sexually harassed at work. *See Dyson Tr.*, vol. 2, 260:4-9.

According to Ms. Dyson, in 2017, when she reported to Ms. Dennis that she was in a hostile work environment, Ms. Dennis did not provide any information of next steps after she made the complaint. *See Id.* at 246:15-19. Ms. Dyson testified that when Mr. Gilmer stuck his tongue in her ear in February 2018, she did not know who to report the incident to because “management wasn’t in the office”. *Id.* at 250:12-18. Ms. Dyson further testified that she did

mention the incident to Jean Brown, Janet, and possibly Erica Paul⁶, on the same day that the incident occurred. *Id.* at 250:16-18. Contrary to Ms. Dyson's testimony, Ms. Brown testified that she learned of the incident when Ms. Dennis asked if she had knowledge of the incident. Dyson Tr., vol. 5, 597:2-25: 598:1.

Ms. Dyson further testified despite the Respondent not providing procedures to follow, after receiving advice from her best friend who worked in the courthouse for thirty-three years, she completed an EEOC complaint online on a Saturday in February. Dyson Tr., vol. 2, 249:17-25; 251:1-24. Ms. Dyson testified that she did everything on her own: the paperwork, emails, and educating herself about the process. *Id.* at 267:6-9. Ms. Dyson contends that, she reported the incident to Ms. Dennis on the Monday or Tuesday that Ms. Dennis returned to the office. *Id.* at 252:17-25;253:1-7; 282:16-25.

17 **MS. NOAH-HOPE:** Now do you recall when you actually told
18 Patrice, Dennis, and/or Mr. Porter?

19 **MS. DYSON:** Everything was with Patrice outside of the
20 one incident that Mr. Porter was in on that I didn't
21 say, but everything was through Patrice, and it
22 would have been maybe that Monday or Tuesday when
23 she came in the office. She didn't have much time
24 for me.

25 **MS. NOAH-HOPE:** Did you actually tell her what -- did you
1 get a chance to tell her what happened?

2 **MS. DYSON:** I told her -- I can see me standing in
3 front of her desk -- that William Gilmer needed to
4 stay away from me. I already moved my car from one
5 location to the next.
6 The same thing, that he stuck his tongue
7 in my ear, and that was nasty and he shouldn't have,
8 and she said that she was going to talk to
9 Mr. Porter and they would take care of it, and I

⁶ There was no testimony regarding Janet's last name. Neither Janet nor Erica Paul, was called as a witness to testify by either party.

10 waited and waited for responses and waited for
11 somebody to tell me what to do, or how they were
12 going to protect me but it didn't happen.

Id. at 252:17-25; 253:1-12.

(c) Employee Training

Mr. Porter testified that workplace sexual harassment training for new employees also began in 2019. Dyson Tr., vol 1., 23:19-25. Mr. Porter and Ms. Dennis testified that from 2003, the start of the business, until 2019, there was no formal sexual harassment training for Staffing, Etc. employees, but that employees received training through orientation, partnerships with different clients and various seminars. *Id.* at 24:14-25, 25:1-5; *See* Dyson Tr., vol. 3, 382:6-9. Mr. Porter was unable to give dates and times for these trainings. *Id.* Mr. and Ms. Porter testified that the company now has training available for employees and a process for documenting when an employee receives training. Dyson Tr., vol. 1, 72; Dyson Tr., vol. 3, 397:1-12.

Ms. Dyson testified, however, that she did not receive sexual harassment training while she worked at Staffing, Etc. *See* Dyson Tr., vol. 2, 259:23-25.

(3) Remedial Actions

As part of an employer's remedial obligation, Title VII imposes a duty on the employer to conduct a prompt and thorough investigation. *See Malik v. Carrier Corp.*, 202 F.3d 97 (2d Cir. 2000). "[A]n employer's investigation of a sexual harassment complaint is not a gratuitous or optional undertaking; under federal law, an employer's failure to investigate may allow a jury to impose liability on the employer." *Id.* "[B]y opening a sexual harassment investigation, the employer puts all employees on notice that it takes such allegations seriously and will not tolerate harassment in the workplace." *Swenson v. Potter*, 271 F.3d 1184 (9th Cir. 2001). Thus, when a

sexual harassment victim makes a complaint about unwanted sexual behaviors or conduct in the workplace, the employer's initiation of an investigation to determine whether the complaint is justified is a necessary part of the employer's obligation to take corrective action.

(a) The Investigation

Mr. Porter testified that he considered an investigation to be "intense follow up and inquiry". Dyson Tr., vol. 1, 45:18-19. According to Ms. Dennis, Ms. Dyson reported that Mr. Gilmer called her a name on February 12, 2018. Dyson Tr., vol. 3, 413:10-25, 414:1-7. When Ms. Dyson made the report, Ms. Dennis informed Mr. and Ms. Porter about the incident and the three of them reviewed the cameras located in the office. Dyson Tr., vol. 3, 413:10-25, 414:1-7. Ms. Dennis testified that the camera did not have audio, but she observed Mr. Gilmer reaching for a pen to sign into work and Ms. Dyson moving the pen cup out of Mr. Gilmer's reach. *Id.* at 414:9-21; *see* Dyson Tr., vol. 4, 504:18-25. Mr. Gilmer testified that it seemed as though Ms. Dyson "was playing until [he] called her a bitch. Dyson Tr., vol. 4, 507:6-16. According to Ms. Dennis, she completed disciplinary action forms for, both, Ms. Dyson and Mr. Gilmer, for the February 12, 2018 incident. *See* Dyson Tr., vol. 1, 95:1-4;96: 10-13; ED Ex. 7; RP Ex. 5; ED Ex. 11.

With regard to the incident alleging that Mr. Gilmer stuck his tongue in Ms. Dyson's ear, Mr. Porter testified that he spoke to Mr. Gilmer the following day. Dyson Tr., vol. 1, 35:15-24. However, when asked by Respondent's counsel, Mr. Porter testified that he spoke to Mr. Gilmer the same day that the incident was reported. *Id.* at 58:1-3. Mr. Porter further testified that he also interviewed other staff, including three or four recruiters, and the two other employees who work in the same station where Ms. Dyson worked, *Id.* at 32:19-20; 36:16-25; 46:8-25; 47:1-5; Dyson Tr., vol. 4, 567:11-19. Mr. Porter contends that none of the individuals he interviewed had

knowledge of the incident. Dyson Tr., vol. 1, 33:1-5; 36:23-25; 37:1; 47:1-5; Dyson Tr., vol. 4; 572:1-3; *See* Dyson Tr., vol. 5, 588:16-20; 595:13-15.

