STATE OF WISCONSIN PERSONNEL COMMISSION

ALICE HUGHES,
Complainant,

v.

Chancellor, UNIVERSITY OF WISCONSIN- MILWAUKEE,
Respondent.

Case No. 02-0099-PC-ER

RULING ON MOTION FOR SUMMARY JUDGMENT

The complaint in this matter was filed with the Commission on July 26, 2002. Complainant alleged discrimination under the Wisconsin Fair Employment Act (FEA) as well as violation of the Family/Medical Leave Act (FMLA) with respect to her employment with the respondent. Because of the statutory time constraint found in §103.10(12)(b), Stats., for holding a hearing under the FMLA, the Commission promptly scheduled a hearing for September 24 and 25, 2002. Complainant filed an amendment to her complaint on August 9, 2002, and also waived the investigation. On August 15, 2002, respondent filed a motion for partial summary judgment. During a prehearing conference held on August 19th, the parties tentatively agreed[1] to the following statement of issues for hearing, subject to the ruling on respondent's motion:

> 1. Whether respondent discriminated and/or harassed complainant on the basis of race when on January 25, 2001, several of respondent's employees allegedly physically threatened and verbally assaulted complainant.
>
> 2. Whether respondent discriminated against complainant on the basis of race when, in January 2001, respondent allegedly failed to act on complainant's verbal complaint of racial harassment.

[1] By letter dated August 30, 2002, respondent objected, in part, to the issues as stated in the August 19th prehearing conference report, suggesting that certain of the issues could be combined "for clarity and to shorten the statement of issues." By letter dated September 2nd, complainant objected to any change. Respondent's objection is not material to the present ruling.

3. Whether on January 26, 2001, respondent discriminated against complainant based on race and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when complainant was allegedly not allowed to reprimand her subordinate employees for racial harassment.

4. Whether on January 29, 2001, respondent discriminated against complainant based on race and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when respondent allegedly failed to act on complainant's complaint that she was suffering racial harassment at work.

5. Whether on February 1, 2001, respondent discriminated against complainant based on race and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when respondent allegedly rehired and reassigned subordinate employees over complainant's objections.

6. Whether respondent discriminated against complainant on the basis of race and/or retaliated against complainant for her January 2001, verbal complaint made of racial harassment when complainant was terminated from her Associate Bursar's position on February 8, 2001.

7. Whether respondent discriminated against complainant [on the basis of race] and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when respondent offered complainant the internal audit position, on February 15, 2001.

Sub-issue: Whether this position was considered a lower level position.

8. Whether in January 2002, respondent discriminated against complainant based on race and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when respondent allegedly rejected complainant for a lower level position in the Bursar's office and told complainant she was not qualified; and whether respondent discriminated against complainant based on race and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when respondent allegedly failed to provide complainant with the reinstatement information for the position within the Bursar's office.

9. Whether respondent discriminated against complainant based on race and/or retaliated against complainant for exercising her statutory

> rights under the FMLA when complainant was not provided adequate work space/work station during the time period of February 28, 2002, to April, 2002.
>
> 10. Whether respondent discriminated against complainant based on race and/or retaliated against complainant for exercising her statutory rights under the FMLA when:
>
> a. On or about March 19, 2002, complainant was rejected for a lower level position in the School of Information Studies;
> b. On or about February 27, 2002, complainant applied for a position in the Athletic Department and was rejected;
> c. On or about May, 2002, complainant applied for a lower level position in the Academic Opportunity Center of the Division of Student and Multicultural Affairs Department and was rejected;
> d. On or about June 3, 2002, complainant was rejected for a lower level position in the Union Department of the Division of Student and Multicultural Affairs;
> e. On or about June 13, 2002, complainant was rejected for a lower level position in the Peck School of the Arts.

Among other contentions in its motion, respondent argued that tentative issues 1, 2, 3, 4, 5, 6 and 7 (FEA claims) were untimely, and that all of complainant's FMLA claims, which are part of tentative issues 9 and 10, were also untimely.

