City of Watseka

Watsekacity.org
Phone (815) 432-2711
Fax (815) 432-2041
E-Mail - mayor@watsekacity.org

201 Brianna Drive P.O. Box 338
Watseka, IL 60970
John K. Allhands
Mayor

Dear Mr. Allen:

The City of Watseka (the "Village") is in receipt of your Illinois Freedom of Information Act ("FOIA") request, which was received by the City on January 3, 2020. In that request, you asked for the following:

1. A copy of all payments made to Ashley Butt by both the City and any insurance carrier the city has coverage under. The period of time is the last 6 months to the current date.
2. A copy of all communications between the city insurance carrier and the Mayor and any city manager regarding Officer Butt in the last 6 months.
3. A copy of any separation or settlement agreement the insurance carrier used in relation to the payment made to former Officer Butt.
4. A copy of all complaints against the Police Chief in the last 5 years.
5. A copy of all adjudicated finding against the Police Chief in the last 5 years
6. A copy of all discipline issued to the Police Chief in the last 5 years.

Be advised that no documents exist responsive to Request Paragraph Nos. 1, 3, and 5. The City is in possession of records that are responsive to Request Paragraphs Nos. 2, 4, and 6. Documents responsive to Request Paragraph Nos. 4 and 6 are produced herewith in electronic format. Certain information in the attached documents has been redacted pursuant to 5 ILCS 140/7(1)(c). Finally, the City is denying your request for documents responsive to Request Paragraph No. 2 as the same are exempt from disclosure pursuant to 5 ILCS 140/7(m) and 5 ILCS 140/7(s).

To the extent the denial, redactions, or absence of records constitute a denial of your request, you have the right to seek judicial review of this response or to request that the Public Access Counselor review this response by submitting a request for review to the Public Access Counselor, Office of the Attorney General, 500 S. 2nd Street, Springfield, IL 62706 or publicaccess@atg.state.il.us.

Sincerely

Cathy Molck
Administrative Assistant/FOIA Officer
City of Watseka

U.S. Equal Employment Opportunity Commission
Chicago District Office
500 West Madison St
Suite 2000
Chicago, IL 60661

NOTICE OF CHARGE OF DISCRIMINATION

(This Notice replaces EEOC FORM 131)

DIGITAL CHARGE SYSTEM

May 14, 2019

To: John Allhands
Mayor
CITY OF WATSEKA
201 Brianna Drive
PO Box 338
Watseka, IL 60970

This is notice that a charge of employment discrimination has been filed with the EEOC against your organization by under: Title VII of the Civil Rights Act (Title VII). The circumstances of the alleged discrimination are based on Retaliation and Sex, and involve issues of Sexual Harassment and Constructive Discharge that are alleged to have occurred on or about Jan 01, 2015 through Sep 07, 2018.

The Digital Charge System makes investigations and communications with charging parties and respondents more efficient by digitizing charge documents. The charge is available for you to download from the EEOC Respondent Portal, EEOC's secure online system.

Please follow these instructions to view the charge within ten (10) days of receiving this Notice:

1. Access EEOC's secure online system: **https://nxg.eeoc.gov/rsp/login.jsf**
2. Enter this EEOC Charge No.: **440-2019-04268**
3. Enter this temporary password: **hg9942kj**

Once you log into the system, you can view and download the charge, and electronically submit documents to EEOC. The system will also advise you of possible actions or responses, and identify your EEOC point of contact for this charge.

If you are unable to log into the EEOC Respondent Portal or have any questions regarding the Digital Charge System, you can send an email to CHICAGOEEOC@EEOC.GOV.

Preservation of Records Requirement

EEOC regulations require respondents to preserve all payroll and personnel records relevant to the charge until final disposition of the charge or litigation. 29 CFR §1602.14. For more information on your obligation to preserve records, see http://eeoc.gov/employers/recordkeeping.cfm.

Non-Retaliation Requirements

The laws enforced by the EEOC prohibit retaliation against any individual because s/he has filed a charge, testified, assisted or participated in an investigation, proceeding or hearing under these laws. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. For more information, see http://www.eeoc.gov/laws/types/facts-retal.cfm.

Legal Representation

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please provide the attorney's contact information when you log in to the online system.

Please retain this notice for your records.

U.S. Equal Employment Opportunity Commission

FEDERAL INVESTIGATION: REQUEST FOR POSITION STATEMENT AND SUPPORTING DOCUMENTARY EVIDENCE

EEOC hereby requests that your organization submit within 30 days a Position Statement setting forth all facts which pertain to the allegations in the charge of discrimination under investigation, as well as any other facts which you deem relevant for EEOC's consideration.