However, Ms. Glenn testified that when she interviewed Mr. Porter, Mr. Porter reported that he only spoke to Ms. Dyson and Mr. Gilmer about the incident. *See* Dyson Tr., vol. 2, 174:4-6; 223:3-10. Ms. Howard and Mr. Gilmer both testified that Mr. Porter did not interview them regarding the allegation of Mr. Gilmer sticking his tongue in Ms. Dyson's ear. *See* Dyson Tr., vol. 5, 590:6-11; *See* Dyson, Tr., vol. 4, 499:12-25; 500:1-5; 505:20-25; 512:3-8.

12 **MS. NOAH-HOPE:** Did anyone ever ask you about the incident that
13 Mr. Jenkins just questioned you about, about sticking your
14 tongue in Ms. Dyson's ear?

15 **MR. GILMER:** No.

16 **MS. NOAH-HOPE:** No?

17 **MR. GILMER:** The lawyers -- the lawyer says somebody says I
18 sexual assault them, but they didn't -- give nothing
19 specific.

20 **MS. NOAH-HOPE:** Okay. Did anyone that worked at Staffing, Etc.
21 ever question you about that?

22 **MR. GILMER:** No.

23 **MS. NOAH-HOPE:** No one ever asked you whether or not you did it?

24 **MR. GILMER:** No.

25 **MS. NOAH-HOPE:** Did Mr. Porter ever talk to you about it?

1 **MR. GILMER:** No, he never talk to me about --

2 **MS. NOAH-HOPE:** Did Ms. Dennis -- okay. Did Ms. Patrice Dennis
3 ever talk to you about it?

4 **MR. GILMER:** Who is Ms. Patrice Dennis? The girl, the lady?
5 No.

Id. at 499:12-25; 500:1-5.

14 **MS. NOAH-HOPE** Okay. So nobody ever brought this up to you
15 until the lawyer told you about it?

16 **MR. GILMER** No, yeah. The lawyer told me about it when I
17 wasn't working there.

18 **MS. NOAH-HOPE** And when you say the lawyer, that -- are you
19 referring to Mr. Manotti Jenkins that's here today?

20 **MR. GILMER** Yes.

Id. at 500: 14-20.

3 **COMMISSIONER SADLER:** Now, let me turn your
4 attention to you just mentioned, I think, when you
5 testified when your attorney asked you questions that you
6 never heard about the allegation that Ms. Dyson --

7 **MR. GILMER:** I never heard about the allegation
8 about me sticking my tongue in her ear, no.

9 **COMMISSIONER SADLER:** So the first --

10 **MR. GILMER:** I never.

11 **COMMISSIONER SADLER:** So -- right. You said you
12 never heard about that. And that the first time it was
13 brought to your attention, your lawyer asked you about --

14 **MR. GILMER:** Not my lawyer, the lawyer. It
15 wasn't my lawyer.

16 **COMMISSIONER SADLER:** The lawyer asked you about
17 -- which -- do you recall the name of the lawyer who asked
18 you about a sexual -- I think you said sexual assault.
19 Was that the first time --

20 **MR. GILMER:** Mr. Porter -- Mr. Porter's lawyer.
21 He said that she --

22 **COMMISSIONER SADLER:** Mr. Jenkins?

23 **MR. GILMER:** She said that she was suing Mr.
24 Porter for sexual harassment. I said, Mr. Porter sexual
25 harass a person? He said, no -- he said, she said you did

1 under his employment. I said, yeah? I never sexual
2 harassed nobody.

3 **COMMISSIONER SADLER:** But let me ask you this:
4 Did you recall that conversation you had where Mr. Porter
5 explained to you the allegation, were you still working
6 for Staffing or was that after you were no longer working
7 there?

8 **MR. GILMER:** No. Mr. Porter told me about a
9 lawyer going to contact me about something, but I wasn't
10 working for Mr. Porter then. I wasn't working for Mr.
11 Porter then. I was working -- excuse me. I was working
12 next door at Steve Weber's office.

13 **COMMISSIONER SADLER:** Okay. But the whole time
14 that you were working there, no one ever mentioned to you
15 the allegation about -- or questioned you about if you
16 stuck your tongue in Ms. Dyson's ear.

17 **MR. GILMER:** No, never, never.

18 **COMMISSIONER SADLER:** So once you were no longer
19 an employee of Staffing, Etc., that's when you were
20 informed that there was an allegation involving you
21 allegedly --

22 **MR. GILMER:** Yes.

23 **COMMISSIONER SADLER:** -- sticking your tongue in
24 Ms. Dyson's ear.

Id. at 512:3-25; 513:1-24.

On redirect, Respondent's counsel asked Mr. Gilmer again about the February 21, 2018 incident, and again, Mr. Gilmer denied that Mr. Porter asked him if he stuck his tongue in Ms. Dyson's ear.

Id. at 501:12-21.

12 **MR. JENKINS:** Okay. Did you and David Porter have any
13 communications?

14 **MR. GILMER:** Yes. Me and Mr. Porter had a lot of
15 communication.

16 **MR. JENKINS:** Okay. So do you recall that at some point Mr.
17 Porter asked you about whether or not you stuck your
18 tongue in Ms. Dyson's ear?

19 **MR. GILMER** I can't never recall that. But I was -- I was --
20 just got suspended by calling her a bitch. That was it.

21 **MR. JENKINS:** Okay.

Id.

There were no cameras in the area of the office where Ms. Dyson worked. *See* Dyson Tr., vol. 1, 36: 5-15; 44:12-16; Dyson Tr., vol. 3, 374:11-16. However, as part of the investigation, Mr. Porter testified that he reviewed camera footage from the two cameras located inside the building, which are focused on the reception desk and the hallway. Dyson Tr., vol. 1, 44:23-25; 45:1. Mr. Porter also testified that the company's camera system deletes footage after 30 or 60 days and that some of the cameras "wasn't working the best." *Id.* at 42:4-13; Dyson Tr., vol. 4, 552:9-14. Mr. Porter admitted that he did not take any notes or document the results of his investigation. Dyson Tr., vol. 1, 37:2-15.