The final brief on respondent's motion was filed on September 5, 2002, and in an Order dated September 9, 2002, the Commission held as follows:

> The Commission has considered the respondent's motion to dismiss complainant's claims under the Family/Medical Leave Act, grants the respondent's motion, and those claims are dismissed. The Commission will issue, in the near future, a ruling explaining its conclusions.[1] The ruling will also address other aspects of respondent's partial motion for summary judgment.

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[1]Because complainant had raised allegations under the FMLA and because of the time limit in §103.10(12)(b), Stats., for holding a hearing under the FMLA, the Commission had scheduled the hearing in this matter for September 24 and 25, 2002. Now that the complainant's FMLA claims are dismissed, the Commission cancels the hearing on September 24 and 25 and will contact the parties for the purpose of scheduling the hearing on those allegations that remain.

The instant ruling supplies the explanation referenced in the Commission's September 9th Order. The findings of fact do not appear to be in dispute unless so noted. These findings are made for the purposes of this motion only.

FINDINGS OF FACT

1. Complainant was first employed by respondent on February 28, 2000. She was hired on a project appointment as a Financial Supervisor 5 in the Department of Business and Financial Services of the Division of Administrative Affairs, Bursar's Office.

2. Complainant's immediate supervisor was respondent's Controller Karen Gundrum. Ms. Gundrum's supervisor was Mike Rupp, the Director of the Department of Business and Financial Affairs.

3. Complainant was hired to fill in for a permanent staff member, Michelle Schartner, who was temporarily serving on a team that was developing changes to respondent's computer systems.

4. On November 2, 2000, Mr. Rupp extended complainant's project appointment to July 31, 2002.

5. On January 25, 2001, several of respondent's employees allegedly threatened and assaulted complainant in the Bursar's Office. [FEA Claim #1]

6. During January 2001, complainant made a verbal complaint to Karen Gundrum and Mike Rupp about racial harassment and respondent allegedly failed to act. [FEA Claim #2]

7 On January 26, 2001, complainant was allegedly prevented by her supervisors from reprimanding subordinate employees. [FEA Claim #3]

8. On January 29, 2001, respondent allegedly failed to act on complainant's complaint that she was suffering racial harassment at work. [FEA Claim #4]

9. On February 1, 2001, respondent allegedly rehired and reassigned complainant's subordinate employees over complainant's objections. [FEA Claim #5]

10. By letter from Mr. Rupp dated February 8, 2001, complainant's project appointment was terminated, effective February 23, 2001. [FEA Claim #6]

11. In a letter to Mr. Rupp dated February 10, 2001, complainant complained about her termination and proposed a "settlement":

> The tone and manner in which the [termination] letter is worded, and the manner in which I was given only minutes to gather personal effects and be escorted off the Bursar Office premises, leaves little room for doubt that these causes outlined in this letter have been directed at me personally, and that I have been terminated as the direct cause as outlined in this letter, and not so much that the "project appointment" has ended. I feel that I have been treated unfairly in this regard.
>
> I have had several communications with Karen Gundrum, Michelle Schartner, and you regarding the harassing and hostile treatment certain of the Cashier staff in the Bursar's office subjected me to daily . . .
>
> I have been treated unfairly in my employment relationship with the Business and Financial Services department at UWM. I have been harassed, berated, violated and my supervision of staff under-mined during my term here. At best, I feel that the Business and Financial Services could have treated me more fairly during my term here by offering me the same managerial support in my supervision of staff that it offers to non-African American supervisors. . .

12. On February 23, 2001, complainant was offered a project appointment in the Department of Internal Audit of the Division of Administrative Affairs, effective February 24, 2001, as an Auditor-Journey. Complainant accepted the position. [FEA Claim #7]

13. Complainant's supervisor in the Department of Internal Audit was Paul Rediske, Director of that department.

14. On April 20, 2001, complainant made the first of several requests for leave due to various health and family care issues. Respondent approved complainant's requests. As a consequence, she was on leave from April 29, 2001, until June 4, 2001, and then from June 26, 2001 until February 25, 2002. Complainant worked sporadically between February 25, 2002 and July 31, 2002, when her employment with respondent ended.