We recommend you review EEOC's resource guide on "Effective Position Statements" as you prepare your response to this request.

Fact-Based Position Statement

This is your opportunity to raise any and all defenses, legal or factual, in response to each of the allegations of the charge. The position statement should set forth all of the facts relevant to respond to the allegations in the charge, as well as any other facts the Respondent deems pertinent to EEOC's consideration. The position statement should only refer to, but not identify, information that the Respondent asserts is sensitive medical information, or confidential commercial or financial information.

EEOC also requests that you submit all documentary evidence you believe is responsive to the allegations of the charge. If you submit only an advocacy statement, unsupported by documentary evidence, EEOC may conclude that Respondent has no evidence to support its defense to the allegations of the charge.

EEOC may release your position statement and non-confidential attachments to the Charging Party and her representative and allow them to respond to enable the EEOC to assess the credibility of the information provided by both parties. It is in the Respondent's interest to provide an effective position statement that focuses on the facts. EEOC will not release the Charging Party's response, if any, to the Respondent.

If no response is received to this request, EEOC may proceed directly to a determination on the merits of the charge based on the information at its disposal.

Signed by an Authorized Representative

The Position Statement should be signed by an officer, agent, or representative of Respondent authorized to speak officially on its behalf in this federal investigation.

Segregate Confidential Information into Separately Designated Attachments

If you rely on confidential medical or commercial information in the position statement, you should provide such information in separate attachments to the position statement labeled "Sensitive Medical Information," "Confidential Commercial or Financial Information," or "Trade Secret Information" as applicable. Provide an explanation justifying the confidential nature of the information contained in the attachments. Medical information about the

Charging Party is not sensitive or confidential medical information in relation to EEOC's investigation.

Segregate the following information into separate attachments and designate them as follows:

a. Sensitive medical information (except for the Charging Party's medical information).
b. Social Security Numbers
c. Confidential commercial or financial information.
d. Trade secrets information.
e. Non-relevant personally identifiable information of witnesses, comparators or third parties, for example, social security numbers, dates of birth in non-age cases, home addresses, personal phone numbers and email addresses, etc.
f. Any reference to charges filed against the Respondent by other charging parties.

Requests for an Extension

If Respondent believes it requires additional time to respond, it must, at the *earliest possible time* in advance of the due date, make a written request for extension, explain why an extension is necessary, and specify the amount of additional time needed to reply. Submitting a written request for extension of time does not automatically extend the deadline for providing the position statement.

Upload the Position Statement and Attachments into the Respondent Portal

You can upload your position statement and attachments into the Respondent Portal using the **+ Upload Documents** button. Select the "Position Statement" Document Type and click the **Save Upload** button to send the Position Statement and attachments to EEOC. Once the Position Statement has been submitted, you will not be able to retract it via the Portal.

Notice To Respondents

Read This Notice Immediately Upon Receipt

In response to feedback from representatives of the Respondent community, the Chicago District Office has further modified its charge investigation and resolutions' procedures. Input from business representatives has focused on two requests: that EEOC should complete its investigations more expeditiously, and that ADR methods are made more available to support quick, amicable charge resolutions where appropriate. In order to meet these needs, our procedures will change, with respect to all charges filed on or after October 1, 1998. Meeting these goals is a shared effort. In order that the parties may benefit from more timely and helpful service from us, all parties must bear their own responsibilities as participants in the charge investigation/resolution process. We direct your attention to the following information regarding your obligations, some of which may be new to you.

A. Charge Investigation

Enclosed with this Notice is a "Notice of Charge of Discrimination," which includes instructions regarding your response to the charge. Although responses indicated on that document are mandatory, you may at any time submit evidence and/or statements of position in response to the charge. We encourage you to make the earliest possible submission, both because evidence made available immediately is generally more credible than that produced reluctantly, and because an early response generally will aid us in resolving charges expeditiously.

Instructions for the required response to the charge are contained in three numbered entries on the Notice of Charge. These remarks relate to those entries.

1. No required action - This may be indicated on your Notice of Charge for a number of reasons. Generally, the Commission has determined to proceed with the investigation in some manner than a written request for a response in writing. In this event, you should expect to be contacted soon by the Commission Representative with specific requests, for example, to produce certain witnesses for an interview or to arrange access to your facility. Again, note that this in no way prohibits you from submitting other statements or evidence, all of which will be considered.