Ms. Dennis initially testified that because the report was made late in the day, she did not speak with anyone about the allegations until the following day. *Id.* at 84:8-16; 85:1-2. Ms. Dennis testified that the following day, she asked Rochelle Ross, Regina Howard, and Jean Brown if any of them were aware of the incident. *Id.* at 84:16-20; Dyson Tr., vol. 3, 448:7-12. Ms. Dennis later testified that she interviewed Ms. Dyson's coworkers on the same day Ms. Dyson reported the incident. Dyson Tr., vol. 4, 469:19-25; 470:1-3. Ms. Dennis testified that none of the individuals she asked were aware of any incident involving Mr. Gilmer sticking his tongue in Ms. Dyson's ear. Dyson Tr., vol. 1, 84:16-20; *See* Dyson Tr., vol. 5, 595:24-25; 596:1-10. However, Ms. Howard testified that she did not recall Ms. Dennis asking her about the allegations. Dyson Tr., vol. 5;

589:5-8; 590:1-5.

Ms. Dennis did not take any contemporaneous notes of the investigation she conducted. Instead, after receiving requests from her counsel in preparation for this matter⁷, Ms. Dennis prepared notes concerning the investigation.

3 **MS. NOAH-HOPE:** Now, did you document the times that you spoke
4 to these people and put it in the investigative file?

5 **MS. DENNIS:** Well, when I was queried to do so, I did
6 document my conversation with those individuals when I was
7 asked. I'm not sure of the time, but I did document it,
8 and I –

9 **MS. NOAH-HOPE:** Where did you document this information?

10 **MS. DENNIS:** You said when?

11 **MS. NOAH-HOPE:** Where, where. Where did you put –

12 **MS. DENNIS:** I had to document it for -- you know, when I was
13 queried about this. So I documented it, you know, in a
14 Word document and presented my findings.

15 **MS. NOAH-HOPE:** Okay. So –

16 **MS. DENNIS:** For the people that I had spoke to.

17 **MS. NOAH-HOPE:** So you were interviewed by Investigator Glenn
18 regarding this incident. Correct?

19 **MS. DENNIS:** Yes, uh-huh.

20 **MS. NOAH-HOPE:** And she asked for all documents regarding this
21 information. Did you provide her any documentation or
22 names of witnesses that you spoke to, anything showing
23 what was said and when you spoke to the witnesses?

24 **MS. DENNIS:** Right. That's what I'm saying. I did present

⁷ In the document dated February 21, 2018, Ms. Dennis made no notes indicating that she interviewed any witnesses. Nor did she note anything regarding the witnesses' accounts. Additionally, the document was not authored on the date indicated on the document. Dyson Tr., vol. 4, 470:14-19;471:4-14; *See* ED Ex. 8.

25 that in a Word document at that time.

1 **MS. NOAH-HOPE:** Okay. Do you have a copy of this Word document?

2 **MS. DENNIS:** I mean, there was -- it was submitted in with
3 the documents that Manotti submitted, you know, at the
4 time when that was done a few -- about a year or so ago.

5 **MS. NOAH-HOPE:** Okay. So we've never received -- I think the
6 entire Board, everyone has a copy. We have not received
7 that document. So if you have that document, we just want
8 to know that there's a copy of record of you interviewing
9 witnesses and what specifically they said and what date
10 you interviewed witnesses. That hasn't -- it's our
11 understanding that that was not done, and that you said
12 that Mr. Porter was handling --

13 **MS. DENNIS:** Oh, okay.

14 **MS. NOAH-HOPE:** -- talking to witnesses.

15 **MS. DENNIS:** No. He was talking to William. Because those
16 people reported to me, I was the one that spoke to them --
17 the people that I just stated to you.

18 **MS. NOAH-HOPE:** Okay. So it's your testimony that you gave
19 written documentation to Manotti Jenkins of interview
20 notes of witnesses that you spoke with regarding this
21 investigation?

22 **MS. DENNIS:** When he asked me, I wrote down the people that I
23 had spoke to and provided that to him when he was -- when
24 we were providing certain information in regards to this.
25 And those were the people that I spoke to.

Dyson Tr., vol. 1, 85:3-25;86; See ED Ex. 8.

Ms. Porter testified that she did not interview any witnesses with regard to the incident. Dyson, Tr., vol. 3, 384:11-14. She testified that she reviewed notes of the investigation taken by Ms. Dennis, but not Mr. Porter. *Id.* at 384:15-23. Ms. Porter contends that she was not aware that Ms. Dennis' investigation notes had not been provided to the investigator in this matter. Dyson Tr., vol. 3, 385:2-6. Mr. Gilmer confirmed that he did not communicate with Ms. Porter about the

incident. He testified that he “never had too much communication with Mrs. Porter” other than saying “hi” when he was cleaning her office or when she needed help carrying her bag to and from the car, he had not had communication with Ms. Porter. Dyson, Tr., vol. 4, 504:11-17.

Ms. Glenn testified that when she interviewed Ms. Dennis, Ms. Dennis reported that Mr. Porter handled the investigation. *See* ED Ex. 12; *See* Dyson Tr., vol. 2, 185:1-7. Ms. Glenn testified that she also interviewed other employees at Staffing, Etc., including Rochelle Ross, Regina Howard, and Jean Brown. *Id.* at 190:18-25; 191:1-14. Neither of them had knowledge of the incident, and Ms. Glenn testified that she did not believe that any of them had been interviewed by anyone about the incident prior to her interviews. *Id.*

Mr. Gilmer was not made available for Ms. Glenn to interview. *Id.* at 202:3-5. But during the hearing, Mr. Gilmer denied putting his tongue in Ms. Dyson’s ear. Dyson Tr., vol. 1, 32: 21-24; 38:1-4; Dyson, Tr. vol. 4, 498:9-24; 523:10-25.