15. Between the end of April of 2001 and the end of her employment on July 31, 2002, complainant actually worked fewer than 500 hours for respondent and received fewer than 100 hours of paid leave.

16. In January of 2002, respondent rejected complainant for a lower level position in the Bursar's office, allegedly told complainant she was not qualified and failed to provide complainant with reinstatement information for the position within the Bursar's office. [FEA Claim #8]

17 On or about February 27, 2002, complainant applied for a position in the Athletic Department and was rejected. [FEA and FMLA Claim #10b]

18. During the period from February 28, 2002 to April of 2002, complainant allegedly was not provided an adequate work space or work station. [FEA and FMLA Claim #9]

19. On or about March 19, 2002, complainant was rejected for a lower level position in the School of Information Studies. [FEA and FMLA Claim #10a]

20. In approximately May of 2002, complainant's application for a lower level position in the Academic Opportunity Center of the Division of Student and Multicultural Affairs Department was rejected. [FEA and FMLA Claim #10c]

21 On May 1, 2002, complainant filed an Injury and Illness Report alleging that she was injured as a result of desk space that was not ergonomically correct.

22. On or about June 3, 2002, complainant was rejected for a lower level position in the Union Department of the Division of Student and Multicultural Affairs. [FEA and FMLA Claim #10d].

23. On or about June 13, 2002, complainant was rejected for a position in the Peck School of the Arts. [FEA and FMLA Claim #10e]

24. Complainant filed her complaint with the Commission on July 26, 2002.

25. Complainant's project appointment with the Department of Internal Audit ended on July 31, 2002.

26. Presently, complainant is not employed by respondent.

CONCLUSIONS OF LAW

1. This complaint is properly before the Commission pursuant to §§103.10 and 230.45(1)(b), Stats.

2. Complainant has the burden to show her FEA claims relating to her position at the Bursar's office were timely filed.

3. Complainant has failed to sustain this burden.

4. Complainant has the burden to show her FMLA claims were timely filed.

5. Complainant has failed to sustain her burden.

6. Commencing no later than approximately April of 2002 and until the end of her employment on July 31, 2002, complainant did not qualify under the Wisconsin FMLA because she had not worked for the employer for at least 1,000 hours during the preceding 52-week period as required by §103.10(2)(c), Stats., and §DWD 225.01(4), Wis. Adm. Code.

OPINION

Respondent seeks dismissal of both the complainant's FEA claims regarding actions taken during his employment in the Bursar's Office, and her subsequent FMLA claims. Respondent contends these claims are untimely filed.

The Commission may summarily decide a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Balele v. Wis. Pers. Comm.*, 223 Wis. 2d 739, 745-748, 589 N.W 2d 418 (Ct. App. 1998). Generally speaking, the following guidelines apply The moving party has the burden to establish the absence of any material disputed facts based on the following principles: a) disputed facts, which would not affect the final determination, are immaterial and insufficient to defeat the motion; b) inferences to be drawn from the underlying facts contained in the moving party's material should be viewed in the light most favorable to the party opposing the motion; and c) doubts as to the existence of a genuine issue of material fact should be resolved against the party moving for summary judgment. *See Grams v. Boss*,. 97 Wis. 2d 332, 338-9, 294 N.W 2d 473 (1980);

Balele v. DOT, 00-0044-PC-ER, 10/23/01. The non-moving party may not rest upon mere allegations, mere denials or speculation to dispute a fact properly supported by the moving party's submissions. *Balele, Id.*, citing *Moulas v. PBC Prod.*, 213 Wis. 2d 406, 410-11, 570 N.W. 2d 739 (Ct. App. 1997). If the non-moving party has the ultimate burden of proof on the claim in question, that ultimate burden remains with that party in the context of the summary judgment motion. *Balele, Id.*, citing *Transportation Ins. Co. v. Huntziger Const. Co.*, 179 Wis. 2d 281, 290-92, 507 N.W 2d 136 (Ct. App. 1993)

Respondent is requesting summary judgment with respect to the allegations specified during complainant's project appointment at respondent's Bursar's office and the allegations identified under the Wisconsin Family Medical Leave Act.