2. Statements of Position - Where this "request is indicated, it is necessary for you to provide a substantive statement of your position in response to the allegations made against your organization. We have extended the due date for this statement to 30 days from issuance of the Notice of Charge. Frequently, you will be able to submit your response in a shorter time, and we strongly encourage you to make the earliest possible submission, for the reasons given above. Thus, 30 days is not a standard response time, but rather the maximum allowable time period; in light of this expanded response time, **requests for extension of the response time will not be entertained**. You should also note that the Notice of Charge requires that your **statement be accompanied by the documentary evidence** supporting each of your assertions. In appropriate situations, this may include affidavits of management officials of your organizations, but often business records will serve this purpose. Note, however, that only statements which are (1) substantive (rather than mere denials of allegations), (2) timely submitted, and (3) adequately supported by evidence are responsive to this request. Failure to provide a responsive submission subjects Respondent to certain possible consequences. First, we may draw an inference from non-responsiveness that the charge is true, and issue such findings based on the charge and the lack of rebuttal. Alternatively, we may proceed against your organization as a non-cooperating Respondent, by issuing subpoenas for the testimony of officials and the production of records.

3. Requests for Information - The remarks concerning timeliness and completeness in item #2, above, apply equally to this request. This request may seek information either as answers to questions or as request for documentary evidence. Answers to questions should be provided by an officer of the organization who is able to answer based on personal knowledge rather than, for example, by retained legal counsel. Documents should be identified so as to make clear the request to which they apply, and your interpretation of them.

B. Charge Resolution

With respect to many charges filed with EEOC, each party feels strongly that they are correct in their view of the merits, while a neutral view (including EEOC's) suggests cause for doubt about each party's position. Many other charges are the result of failures of communication. The business community, for such reasons, has encouraged EEOC to provide ADR (alternative dispute resolution) services, to make possible the speedy resolution of charges without the expense and disruption of an investigation. Our office offers two forms of early resolution services.

1. Mediation - Upon agreement of all parties (Charging Party, Respondent and EEOC), many charges can be referred to a mediator for up to 60 days, instead of being assigned to an investigator, so that a mediated resolution can be attempted without the need for an investigation. For further information regarding this option, please call our ADR Coordinator, Julie Bretz, at (312) 869-8052.

2. Negotiated Settlement - Pursuant to EEOC Regulations, each of our investigators is authorized (and trained) to assist the parties by facilitating charge settlements. While we encourage you to seriously consider proposing settlement of this charge at any point in our investigation, we emphasize that our experience indicates that settlement efforts are most likely to succeed early in the process. To discuss a settlement proposal for this charge, please call the assigned Commission Representative.

C. Technical Assistance

Many employment discrimination charges result from the actions of managers who have insufficient knowledge of employers' responsibilities under the laws and EEOC regulations. In order to assist employers (and others against whom charges are made) to prevent violations and the resulting charges, we offer a variety of technical assistance opportunities each year. Recently, we have placed greater emphasis on this facet of our work, in the hope that discrimination claims can be reduced through education of Respondent representatives concerning both (1) what the law requires and (2) how to work effectively with the EEOC. Half-day, one-day and two-day seminars are presented at sites allover Illinois. While fees are charged to offset expenses, the cost of these seminars is very competitive with similar presentations from non-EEOC sources. In addition, where employers, employer associations or others are able to arrange for a group of sufficient size, we work with them to present training for their managers, supervisors, human resources or employees' relations professionals, or others involved with compliance with the laws prohibiting discrimination. This training often can be custom-designed to focus on areas of particular interest, for example, sexual harassment, reasonable accommodation, obligations of local government employers, etc. For information about upcoming technical assistance opportunities, or to discuss the EEO training needs of your organization, please call Maria Flores, our technical assistance program coordinator, at (414) 297-3594.

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974: See Privacy act statement before completing this form. #	AGENCY IDHR ☒ EEOC	CHARGE NUMBER 440-2019-04268

Illinois Department of Human Rights and EEOC

NAME OF COMPLAINANT (Indicate Mr. Ms. Mrs.)		TELEPHONE NUMBER (include area code)
STREET ADDRESS	CITY, STATE AND ZIP CODE	DATE OF BIRTH M D YEAR

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (IF MORE THAN ONE LIST BELOW)

NAME OF RESPONDENT Watseka Police Department	NUMBER OF EMPLOYEES, MEMBERS 15+	TELEPHONE (Include area code) 815-432-2433
STREET ADDRESS 201 Brianna Drive, Watseka, Illinois 60970	CITY, STATE AND ZIP CODE	COUNTY Iroquois

CAUSE OF DISCRIMINATION BASED ON: Sex Discrimination, Retaliation	DATE OF DISCRIMINATION EARLIEST (ADEA/EPA) LATEST (ALL) 9-7-18 ☐ CONTINUING ACTION

THE PARTICULARS OF THE CHARGE ARE AS FOLLOWS:

SEE ATTACHED

RECEIVED EEOC

CHICAGO DISTRICT OFFICE

Page 1 of 3

I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	SUBSCRIBED AND SWORN TO BEFORE ME THIS_____DAY OF_____ NOTARY SIGNATURE
NOTARY STAMP	SIGNATURE OF COMPLAINANT DATE I declare under penalty that the foregoing is true and correct. I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

EEO-5 FORM (Rev. 11/09-DVT)

I. A. ISSUES/BASIS

Sex Discrimination

B. PRIMA FACIE ALLEGATIONS

1. From December 2014 until September 2018 Complainant worked as a patrol officer and most recently a detective for the Watseka Police Department.