(b) The Outcome of the Investigation

With regard to the February 12, 2018 incident, Ms. Dennis’ email to Ms. Dyson informed Ms. Dyson that “[r]eports of unprofessional behavior are taken seriously by the Staffing Etc. management team and was followed up by David Porter promptly yesterday.” *See* RP Ex. 3; *See* Dyson, Tr. vol. 2, 276:1-8. Ms. Dennis informed Ms. Dyson that matter had been reviewed and addressed by David Porter with William Gilmer. *Id.* Ms. Dyson thanked Ms. Dennis for the email but explained that the email did not give her any insight on what can be done in the future to prevent the conduct from happening again. *Id.*; *Id.* at 281:9-20. Ms. Dyson testified that she did not want to be harassed, touched or cursed out going forward. *Id.* at 281:2-4. According to Ms. Dennis, she completed a disciplinary action form for the February 12, 2018 incident between Mr. Gilmer and Ms. Dyson for Mr. Gilmer using profane language towards Ms. Dyson. Dyson Tr., vol.

1, 95:2-22;96:10-22; Dyson Tr., vol. 3, 471:17-24; ED Ex. 11.

With regard to the February 21, 2018 incident, Mr. Porter testified that he informed Ms. Dyson that the company interviewed all of the staff involved. Dyson Tr., vol. 1, 32:19-20. According to Ms. Dennis, the day after the investigation, she informed Ms. Dyson to ensure that neither of them interacted with each other, Mr. Gilmer's work hours were changed so that he would come to work at 6:00 p.m. since Ms. Dyson got off from work at 5:00 p.m. *Id.* at 92:20-25;93:1-7; 99:22-25; 100:1-10; Dyson Tr., vol. 3; 447:13-22. When asked by Executive Director's counsel about the manner in which Ms. Dennis followed up with Ms. Dyson about the outcome of the investigation, Ms. Dennis testified that she was unsure of whether she verbally informed Ms. Dyson or sent an email to Ms. Dyson. Dyson Tr., vol. 1, 93:8-9. When asked by Respondent's counsel, three months later, Ms. Dennis testified that she followed up with Ms. Dyson by sending an email. Dyson Tr., vol. 3, 447: 17-22. The email Ms. Dennis sent to Ms. Dyson informed Ms. Dyson that she *would* follow up with Ms. Dyson after completing an investigation concerning the allegation of Mr. Gilmer sticking his tongue in Ms. Dyson's ear. Dyson Tr., vol. 4., 560: 16-25; *See* Joint Ex. 1. However, no emails informing Ms. Dyson about the outcome of the investigation were produced or entered as an exhibit in this proceeding. *Id.* 473:14-25; 474:1-25. To the contrary, Ms. Dyson testified that no one informed her of the outcome of the investigation or of her right to file formal complaints with the EEOC, the Maryland Commission on Civil Rights or the Human [Rights] Commission. Dyson, Tr., vol. 1, 93:10-14; Dyson Tr., vol. 2, 260:10-25; *See* Dyson Tr., vol. 4, 557:2-17.

Ms. Dennis testified that she could not recall if she prepared a disciplinary action form for the February 21, 2018 incident between Mr. Gilmer and Ms. Dyson⁸. Ms. Glenn testified that she

⁸ Mr. Porter testified that Ms. Dennis is the person who prepares disciplinary forms. *See* Dyson Tr.,

requested Mr. Gilmer's personnel file and did not receive a disciplinary action form concerning the February 21, 2018 allegation of Mr. Gilmer sticking his tongue in Ms. Dyson's ear. *See* Dyson Tr., vol. 2, 161:16-24.

(i) *Changed Work Hours*

Ms. Dyson's work hours were 8:30 a.m. – 5:00 p.m. Dyson Tr., vol. 1, 39:21; 63:15-18. Mr. Gilmer's work hours were 2:00 p.m. to 6:00 p.m. *Id.* at 39:11. According to Mr. Porter, prior to Ms. Dyson's February 21, 2018 report of sexual harassment, there was "friction" and "contention" between Ms. Dyson and Mr. Gilmer because Ms. Dyson was taking pictures of Mr. Gilmer and other employees. *Id.* at 39;40:1-2. Mr. Porter testified that, to be proactive, he changed Mr. Gilmer's work hours. *Id.* Mr. Gilmer no longer began work at 12:00 p.m. His hours were changed to 4:00 p.m. to 8:00 p.m. and then again from 6:00 p.m. to 9:00 p.m. *Id.* at 40; 48:23-25;49:1-2; 61:1-10;91:10-19; *See* ED Ex. 10; *See* Dyson Tr., vol. 2, 176:22-25; 177:1-19; Dyson Tr., vol. 4, 520:13-24; 549:9-14. The schedule change was made on February 14, 2018, prior to the February 21, 2018 incident. Dyson Tr., vol. 1, 119:6-21;120:1-4; Dyson Tr., vol. 2, 203:9-12. Despite the change, on March 13, 2018, Mr. Gilmer was at the office at 4:42 p.m. *Id.* at 261:22-25; *See* ED Ex. 18.

However, Mr. Gilmer testified that his hours never changed. Dyson Tr., vol. 4, 500:9-17.

9 **MS. NOAH-HOPE:** Okay. All right. And do you know, were your
10 work hours changed based on this incident?

11 **MR. GILMER:** I never -- I never -- I never ran across the
12 incident, so my work hours never changed because of
13 nothing.

14 **MS. NOAH-HOPE:** Okay. So nobody ever brought this up to you
15 until the lawyer told you about it?

vol. 4, 545:21-25.; 546:1; 548:9-20.

16 **MR. GILMER:** No, yeah. The lawyer told me about it when I
17 wasn't working there.

18 **MS. NOAH-HOPE:** And when you say the lawyer, that -- are you
19 referring to Mr. Manotti Jenkins that's here today?

20 **MR. GILMER:** Yes.

Id.

22 **COMMISSIONER ODUYEBO:** What caused your time to
23 be changed from 2:00 p.m. to 4:00 p.m?

24 **MR. GILMER:** The time was changed from 2:00 p.m.
2 I ain't never -- I ain't never -- 2:00 p.m. to 4:00 p.m. I
2 ain't never -- I ain't never -- I ain't know. I ain't
3 never know my time was changed.