I. FEA Allegations Arising During the Project Appointment in the Bursar's Office

With respect to the FEA allegations involving complainant's employment at the Bursar's office, respondent argues the claims fall outside of the 300 day statutory filing period, and therefore, should be dismissed. It is complainant's burden of proof to demonstrate that the allegations raised in her complaint were timely filed. When analyzing this question it is appropriate to construe the allegations raised in the complaint in a light most favorable to complainant. *Reinhold v. Office of the Columbia County District Attorney & Bennett*, 95-0086-PC-ER, 9/16/97

Complaints filed under the Fair Employment Act (FEA) must be filed no more than 300 days after the alleged discrimination occurred, as noted in §111.39(1), Stats. The statutory term "occurred" usually means the date of notice of the alleged discriminatory act, e.g., the date complainant was notified that his or her employment was terminated. *Hilmes v. DILHR*, 147 Wis. 2d 48, 53, 433 N.W 2d 251 (Ct. App. 1988).

This complaint was filed on July 26, 2002. As a result, the actionable period under the FEA is from September 29, 2001, through July 26, 2002.

Complainant contends that her claim involves a continuing violation so that as long as one alleged incident of discrimination/retaliation occurred within the 300 day

filing period, all of her previous allegations should also be considered timely. Complainant cites *Kortman v. UW-Madison*, 94-0038-PC-ER, 11/17/95, which involved an individual who had filed a charge with the Commission alleging that respondent had discriminated against her for engaging in protected whistleblower and FEA activities. The Commission applied the continuing violation theory and found that none of the alleged actions were sufficiently remote in time from its predecessor or successor to break the chain of related events.

As respondent has correctly stated, *Tafelski v. UW-Madison*, 95-0127-PC-ER, 3/22/96 was decided after the *Kortman* decision and has gone beyond *Kortman*, further explaining the Commission's application of the continuing violation theory.

In its decision in *Tafelski v. UW-Madison*, 95-0127-PC-ER, 3/22/96, as well as subsequent decisions, the Commission has cited the following analysis set forth in *Selan v. Kiley*, 969 F.2d 560, 564-65, 59 FEP Cases 775, 778 (7th Cir., 1992):

> The continuing violation doctrine allows a plaintiff to get relief for a time-barred act by linking it with an act that is within the limitations period. For purposes of the limitations period, courts treat such a combination as one continuous act that ends within the limitations period.
> The first [continuing violation] theory stems from "cases, usually involving hiring or promotion practices, where the employer's decision-making process takes place over a period of time, making it difficult to pinpoint the exact day the 'violation' occurred." Courts have tolled the statute in such cases for equitable reasons similar to those underlying the federal equitable tolling doctrine. . The second theory stems from cases in which the employer has an express, openly espoused policy that is alleged to be discriminatory. The third continuing violation theory stems from cases in which "the plaintiff charges that the employer has, for a period of time, followed a practice of discrimination, but has done so covertly, rather than by way of an open notorious policy. In such cases the challenged practice is evidenced only by a series of discrete, allegedly discriminatory, acts." This brand of continuing violation has also been referred to as a "serial violation," and as a "pattern of ongoing discrimination."
>
> Under the third theory, the question is whether, in response to the defendants' motion for summary judgment, [the employee] produces sufficient evidence to establish that there existed a genuine issue of fact whether the defendants' acts were "related closely enough to constitute a continu-

ing violation" or were "merely discrete, isolated, and completed acts which must be regarded as individual violations." The Fifth Circuit has suggested three factors to consider in making this determination.