2. In approximately 2015, Complainant was with Chief Jeremy Douglas at the Iroquois County Jail Deputy's Room. Chief Douglas placed his hands inside Complainant's uniform blouse on the straps of her vest and grabbed and rubbed up and down against Complainant's chest [redacted] observed the Chief's actions and stated that his conduct was not appropriate.

3. In approximately January 2015, Complainant was sitting at her desk in the break room during a shift change. Chief Douglas entered the room and asked Complainant, "Stand up so I can look at your ass."

4. In the Fall of 2015, Complainant worked the afternoon shift, which was from 2:00 p.m. to 10:00 p.m. Approximately once a week for a period of six months, the Chief would rub Complainant's shoulders during the shift change. Chief Douglas advised Complainant that he was a "touchy feely person." On one occasion, Chief Douglas placed his face near Complainant's head and stated, "you smell good." Officer Hall observed Chief Douglas and asked, "are you going to smell me next?"

5. From 2016 through September 2018, Chief Douglas would rub Complainant's shoulders approximately every other month. Complainant repeatedly told the Chief not to touch her; but he would not listen.

6. In 2017, Chief Douglas wrongly accused Complainant of sleeping with Officer Vincent Laffon. Chief Douglas further stated to Complainant that when she and Officer Laffon would have sex, he would not call out the wrong name during sex since his wife's name is also

7. In September 2017, before the 911 memorial event, Chief Douglas stated to Complainant, "don't wear the yoga pants because the little boys won't be able to keep it in their pants."

8. In January, 2018, Complainant was involved in an arson investigation with the State Fire Marshall's Office. While she was taking notes during an investigator's interview of a witness, Chief Douglas approached her from behind and placed both of his hands on the sides of her neck. Later that day Chief Douglas told Complainant the firemen told him they were sad she changed from her yoga pants to jeans.

9. Sometime between May 25 and May 29, 2018, outside the Iroquois County Courthouse Museum, Chief Douglas asked Complainant, "So are you fucking Justin Moyer?"

10. In May or June of 2018 Complainant attended the wake of Officer Muench's girlfriend. At the wake Chief Douglas commented on how "good" Complainant's "ass looked in those pants," which was said in front of several police officers.

11. From December 2014 through September 2018, Chief Douglas would ask Complainant at least twice a month "who she was "fucking".

12. In September 2018, Complainant believed she was forced to leave her job as a result of the constant and continuous sexual assaults and harassment by Chief Douglas.

13. The aforementioned facts created a sexually hostile environment.

II. Retaliation

14. Complainant reasserts and realleges the facts in paragraphs 1 through 13.

15. From 2016 through September 2018, Chief Douglas would rub Complainant's shoulders approximately every other month. Complainant repeatedly told the Chief: "I don't like being touched and please don't touch me."

16. From December 2014 through September 2018, Chief Douglas would ask Complainant at least twice a month "who am I fucking". Complainant repeatedly told the Chief that her personal life was none of his business.

17. On or about September 7, 2018, after enduring monthly panic attacks and constant nightmares caused by the aforementioned conduct of Chief Douglas, Complainant found her working conditions intolerable, which forced her involuntary resignation.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

IN THE MATTER OF:	)	
	)	
	)	
	)	
COMPLAINANT,	)	CHARGE NO. 440-2019-04268
	)	
AND	)	
	)	
Watseka Police Department[1],	)	
	)	
RESPONDENT.	)	

POSITION STATEMENT

City of Watseka Police Department (the "City"), by and through its attorney K. Austin Zimmer of DEL GALDO LAW GROUP, LLC as its position statement in response to Complainant's Charge provides as follows:

Complainant was hired as a probationary police officer with the City of Watseka Police Department on or about December 16, 2014 and completed her probationary period in April of 2015. See letter dated 4/22/15 attached as Exhibit A. Complainant resigned from her employment with the City of Watseka effective September 14, 2018. See resignation letter dated 8-31-18 as Exhibit B. Complainant's employment was governed by the Collective Bargaining Agreement ("CBA") between the City of Watseka. See CBA as Exhibit C.