4 **COMMISSIONER ODUYEBO:** Did you --

5 **MR. GILMER:** You're telling me something new.

6 **COMMISSIONER ODUYEBO:** Okay, good. Hold on.

7 **MR. GILMER:** I ain't know my time was -- I know
8 I worked in the morning -- I worked in the morning in the
9 yard, in the outside yard, and the afternoon was closing
10 time, I did the bathroom and clean the inside. But I was
11 there all since in the morning. I ain't know my time was
12 changed.

13 **COMMISSIONER ODUYEBO:** Okay. So to the best of
14 your recollection, there was never a time that your
15 schedule was altered, adjusted?

16 **MR. GILMER:** No, I ain't never -- I ain't ever
17 -- you're trying to say I signed in twice? For my time to
18 be changed, I had to sign in twice. I never signed in
19 twice. I sign in and I sign out. That was it. I never
20 signed in, like --

Id. at 507:22-25; 508:1-20.

Mr. Gilmer testified that he started working at approximately 12 p.m. and was never asked to come in at an earlier or later time. *Id.* at 510:18-23. Ms. Ross testified that she did not know Mr.

Gilmer's actual hours but that she saw him around the office "between 10:00 and maybe 5:00". *Id.* at 571:8-13. She testified that, to her knowledge, Mr. Gilmer did not work later hours. *Id.* at 21-24.

Ms. Dyson testified that having Mr. Gilmer in the office after being told that his hours had changed made her feel "disrespected", "nasty," shameful", "angry", and "anxious". *Id.* at 264: 3-15.

(ii) Suspension

Mr. Porter testified that because of the allegation that Mr. Gilmer put his tongue in Ms. Dyson's ear, he suspended⁹ Mr. Gilmer on February 22, 2018. *See* Dyson Tr., vol. 1, 38:9-25; 61:11-23; Dyson Tr., vol. 4, 524:10-18. Mr. Porter contends that Mr. Gilmer was suspended for three days without pay, starting February 23, 2018. Dyson Tr., vol. 1, , 38:9-25; 61:11-23. Mr. Gilmer was suspended from work for three days, but he was out of work for a longer period of time due to becoming ill. *See Id.* at 62: 17-23; ED Ex. 10. Mr. Gilmer returned to work on Mach 6, 2018. *Id.* at 63: 4-8; *See* ED Ex. 10. In a document dated February 21, 2018, outlining the meeting with Mr. Porter, Ms. Porter, and herself, Ms. Dennis wrote that "Mr. Porter suspended William for three days because he denied sticking his tongue in Carisia's ear, but he admitted to calling her a defamatory word which was deemed as unprofessional and derogatory behavior and warranted corrective action and suspension." Dyson Tr., vol. 1, 90:5-11; *See* Dyson Tr., vol. 4, 519:9-10; *See* ED Ex. 8.

Ms. Dennis initially testified that the suspension was because, both, Mr. Gilmer denied the allegation of him sticking his tongue in Ms. Dyson's ear and because he admitted to calling her

⁹ Mr. Porter was Mr. Gilmer's direct supervisor. Therefore, it was Mr. Porter's, not Ms. Dennis', decision to suspended Mr. Gilmer. *See* Dyson Tr., vol. 4, 481:13-19; 535:9-17.

Ms. Dyson a defamatory word. *Id.* at 90:22-25;91:1-5. On cross examination, Ms. Dennis testified that Mr. Porter spoke with Mr. Gilmer about the suspension and that she was not present for the conversation. *Id.* at 110; 17-22; *See* Dyson Tr., vol. 4, 487:7-14. However, three months later, Ms. Dennis testified that when Mr. Gilmer was suspended, the company had not yet made a decision about the allegation of Mr. Gilmer sticking his tongue in Ms. Dyson's ear and "needed to investigate further". Dyson Tr., vol. 4, 472:3-525. Despite Ms. Dennis' testimony that the Respondent needed to investigate the allegations further, Mr. Porter testified that Mr. Gilmer was suspended primarily for the accusation that Mr. Gilmer stuck his tongue in Ms. Dyson's ear, not for calling Ms. Dyson a "bitch"¹⁰. *Id.* at 526:1-8; 529:12-18; 549:15-22. Yet, Mr. Gilmer testified three different times that he was suspended for calling Ms. Dyson a name, not for the allegation of sticking his tongue in her ear. *See* Dyson Tr., vol. 4, 500:6-7;501:16-21; 508:21-23.

Ms. Dyson testified that she started taking pictures of Mr. Gilmer because "nobody would do anything". Dyson Tr., vol. 2, 253:17-18. According to Ms. Dyson, no one checked on her well-being, and she was shunned. Dyson Tr., vol. 1, 10-16. She further testified that she did not feel that the Respondent took her complaint seriously because Mr. Gilmer was allowed to come back to the office. *Id.* at 265:15-24.

15 A. Because they let him keep coming back. I
16 had no reason to lie or no reason to say this if it
17 wasn't true, and not to be supported and have to
18 walk in there every single day and still perform my
19 job to the best that I did and then some. It just
20 made me feel shame. It made me feel ashamed. I
21 still feel ashamed that I put up with that because
22 of the fact that I had to pay my bills and I didn't
23 have another job to go to because I had left my job
24 to come there.

¹⁰ The disciplinary action form states that Mr. Gilmer was suspended for calling Ms. Dyson a bitch. *See* ED Ex. 8.

Id.

Ms. Dyson reported to Ms. Glenn that after the disclosure of Mr. Gilmer sticking his tongue in her ear, she had other contact with Mr. Gilmer, including Mr. Gilmer being at work during the same hours she was there, and that she kept journals of the contact in her email. *Id.* at 187:18-24; 188:1-25

Ms. Dyson testified that:

9 I documented by
10 sending myself e-mails at home. That was actually
11 suggested to me by a clerk -- a law clerk that I
12 should -- you know, try to send things home to
13 myself just so I could have a realtime chronological
14 relation because it wasn't nothing else that I could
15 do.

Id. at 254:9-15.

19 He would walk past my chair. I could feel him. The
20 sweater on the back of my chair would move. He
21 would come so close I could reach out and touch him.
22 I have pictures of it all. They wouldn't
23 do anything so I started taking pictures to keep him
24 away from me so I could have something to show.