> The first is subject matter. Do the alleged acts involve the same type of discrimination, tending to connect them in a continuing violation? The second is frequency. Are the alleged acts recurring (e.g., a bi-weekly paycheck) or more in the nature of an isolated work assignment or employment decision? The third factor, perhaps of most importance, is degree of permanence which should trigger an employee's awareness of and duty to assert his or her rights, or which should indicate to the employee that the continued existence of the adverse consequences of the act is to be expected without being dependent on a continuing intent to discriminate?

This court and others have stressed the significance of the third factor:

> What justifies treating a series of separate violations as a continuing violation? Only that it would have been unreasonable to require the plaintiff to sue separately on each one. In a setting of alleged discrimination, ordinarily this will be because the [employee] had no reason to believe he was a victim of discrimination until a series of adverse action established a visible pattern of discriminatory treatment. [citations omitted]

Complainant merely argues that respondent "has continued in a pattern of harassment or a pattern of actions designed to achieve complainant's separation from employment and none of the alleged actions are sufficiently remote in time from its predecessor or successor of January, 2001 to break the chain." (Brief dated August 28, 2002) Complainant has not articulated an argument that the respondent's conduct falls within either the first or second continuing violation theory explained in *Tafelski*, and the Commission does not perceive either theory to apply to the present facts. With respect to the third continuing violation theory, also referred to as a "serial violation," the Commission must look at the three factors set forth by the Court.

Respondent argues complainant has not established the first factor relating to the type of discriminatory conduct being alleged. The Commission focuses on how the al-

legations involving complainant's position within the Bursar's office do or do not relate to the allegations that fall within the 300 day filing period, the first of which occurred in January of 2002 when respondent is alleged to have rejected complainant for a position in the Bursar's office, and to have failed to provide complainant with reinstatement information. Subsequent FEA allegations that are within the actionable period relate to complainant's work space within the Department of Internal Audit and various decisions not to select complainant for vacancies in the School of Information Studies, the Athletic Department, the Academic Opportunity Center, the Union Department and the Peck School of the Arts. None of these subsequent selection decisions related to positions within the Bursar's Office or the Department of Internal Audit.

The complainant's allegations involve different types of actions rather than a series of similar conduct. The Commission agrees with respondent's description of the allegations as "ranging from alleged physical threats and verbal assaults, to termination of employment, to alleged failure to provide an adequate workspace, to failure to hire for other positions in separate distinct departments of the university . [involving] a number of different alleged discriminators/decision-makers and spread out over a lengthy time period." Reply brief, p. 4. The "anchor" incident must be of the same type as the incidents which fall outside the actionable period, and these were not. *Vines v. UW (Parkside)*, 99-0044-PC-ER, 9/5/01, *Selam, supra; Tafelski, supra.*

With respect to the second factor, involving the frequency of the alleged acts, complainant's first allegation of discrimination involves an incident that took place in January 2001, with three additional incidents until and including complainant's termination with the Bursar's office on February 8, 2001. All of these alleged incidents occurred well before the commencement of the actionable period on September 29, 2001. It was not until 11 months after the February 8, 2001, termination that the next alleged incident occurred, in January 2002, when respondent allegedly failed to provide complainant with reinstatement information for the position within the Bursar's office. Several more incidents allegedly occurred between January, 2002, and June 13, 2002. Complainant has not satisfied the second factor because the allegations are "more in the

nature of an isolated work assignment or employment decision" rather than "a bi-weekly paycheck." *Tafelski,* citing *Berry v. Board of Supervisors of L.S.U.*, 715 F.2d 971, 981 (5th Cir. 1983).