Complainant cannot establish discrimination/hostile work environment based on her gender or any retaliation against Complainant for several reasons. First, the City is not liable for the acts of Chief Jeremy Douglas as Complainant did not suffer any tangible employment action and the City promptly took corrective action. Second, Complainant has failed to show severe and

[1] Complainant was employed by the City of Watseka.

pervasive conduct as to sufficiently prove a hostile work environment. Third, Complainant additionally does not demonstrate any adverse employment action was taken against her such that she was discriminated against because of her gender. Fourth, Complainant has not been retaliated against by the City. Lastly, any allegations that occurred outside of the 300 days from the filing of the Charge of Discrimination ("Charge") should not be considered.

I. No Establishment of Sexual Harassment/Hostile Work Environment/ Sexual Discrimination

a. Complainant fails to demonstrate Hostile Work Environment by an alleged Supervisor

Complainant claims that Chief Jeremy Douglas created a sexually hostile work environment. To the extent Plaintiff asserts that Chief Douglas was her supervisor, Complainant cannot establish her claims.[2]

Courts have framed a sexual harassment claim wherein a supervisor is alleged to be the harasser as quid pro quo harassment. Quid pro quo sexual harassment occurs "when tangible employment benefits are conditioned upon one's compliance with a harasser's sexual demands." *Urban v. Blossom Hill Health Centre, Inc.,* No. 97 C 5507, 2000 WL 1262937, at *9 (N.D. Ill. Aug. 31, 2000) citing *Brill v. Lante Corp.,* 119 F.3d 1266, 1276 (7th Cir.1997)). According to the EEOC Guidelines on sexual harassment:

> *Unwelcome* sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, [or] (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual. (emphasis added)

[2] The City does not concede that Chief Douglas was Complainant's supervisor for purposes of Title VII.

The United State Supreme Court held in *Farragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998) that "[i]n order to accommodate the principle of vicarious liability for harm caused by misuse of supervisory authority, as well as Title VII's equally basic policies ... [a]n employer is subject to vicarious liability to a victimized employee for an *actionable hostile environment* created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. (emphasis added); holding also adopted in *Burlington Industries, Inc. v. Ellerth,* 524 U.S. 742, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998).

i. <u>The supposed acts alleged by Chief Douglas, do not qualify as actionable hostile work environment for vicarious liability purposes</u>

In *Farragher*, the Court noted that "in order [for harassment] to be actionable under the statute, a sexually objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so." 510 U.S. at 787. To determine whether an environment is sufficiently hostile or abusive, courts are directed to "[look] at 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." *Id.* The court recognized, that Title VII does not prohibit "genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex." *Id.* citing *Oncale v. Sundowner Offshore Services, Inc.,* 523 U.S. 75, 81 (1998). The Court also noted, that "simple teasing, ... offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" *Farragher*, 510 U.S. at 787-788.

Complainant alleges that Chief Douglas among other things, placed his hands inside her blouse, rubbed her shoulders, made comments about her wearing yoga pants and questioned her about with whom she may have been having sex. *See Charge*. The conduct alleged by Chief Douglas was not both subjectively and objectively offensive. *Bannon v. University of Chicago*, 503 F.3d 623, 629 (2007) (emphasis added).

The City's Police Department has a policy which prohibits discrimination and outlines a process to report any alleged harassment/discrimination. The relevant portion of the policy in effect during Complainant's employment provides:

> An employee must promptly report all harassment to his/her department supervisor unless the complaint involves the department supervisor. In that event, the employee must report the harassment to the next higher supervisor in the chain of command. In addition, all complaints of harassment must be reported personally to the Mayor. This double reporting requirement is intended to ensure the all complaints of harassment are handled properly. See p. 32 of Exhibit D.

On March 15, 2016, Complainant signed an acknowledgement that she received a copy of the policy and reviewed it. See acknowledgement as Exhibit E. Under the City's policy, because the allegation was made against the Chief of Police, Complainant was required to report the alleged harassment to the "next higher supervisor in the chain of command" and the Mayor. However, Complainant did not adhere to the anti-harassment policy. In fact, she did not report any supposed harassment to the Mayor until after she resigned. As will be detailed below, the City thereafter promptly conducted an investigation. As such, Complainant's response to the alleged harassment, or lack thereof, demonstrates that she did not find, nor could a reasonable jury find, her workplace subjectively and objectively offensive. See *Bannon*, 503 F.3d at 629 (the plaintiff's conduct in failing to report behavior of supervisor alleged to have continued for at least five years along with admission to socializing with her boss, would prevent a reasonable jury from finding that she subjectively viewed her work environment as hostile); *Andrade v. Mayfair Mgmt., Inc.,* 88 F.3d

258, 262 (4th Cir.1996)(affirming judgment setting aside jury verdict in favor of employee where evidence revealed plaintiff did not notify harassing supervisor's boss and employer was not informed of the harassment before plaintiff quit); *Perry v. Harris Chernin, Inc.*, 126 F.3d 1010, 1014 (7th Cir. 1997)(concession that the plaintiff never complained to anyone about the harassment before she quit was critical and the employer will not be liable in such a case where it had no reason to know about it).