Id. at 253:19-24.

Ms. Dyson reported that she “learned to put everything in writing because [Ms. Dennis] would not remember since she had so much going on”. *Id.* at 274:9-12; *See* RP Ex. 2; *See* ED Ex. 18. The Respondent contends that Mr. Gilmer did not stick his tongue in Ms. Dyson’s ear and that is evidenced by the fact it was Ms. Dyson’s normal practice to document things, and Ms. Dyson did not memorialize the incident with the specific wording that Mr. Gilmer stuck his tongue in her ear. *See Id.* at 279:2-12; 281:5-14; 296:12-16; Dyson Tr. Vol 3, 318:2-5, August 16, 2021. Respondent’s counsel identified emails dated February 12, 2018, February 14, 2018, February 20, 2018, March 13, 2018, and March 26, 2018, where Ms. Dyson did not make any notes regarding Mr. Gilmer sticking his tongue in her ear. *See* Dyson Tr., vol. 3, 323-331. RP Ex.4.

When asked why she had not chronicled the day she reported that Mr. Gilmer stuck his tongue in her ear in her email, Ms. Dyson testified that she did not send herself an email because she was upset. *Id.* Ms. Dyson testified that she verbally reported the incident to Ms. Dennis. *See Id.* Ms. Dyson further testified that a face-to-face conversation about the incident was best because of the severity of the occurrence. Dyson Tr. Vol 3, 318:9-12. In the email dated February 20, 2018, Executive Director’s counsel argued that Ms. Dyson chronicled that “the man who sexually harassed me was allowed to not only work in the office suite, but was allowed to come back to where I work and joke, and make subtle hints about me thinking reporting him was going to make a difference. *See* Dyson Tr., vol 3, 347:25-348:1-13. Once I took a picture to show how close in contact they (Staffing Etc.) management allow him to be with me it’s upsetting and shameful.” ED Ex. 18; *Dyson Tr. vol. 2*, 256:15-24; 257:1-25.

III. CONCLUSION

The Commission finds that Respondent violated Title VII of the Civil Rights Act of 1964 because Complainant Carisia Dyson was subjected to sexual harassment while working at Staffing, Etc., and Respondent failed to properly investigate her allegations of sexual harassment; failed to have a well-developed and publicized sexual harassment policy; and failed to properly train and educate employees about their rights and responsibilities under the policy.

Ms. Dyson made a *prima facie* showing that sexually harassing conduct occurred. The conduct, including verbal threats, bumping Ms. Dyson in the hall, sticking a tongue in Ms. Dyson’s ear, calling her a bitch, and making comments about her looks, were unwelcomed by Ms. Dyson. These actions negatively affected Ms. Dyson to the point where she found it necessary to change the location where she normally parked her car and she was afraid to return to work. Considering the totality of circumstances, the Commission finds that this conduct was not isolated

or trivial, and, therefore, was severe or pervasive enough to create a sexually charged hostile work environment that affected the terms and conditions of Ms. Dyson's employment at Staffing, Etc.

The Respondent's recollection of when and to whom Ms. Dyson made her sexual harassment complaints conflicted throughout the hearing. Although there is dispute over the timeline of when the harassing incidents occurred, when Ms. Dyson complained, and who was present when she complained, the Complainant and the Respondent, both, testified that the Respondent was informed of harassing incidents. Therefore, there is no dispute that the Respondent had knowledge of the conduct.

What is in contention is the remedial action the Respondent took after Ms. Dyson complained of harassment and whether the Respondent's action was reasonably calculated to end the conduct. Here, the Respondent was required to have a well-developed and publicized sexual harassment policy and training for employees to help employees understand and carry out the policy. However, the Respondent acknowledged that although the company has been operating since 2003, there was no written sexual harassment policy when Ms. Dyson was employed there. As a consequence, neither Ms. Dyson nor Mr. Gilmer received a written sexual harassment policy; nor did they receive training on their rights and responsibilities under a sexual harassment policy. The same neglect or omission is apparent from the company's failure to have a procedure for reporting sexual harassment. The procedure was not written and was only provided verbally at orientation. The Respondent's written sexual harassment policies and procedures and workplace sexual harassment training were not implemented until 2019. Because the Respondent did not have a written sexual harassment policy, it failed to provide its employees with the procedures to follow to report sexual harassment in the workplace.

Title VII imposes a duty on employers to conduct a prompt and thorough investigation of

sexual harassment claims. The Respondent argues that once sexual harassment is reported and the employer takes action, the employer has no liability. Although Mr. Porter testified that he considered an investigation to be “intense follow up and inquiry”, the Respondent did not conduct a prompt or thorough investigation. The Respondent contends that it reviewed cameras and interviewed Ms. Dyson’s coworkers. However, again, the Respondent’s credibility is called into question. Mr. Porter testified that he interviewed Mr. Gilmer and other staff. But Ms. Glenn testified that Mr. Porter reported to her that he only interviewed Ms. Dyson and Mr. Gilmer. Mr. Gilmer and Ms. Howard testified that Mr. Porter did not interview either of them about the February 2018 incident. In fact, Mr. Gilmer testified that he knew nothing about the allegation of him sticking his tongue in Ms. Dyson’s ear; that the only person who ever asked him about the incident was the Respondent’s attorney; and that inquiry was made after Ms. Dyson filed her sexual harassment claim and he was no longer working for the Respondent.

The time frame for when Mr. Porter interviewed Mr. Gilmer also changed throughout Mr. Porter’s testimony. First, Mr. Porter testified that he interviewed Mr. Gilmer the day following the reporting of the incident. Then Mr. Porter’s testimony changed to claim that he interviewed Mr. Gilmer the same day that the incident was reported.