The third factor is whether the alleged conduct had a the degree of permanence which should trigger an employee's awareness and duty to assert his or her rights or which should indicate to the employee that the continued existence of the adverse consequences of the act is to be expected without being dependent on a continuing intent to discriminate. *Tafelski, supra*. The key allegation in terms of analyzing this factor relates to the decision, communicated to complainant on February 8, 2001, to terminate the complainant's project employment in the Bursar's Office. Complainant had already alleged to her supervisors that she was suffering racial harassment at work. Just two days after her termination she wrote Mr. Rupp, complained about the termination and of not receiving "the same managerial support" as provided to non-African American supervisors, and proposed a "settlement." The termination clearly qualifies as a "discrete" event that triggered complainant's "awareness of and duty to assert his or her rights." *Tafelski,* citing *Berry v. Board of Supervisors of L.S.U.*, 715 F.2d 971, 981 (5th Cir. 1983).

Because of all three of the factors set forth in *Tafelski*, the continuing violation doctrine cannot be applied to complainant's allegations that arise from her position within the Bursar's office.

II. FMLA Allegations

Respondent raises multiple arguments in support of its request that complainant's FMLA claims be dismissed. Its primary argument relates to the timeliness of the FMLA allegations.

The time limit for filing an FMLA complaint is found in §103.10(12)(2)(b), Stats.:

> An employee who believes his or her employer has violated sub. (11)(a) or (b) may, within 30 days after the violation occurs or the employee

> should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation.

Because this complaint was filed on July 26, 2002, the FMLA actionable period began on June 27, 2002, and ended on July 26, 2002.

Complainant's FMLA allegations all arise from events that occurred before the actionable period. The period in which respondent allegedly failed to provide complainant with an adequate work station ended in April of 2002. Complainant was not selected for a variety of positions at UW-Milwaukee, but the last rejection occurred on or about June 13, 2002. Complainant does not argue and there is no basis on which the Commission could conclude that the complainant should not have reasonably known of such alleged violations until on or after June 27, 2002. All of the non-selection decisions were discrete personnel actions. Complainant was aware of all of the adverse actions before the commencement of the actionable period. In her charge of discrimination, complainant effectively admitted she was aware of the alleged FMLA violations prior to June 26th Complainant wrote the following in "Section 7" of her charge of discrimination filed with the Commission on July 26, 2002:

> *On or about April, 2002, I complained to the Vice Chancellor, Sona Andrews* about the ongoing racial discrimination issues and relation I felt is continually being directed towards me by the University continuing from my complainant in January, 2001, including, but not limited to the University failing to consider my reinstatement rights for consideration for the position within the Bursar's office as Financial supervisor; including the University's failure to provide me with a work station area which would not cause me continual physical harm. I told Dr. Andrews *how I do not have an adequate workstation since my return in February 2002.* Dr. Andrews addressed [one] of the issues I raised, but to date, has not gotten back with me regarding all the other issues and complaints as outline above which I raised in our meeting.
>
> *On or about June 13, 2002,* I came into the Human Resources office to pick up Medical Leave forms to complete, which were given to me in the lobby by Terry Duffy. When I asked Terry Duffy, in her opinion, why did she think [I] was not being hired by UW-Milwaukee, and if Department Heads have access to my family medical leave or worker compensation leave information? She told me I was "probably not being

> hired due to my attendance." My attendance shows leaves provided for under the Family Leave Act and Worker Compensation. This denial to allow me access to employment transfer or promotion at UW-Milwaukee, based upon my family leave or medical leave is discrimination. (Emphasis added)

Although the complainant failed to satisfy the 30 day period for filing a FMLA (§103.10, Stats.) complaint, her claims are still viable under an FEA retaliation theory, as long as they meet the 300 day filing period applicable to the FEA. The Fair Employment Act includes the following protection in §111.322, Stats..

> Subject to ss. 111.33 to 111.36, it is an act of employment discrimination to do any of the following:
> (2m) To discharge or otherwise discriminate against any individual because of any of the following:
> (a) The individual files a complaint or attempts to enforce any right under s. 103.02, *103.10.*

The Commission construes tentative issues 9. and 10., to include both an FEA race discrimination claim and an FEA retaliation claim, the latter under §111.322(2m)(a), Stats. While these two issues are untimely as FMLA claims, they are not untimely when the 300 day FEA limit is applied. The Commission will continue to process these claims pursuant to FEA, but not FMLA, procedures.