Even if Complainant could demonstrate that the alleged conduct was offensive, it would nevertheless be insufficient to establish a hostile work environment because Complainant cannot demonstrate that the harassment was severe or pervasive. In *Weiss v. Coca-Cola Bottling Co,* the defendant allegedly asked the plaintiff for dates, called her a "dumb blond," put his hand on her shoulder several times, placed "I love you"' signs in her work area and attempted to kiss her in a bar, and "may have twice attempted to kiss her in the office." The 7th Circuit found such relatively isolated incidents failed to meet the standard for actionable sexual harassment. 990 F.2d 333, 337 (7th Cir.1993). See also *Hilt-Dyson v. City of Chi.,* 282 F.3d 456, 463-464 (7th Cir. 2002)(holding that the plaintiff's allegations that her supervisor twice rubbed her back and stared at her chest during a uniform inspection while telling her to raise her arms and open her blazer were isolated incidents that, even when taken together, did not create a sufficient inference of a hostile work environment); *Adusumilli v. City of Chi.,* 164 F.3d 353, 361-362 (7th Cir. 1998)(holding that the plaintiff's complaints of teasing; comments about bananas, rubber bands, and low-neck tops; staring and attempts to make eye contact; and four isolated incidents where a co-worker briefly touched her arm, fingers, or buttocks did not constitute sexual harassment); *Baskerville v. Cullingan Int'l Co.,* 50 F.3d 428, 430-431 (7th Cir. 1995)(a jury verdict in the plaintiff's favor overturned where evidence of "vulgar," "coarse, and "boorish" behavior, spread over months was

insufficient; finding "[t]he concept of sexual harassment is designed to protect working women from the kind of male attentions that can make the workplace hellish for women. It is not designed to purge the workplace of vulgarity."); *Kampmier v. Emeritus Corp.*, 472 F.3d 930, 941 (7th Cir. 2007) ("occasional vulgar banter, tinged with sexual innuendo of coarse or boorish words generally does not create a work environment that a reasonable person would find intolerable); *Coffman v. Indianapolis Fire Dept.*, 578 F.3d 559 (7th Cir. 2009) (workplace harassment not severe and pervasive).

The conduct alleged to have occurred in this case is similarly insufficient to establish the elements of a hostile work environment. As the cases referenced above demonstrate, this is not sufficiently severe or pervasive as to make Complainant's work environment "hellish."

ii. No tangible employment action was taken against Complainant

As the Court in *Farragher* explained, vicarious liability by a supervisor requires an analysis of whether a tangible employment action was taken in order to determine the availability of an affirmative defense to the employer. 524 U.S. 775, 807 (1998). "When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence." *Id.* A tangible employment decision requires an official act of the enterprise, a company act. *Ellerth*, 524 U.S. at 762. Here, Complainant cannot establish a tangible employment action. In the Charge, Complainant contends "she was forced to leave her job." In other words, Complainant claims she was constructively discharged.

The working conditions for "constructive discharge must be even more egregious than the high standard for hostile work environment because ... an employee is expected to remain employed while seeking redress." *Tutman v. WBBM-TV, Inc./CBS, Inc.*, 209 F.3d 1044, 1050 (7th Cir.2000). Where Complainant's work environment was not sufficiently hostile as discussed

above, she fails to demonstrate the higher standard for constructive discharge. Moreover, upon information and belief Complainant left her employment with the City to become a patrol officer for the Village of Rantoul, a larger police department. See website printout of Village of Rantoul 's current police officers and minutes from board meeting of Village of Rantoul Board of Trustees held on September 11, 2018 as Exhibit F. Notably, Complainant's resignation with the City was effective September 14, 2018 and yet Complainant was sworn in as a police officer with the Village of Rantoul Police Department days prior, on September 11, 2018. Exhibit B & F. The facts contradict any constructive discharge. See *Komen v No. 112 North Shore School Dist.*, 2003 WL 21181609, Case No. 01 C 314, *2 (N.D. Ill. 2003) (summary judgment granted on constructive discharge in part because the plaintiff left her employment with the defendant because of an opportunity).

iii. The City took prompt and corrective action

In *Faragher v. City of Boca Raton,* the Supreme Court held that where there is no tangible employment action, an employer facing liability for a supervisor's act of sexual harassment may raise an affirmative defense to that liability by arguing that it took reasonable care to prevent and correct any sexually harassing behavior. 524 U.S. 775, 807, (1998). "The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise ... And while proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing an unreasonable failure to use any complaint procedure provided by the employer, a demonstration of such failure will normally suffice to satisfy the employer's burden under the second element of the defense." *Id.*

As demonstrated above, the City had an anti-harassment policy in effect during the period of Complaint's employment. *Exhibit D.* Complainant did not follow the procedure in the policy.