Ms. Dennis’ testimony also changed. In May 2021, Ms. Dennis initially testified that because the report was made late in the day, she did not speak with anyone about the allegations until the following day. But in August 2021, Ms. Dennis testified that she interviewed Ms. Dyson’s coworkers on the same day Ms. Dyson reported the incident. Ms. Howard testified, however, that she did not recall Ms. Dennis asking her about the allegations of Mr. Gilmer sticking his tongue in Ms. Dyson’s ear. Even if there was testimony acknowledging that Mr. Porter or Ms. Dennis interviewed witnesses, neither Mr. Porter nor Ms. Dennis took written notes of their investigative

interviews. What is more disturbing is that the notes Ms. Dennis claimed to have taken were not taken during the actual interview. Rather, Ms. Dennis created a document at the request of the Respondent's attorney, in which she recalls what occurred during her investigation. The document was created after Ms. Dyson filed a claim for sexual harassment but dated back to February 21, 2018, as if the document was made contemporaneously.

Not only did the Respondent fail to do a proper investigation, once the investigation was complete, the Respondent did not notify Ms. Dyson of the outcome of the investigation or provide her information about the procedures to follow going forward, including her right to file formal complaints with the EEOC, the Maryland Commission on Civil Rights or the Prince George's County Human Rights Commission.

The Respondent also did not take remedial action that would put all employees on notice that it takes such allegations seriously and that it will not tolerate harassment in the workplace. The Respondent completed a disciplinary form for the February 12, 2018 incident when Mr. Gilmer allegedly called Ms. Dyson a bitch. While the Respondent contends that after the name calling incident, it changed Mr. Gilmer's work hours to begin his shift after 6:00 pm, Ms. Dyson and Ms. Howard testified that Mr. Gilmer was regularly seen during normal business hours between 10 am and 5pm. Further, Mr. Gilmer testified he was never asked to come in at an earlier or later time, and his hours were never changed.

The Respondent also argues that it suspended Mr. Gilmer for sticking his tongue in Ms. Dyson's ear. However, the Respondent never completed a disciplinary action form for this incident and Mr. Gilmer testified that he was only suspended for calling Ms. Dyson a bitch. Additionally, Mr. Porter's and Ms. Dennis' testimonies regarding the reason for the suspension were conflicting and changed throughout the hearing. According to Ms. Dennis, at the time

Mr. Gilmer was suspended, the company had not yet made a decision about the allegation of Mr. Gilmer sticking his tongue in Ms. Dyson's ear and "needed to investigate further". Meanwhile, Mr. Porter testified that Mr. Gilmer was suspended because of the report that Mr. Gilmer stuck his tongue in Ms. Dyson's ear and not for calling Ms. Dyson a bitch.

The Commission recognizes that there were inconsistencies in Ms. Dyson's testimony as well regarding when the incident occurred and when she reported the incident concerning Mr. Gilmer sticking his tongue in her ear. For example, Ms. Dyson did not give an exact date that Mr. Gilmer stuck his tongue in her ear. Ms. Dyson also had conflicting testimony of when she reported the incident to Ms. Dennis.

The Commission's findings of fact are based on its assessment of the credibility of the parties and the witnesses, taking into account their demeanor, their interest in the outcome of the case, and the presence of corroborating evidence. Although each party had credibility issues, the Commission finds the Complainant to be more credible than the Respondent. As such, the testimonies showed that Ms. Dyson was subjected to harassing treatment from Mr. Gilmer and that she reported this treatment to no avail because the Respondent did not have a well-developed and publicized sexual harassment policy and had not properly trained employees about their rights and responsibilities under such a policy to prevent the discrimination that Ms. Dyson suffered.

A. DAMAGES

Having found that the Respondent violated Title VII of the Civil Rights Act of 1964, because Complainant Carisia Dyson was subjected to sexual harassment while working at Staffing, Etc., and Respondent failed to properly investigate her allegations of sexual harassment; failed to have a well-developed and publicized sexual harassment policy; and failed to properly train and educate managers and employees about their rights and responsibilities under the policy, the

Commission now determines the relief to be afforded to Ms. Dyson. Under Title VII, successful plaintiffs may recover back pay, front pay, compensatory damages, punitive damages, attorney's fees, and costs. *See* 42 U.S.C. § 1981a(a)(1), b; 42 U.S.C. § 2000e-5(g). Under Maryland's Fair Employment Practices Act ("FEPA"), successful plaintiffs may be able to recover back pay, front pay, compensatory damages, punitive damages, attorney's fees, and costs. *See* Md. Code Ann., State Gov't § 20-1009(b). Under Prince George's County Code, the Commission is empowered to impose a civil fine not to exceed Ten Thousand Dollars (\$10,000.00). PRINCE GEORGE'S COUNTY, MD., CODE OF ORDINANCES, Subtitle 2, Division 12, Subdivision 1, §2-195.01(b) (2021).

1. Front Pay

Front pay is "simply money awarded for lost compensation during the period between judgment and reinstatement or in lieu of reinstatement." *Pollard v. E. I. du Pont de Nemours & Co.*, 532 U.S. 843, 846 (2001). "In cases in which reinstatement is not viable because of continuing hostility between the plaintiff and the employer or its workers, or because of psychological injuries suffered by the plaintiff as a result of the discrimination, courts have ordered front pay as a substitute for reinstatement." *Id.*

"The Fourth Circuit has not specifically enumerated a list of factors to consider in deciding to award front pay. Other courts have considered the plaintiff's prospects of obtaining comparable employment; the time period of the award; whether the plaintiff intended to work; and whether liquidated damages have been awarded." *Ford v. Rigidply Rafters*, 984 F. Supp. 386, 392 (D. Md. 1997) (citing *Downes v. Volkswagen of America, Inc.*, 41 F.3d 1132, 1141 (7th Cir. 1994)).

The following factors may assist the court in calculating a front pay award: (1) the plaintiff's age, (2) the length of time the plaintiff was employed by the defendant employer, (3) the

likelihood the employment would have continued absent the discrimination, (4) the length of time it will take the plaintiff, using reasonable effort, to secure comparable employment, (5) the plaintiff's work and life expectancy, (6) the plaintiff's status as an at-will-employee, (7) the length of time other employees typically held the position lost, (8) the plaintiff's ability to work, (9) the plaintiff's ability to work for the defendant-employer, (10) the employee's efforts to mitigate damages, (11) the amount of any liquidated or punitive damage award made to the plaintiff. *Ogden v. Wax Works, Inc.*, 29 F. Supp. 2d 1003, 1005 (N.D. Iowa 1998) (collecting cases from various circuit courts of appeals). Expert witness testimony can be used to establish front pay. *See Smith v. Springs Indus., Inc.*, Nos. 90-1716, 90-1783, 1991 U.S. App. LEXIS 27221, at *12 (4th Cir. Nov. 20, 1991).