In one of her submissions regarding respondent's motion, the complainant makes a reference that might be construed as identifying an additional claim under the FMLA that could fall within the 30 day period for filing an FMLA claim. Complainant's brief dated August 30, 2002, includes the following language:

> To complainant's knowledge and belief, she was on FMLA leave at minimum, from June 13, 2002 *through July 10*, 2002 for the work related injury sustained by not being assigned a safe/ergonomically workstation." (Emphasis added.)

If this is construed as a claim that, sometime after July 10th, respondent denied complainant FMLA leave to which she was entitled, the claim would satisfy the 30 day constraint. Nevertheless, the Commission would grant summary judgment to respondent

on such a claim because of the absence of any genuine issue of fact that the complainant was no longer entitled to any Wisconsin FMLA leave by July 10, 2002.

One of the requirements for Wisconsin FMLA eligibility is that the employee must have "worked for the employer for at least 1,000 hours during the preceding 52-week period." S. 103.10(2)(c), Stats. This provision has been defined in §DWD 225.01(4), Wis. Adm. Code, as follows:

> A person shall be deemed to have "worked for the employer for at least 1,000 hours during the preceding 52-week period" within the meaning of s. 103.10(2)(c), Stats., if the number of hours actually worked in that period plus the number of hours for which the employee was paid pursuant to a regular policy of paid vacation leave, sick leave or other paid leave equals at least 1,000 hours.

Respondent filed an affidavit by Paul Rediske that referenced complainant's work days and leave days and attached copies of complainant's bi-weekly timesheets and her various leave without pay requests. These documents establish that between the end of April of 2001 and the conclusion of her employment with respondent on July 31, 2002, complainant was on unpaid leave except for approximately 3 work weeks in June of 2001 and 300 hours of work time and 100 hours of paid leave between February 25 and July 31 of 2002. These limited hours of paid employment fail to satisfy the 1,000 hour threshold established by statute. Therefore, complainant was not eligible for Wisconsin FMLA leave at any time during the 30 day actionable period that commenced on June 27, 2002, and in the event complainant is alleging that she was denied Wisconsin FMLA leave on or after July 20th, the Commission grants summary judgment to respondent as to that allegation.

ORDER

Respondent's partial motion for summary judgment is granted. The allegations involving complainant's position in the Bursar's office are dismissed as untimely. The FMLA claims are also dismissed as untimely. The following claims may proceed to hearing as claims of FEA discrimination and retaliation:

1. Whether in January 2002, respondent discriminated against complainant based on race and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when respondent allegedly rejected complainant for a lower level position in the Bursar's office and told complainant she was not qualified; and whether respondent discriminated against complainant based on race and/or retaliated against complainant for her January 2001, verbal complaint of racial harassment when respondent allegedly failed to provide complainant with the reinstatement information for the position within the Bursar's office.

2. Whether respondent discriminated against complainant based on race and/or retaliated against complainant in violation of the FEA for exercising her statutory rights under the FMLA when complainant was not provided adequate work space/work station during the time period of February 28, 2002, to April, 2002.

3. Whether respondent discriminated against complainant based on race and/or retaliated against complainant in violation of the FEA for exercising her statutory rights under the FMLA when:

a. On or about March 19, 2002, complainant was rejected for a lower level position in the School of Information Studies;

b. On or about February 27, 2002, complainant applied for a position in the Athletic Department and was rejected;

c. On or about May, 2002, complainant applied for a lower level position in the Academic Opportunity Center of the Division of Student and Multicultural Affairs Department and was rejected;

d. On or about June 3, 2002, complainant was rejected for a lower level position in the Union Department of the Division of Student and Multicultural Affairs;

e. On or about June 13, 2002, complainant was rejected for a lower level position in the Peck School of the Arts.

Dated: Sept. 17, 2002.

STATE PERSONNEL COMMISSION

ANTHONY J. THEODORE, Commissioner

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KELLI S. THOMPSON, Commissioner