In particular, Complainant alleges Chief Douglas was her harasser, yet she did not report the alleged harassment to his superior and also to the mayor at the time the harassment was supposedly occurring. This failure to "use the complaint procedure provided by [the City] will suffice to satisfy the employer's burden" to establish the second element of the affirmative defense as described above. Furthermore, the City expeditiously investigated the matter upon the Mayor's receipt of a complaint of harassment, which was made by Complainant after she resigned. After a thorough investigation, the City entered into an agreement with Chief Jeremy Douglas which included the following terms:

> Chief Douglas agreed to serve a fifteen-calendar day suspension. The basis for the suspension was alleged violations of Rule 5-1, Respect and Disparaging Remarks, of the Rules and Regulations of the City's Police Department.
>
> Chief Douglas agrees to implement and attend mandatory workplace sexual harassment awareness training for all members of the Police Department. The training will be designed to achieve a greater understanding of sexual harassment and the best practices for preventing sexual harassment in the workplace.
> See Memorandum of Agreement as Exhibit G.

The City has established the affirmative defense and is, accordingly, not liable. See *Cooper-Schut v. Visteon Automotive Systems*, 361 F.3d 421, 427-429 (7th Cir. 2004) (employer took reasonable actions to remedy violations).

b. Without proof of an Adverse Employment Action, Complainant fails to Demonstrate Sexual Discrimination

An employee can support an adverse employment action made for discriminatory reasons by "directly show[ing] that [gender] discrimination motivated the employment decision, or, as is more common, [by relying] on the indirect burden-shifting method." *Sublett v. John Wiley & Sons*, 463 F.3d 731, 736-37 (7th Cir. 2006). Whether a plaintiff proceeds by direct or indirect method in proving discrimination, she must show a materially adverse employment action. *Phelan v. Cook County*, 463 F.3d 773, 780 (7th Cir. 2006). Complainant cannot establish that she suffered an

adverse employment action. An adverse employment action is a significant change in employment status. *Rhodes v. Illinois Dep't of Transp.*, 359 F.3d 498, 504 (7th Cir. 2004). The idea behind the requirement of proof of an adverse action "is simply that a statute that forbids employment discrimination is not intended to reach every bigoted act or gesture that a worker might experience in the workplace." *Phelan*, 463 F.3d at 780 citing *Hunt v. City of Markham, Ill.*, 219 F.3d 649, 653 (7th Cir. 2000). An adverse employment action includes a termination or a demotion evidenced by a decrease in wage or salary, a less distinguished title, or a material loss of benefits. *Moser v. Indiana Department of Corrections*, 406 F.3d 895, 904 (7th Cir. 2005).

The only potential adverse action alleged by Complainant is the supposed constructive discharge. However, as demonstrated above, this claim fails because Complainant has not established that her work environment was egregiously hostile and Complainant left for a better opportunity. As such Complainant has failed to demonstrate an adverse employment action to establish discrimination.

II. No acts of Retaliation have been Taken against Complainant

Complainant asserts retaliation in her Charge but fails to allege or establish any of the elements: (1) that she engaged in protected conduct, (2) that she suffered an adverse employment action, and (3) that there was a causal connection between the two. *Jones v. Res–Care, Inc.,* 613 F.3d 665, 671 (7th Cir.2010). Title VII makes it "unlawful for an employer to discriminate against any of his employees ... because such individual ... has opposed any practice made unlawful...." *Alexander v. Biomerieux, Inc.*, 485 F. Supp.2d 924, 933 (N.D. Ill. 2007). In other words, to establish retaliation, a plaintiff must demonstrate he/she engaged in activity statutorily protected under Title VII. "Such activity consists of opposing or complaining about discrimination by the

employer based on race, color, religion, gender, national origin, age, or disability." *Small v. WW Lodging, Inc.*, 106 Fed. Appx. 505, 508 (7th Cir. 2004).

Complainant has not asserted any facts in her Charge that demonstrate that she was engaged in protected activity. To be exact, Complainant has not stated that she voiced any opposition to or complained about any supposed discrimination. Thus, her claim fails at the outset. Nevertheless, Plaintiff also fails to allege any adverse action that was taken against her in retaliation for her engagement in protected activity or a connection between the two. The only assertion made by Complainant is that she resigned, but as evidenced above, Complainant's resignation was voluntary.