Before awarding front pay, a court must consider whether the plaintiff made reasonable efforts to mitigate damages by finding other work. *See Ford Motor Co. v. EEOC*, 458 U.S. 219, 233-234 (1982). Reasonable efforts to mitigate could include enrolling in school while continuing to seek employment, or accepting lower-paying employment. *Id.* If the plaintiff did not make reasonable efforts to mitigate, the court should not award front pay. *Id.*

The Commission did not hear any relevant testimony to determine that Ms. Dyson should be awarded any damages for front pay.

2. Compensatory Damages for Emotional Distress

Compensatory damages include both pecuniary (e.g., out-of-pocket expenses such as increased commuting and living expenses) and nonpecuniary losses (e.g., "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses"). 42 U.S.C. § 1981a(b)(3). Neither back pay nor front pay are elements of compensatory damages under 42 U.S.C. § 1981a. *See* 42 U.S.C. § 1981a(b)(2). Emotional

distress can be a component of compensatory damages. “[A] plaintiff’s testimony, standing alone, can support an award of compensatory damages for emotional distress.” *Bryant v. Aiken Reg’l Med. Ctrs., Inc.*, 333 F.3d 536, 546 (4th Cir. 2003). Such testimony must “establish that the plaintiff suffered demonstrable emotional distress, which must be sufficiently articulated” and cannot rely “conclusory statements that the plaintiff suffered emotional distress” or the mere fact that the plaintiff was wronged. *Price v. City of Charlotte*, 93 F.3d 1241, 1251 (4th Cir. 1996).

Ms. Dyson testified about the emotional distress she experienced. Specifically, Ms. Dyson testified that she was “going crazy over the incident because [she] [was] feeling like [Mr. Gilmer] was going to do it again.” She further testified that she was “scared” to return to work. Ms. Glenn testified that when she interviewed Ms. Dyson about her complaint, Ms. Dyson was “hysterical”, “frustrated”, “shaking”, “crying”, “very, very angry”, and “distraught” when she recounted the incident. Although Ms. Dyson requested pecuniary damages for medical bills, there was no evidence provided to support this request. Therefore, the Commission awards Ms. Dyson compensatory damages for emotional stress in the amount of \$ 10,000.00.

3. Punitive Damages

Punitive damages are available under FEPA. However, unlike under Title VII, FEPA does not allow punitive damages in the absence of compensatory damages. *Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 642 (2005) (holding that Maryland common law, which differed from federal common law regarding punitive damages, applied and Maryland common law did not support a punitive damages award without at least nominal compensatory damages).

Although compensatory damages have been awarded in this matter, the Commission does not find that awarding punitive damages in this matter is warranted.

4. Civil Fine

The Respondent made a number of operational errors that impacted this matter. First, the Respondent did not have a properly trained human resources department. Second, the Respondent did not have written sexual harassment policies, procedures, or training. Third, the Respondent did not thoroughly investigate the allegations or follow up with the Complainant about the outcome of the investigation. The Respondent acted in violation of §2-222 of Division 12. Therefore, the Commission imposes a civil fine of \$10,000.00 on the Respondent.

**BEFORE
THE PRINCE GEORGE'S COUNTY
HUMAN RIGHTS COMMISSION**

IN RE: CARISIA DYSON

Complainant

By

EXECUTIVE DIRECTOR

**vs.
STAFFING ETC.**

Respondent

**HRC Case No.: HRC19-0306
EEOC Case No.: 531-2018-01416**

Human Rights Commission
Clerk Received
March 29, 2022

OPINION AND ORDER

Pursuant to the authority conferred on this Commission by Section 2-195, Division 12, Prince George's County Code, 1991, as amended, for the reasons stated above, the Commission issues this Opinion and Order and finds that the Respondent, Staffing, Etc., violated Title VII of the Civil Rights Act of 1964, as amended, and the Prince George's County Code Section 2-224, because Complainant Carisia Dyson was subjected to sexual harassment while working at Staffing, Etc., and Respondent failed to properly investigate her allegations of sexual harassment; failed to have a well-developed and publicized sexual harassment policy; and failed to properly train and educate managers and employees about their rights and responsibilities under the policy.

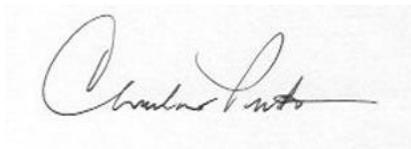
Judgment is entered in favor of the Complainant and against Respondent for compensatory damages for emotional distress in the amount of \$10,000.00. The Respondent shall prepare a certified check, payable to Ms. Carisia Dyson, and deliver the check to the Prince George's County

Human Rights Commission's Clerk at 14741 Governor Oden Bowie Drive, Suite L105, Upper Marlboro, Maryland 20772, within 35 days of this Opinion and Order. If a check is not delivered within 35 days of this decision, post-judgment interest shall accrue at the rate of 10% annum from the date until payment is made.

Further, the Commission imposes a \$10,000.00 civil fine on Respondent, to be paid by Respondent to the Commission. The fine shall be paid by certified check, made payable to Prince George's County Government and delivered to the Prince George's County Human Rights Commission's Clerk at 14741 Governor Oden Bowie Drive, Suite L105, Upper Marlboro, Maryland 20772 within 65 days of this Opinion and Order. Interest will not accrue on this fine.

On the 29th day of March 2022, **IT IS SO ORDERED.**

Under Section 2-197-C of the Prince George's County Code, any party aggrieved by a final decision of the Commission in a contested case is entitled to file an appeal pursuant to Subtitle B of the Maryland Rules of Procedure, Annotated Code of Maryland, within 30 days from the date last entered above.



Charlene Proctor, Esq., Chairperson
Prince George's County
Human Rights Commission

Employment Panel:

Felicia Sadler, Esq., Commissioner, Panel Chair
Wendi Howard, Commissioner
Ademola Oduyebo, Commissioner

Copies to:

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