III. Any allegations of conduct that occurred outside of the 300 days from the date of the Charge should be disregarded

Under Title VII, acts that occur more than 300 days prior to the filing of a charge of discrimination are barred. *42 U.S.C. § 2000e-5(e)(1).* Under the "continuing violation" rule, a hostile work environment claim may incorporate acts that occurred more than 300 days before filing into a "single employment action" so long as at least one of the acts occurred within the 300 days. *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). However, if there are significant gaps between occurrences or where allegations are vague, Courts have barred the conduct as untimely. See *Tinner v. United Insurance Co. of America*, 308 F.3d 697, 709 (7th Cir. 2002)(eight-year gap between incidents could not constitute a single hostile work environment claim); *Selan v. Kiley*, 969 F.2d 560, 567 (7th Cir. 1992)(a two-year gap between alleged discriminatory acts was considerable and weighed heavily against finding a continuing violation); *Milligan-Grimstad v. Stanley,* 877 F.3d 705, 713 (7th Cir. 2017)(finding assertions lack the specificity necessary to show that allegations form a single employment practice where unspecific, speculative allegations cannot connect otherwise distant allegations into a single employment

practice); and *Lucas v. CTA*, 367 F.3d at 736 (an assertion that "racial slurs were commonly used in the workplace," but is vague on time, place, and persons present, is conclusory and not considered supportive of the hostile work environment claim as to avoid summary judgment). Because Complainant's allegations lack specificity and incorporate dates such as 2014 which is far removed from 2018, any conduct alleged to have occurred outside the 300 days from the filing of her Charge are untimely. Furthermore, "discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002). To the extent Complainant alleges any discrete acts outside of the 300 days from the filing of her Charge, they should be disregarded. See *Padron v. Wal-Mart Stores, Inc.*, 783 F. Supp. 2d 1042, 1051 (N.D. Ill. 2011) (court found that any allegations that the defendant violated Title VII prior to the 300-day statute of limitations were time-barred.

IV. Conclusion

For all the reasons stated above, Complainant has failed to establish any of her claims.

Respectfully Submitted,
City of Watseka- Respondent

By: */s/K. Austin Zimmer*
K. Austin Zimmer

K. Austin Zimmer
Veronica Bonilla-Lopez
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60402
(708) 222-7000 (t)
(708) 222-7001 (f)
zimmer@dlglawgroup.com
vblopez@dlglawgroup.com

MEMORANDUM OF AGREEMENT

The City of Watseka ("City"), by and through its Mayor, John Allhands, and Chief of Police Jeremy Douglas ("Chief Douglas"), hereby agree to resolve any and all matters in controversy arising out of or relating to an investigation into complaints of a sexually hostile work environment in the Police Department. The terms and conditions of the agreement are as follows:

1. The City will refrain from filing administrative charges in return for Chief Douglas serving a fifteen calendar day suspension. The basis for the suspension will be alleged violations of Rule 5-1, Respect and Disparaging Remarks, of the Rules and Regulations of the City's Police Department. The fifteen calendar day suspension will include ten working days. Chief Douglas will be allowed to use accrued benefit time for all but three working days of the suspension. Mayor Allhands and Chief Douglas will agree upon the specific dates when the suspension will be served.

2. Chief Douglas agrees to implement and attend mandatory work place sexual harassment awareness training for all members of the Police Department. The training will be designed to achieve a greater understanding of sexual harassment and the best practices for preventing sexual harassment in the work place. The training program must be approved by Mayor Allhands. The City agrees to pay for the training.

3. Chief Douglas acknowledges that it is unlawful to retaliate against any person who makes a complaint or cooperates with an investigation into a sexually hostile work environment. Chief Douglas agrees that he will not retaliate against any person, including any current and former member of the Police Department, regarding any complaint of or investigation into a sexually hostile work environment.

4. Chief Douglas acknowledges that any breach of this Memorandum of Agreement, future participation in a sexually hostile work environment, or failure to take prompt remedial action regarding a complaint of a sexual hostile work environment within three years of the date of this agreement will result in his removal as Chief of Police.

5. The City agrees that Chief Douglas' willingness to enter into a mutually agreeable resolution of this matter is not an admission of liability or fault on his part.

6. The City agrees to remove any records from Chief Douglas' personnel file relating to this disciplinary action conditioned upon the Chief's failure to engage in any like conduct for three years from the date of this Memorandum of Agreement.

Date: 1-29-19

Chief of Police Jeremy Douglas

Attorney for Chief Douglas

Mayor John Allhands

Attorney for City of Watseka