



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

Roberta Gabaldon, et al., a/k/a  
Rosamaria F., et al.,<sup>1</sup>  
Class Agent,

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Customs and Border Protection),  
Agency.

Appeal No. 2023003476

Hearing No. 450-2017-00086X

Agency No. CBP-00258-2017

DECISION

With its May 30, 2023 final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ's) certification of the class complaint alleging discrimination in violation of the Pregnancy Discrimination Act (PDA) of 1978, and section 701 of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

At the time of events giving rise to this complaint, Class Agent worked as an Agriculture Specialist at the Agency's Field Office in El Paso, Texas. On October 14, 2016, Class Agent filed individual and class complaints alleging discrimination on the bases of sex (female, pregnancy), and disability.<sup>2</sup>

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

<sup>2</sup> Class Agent subsequently filed an unopposed Motion to Amend the Accepted Issue to reframe the complaint and removed disability as a basis for the class complaint. The AJ granted the motion. Appeal Record at 419-21, 424.

In her individual complaint, which the Agency accepted, Complainant alleged that management has refused to return her to her position since June 2015. She also alleged a hostile work environment related to incidents following the announcement of her pregnancy. For example, she was required to obtain a doctor's note stating that she needed light duty; removed from her Agriculture Specialist position and required to train other employees on her job duties; and placed on an overnight shift and required to work more than forty hours a week, against her medical restrictions. Appeal Record at 62.

On November 14, 2016, the Agency informed Class Agent that the class complaint was forwarded to the EEOC for certification and her individual complaint was placed in abeyance. Appeal Record at 71. The Commission acknowledged receipt of the class complaint, and the parties commenced with discovery. Appeal Record at 81-4, 163-6.

On September 27, 2022, the AJ granted Class Agent's unopposed Motion to Add Class Agent and ordered the addition of a named co-class agent, who held a Customs and Border Protection Officer (CBPO) position. Appeal Record at 412, 414. On September 30, 2022, Class Agents filed a Motion for Class Certification, the Agency submitted its opposition on November 9, 2022, and Class Agents replied to the Agency's opposition on December 16, 2022.

The AJ issued a decision on Class Agents' Motion for Class Certification on April 21, 2023. Class Agents alleged that the Agency discriminated against employees based on sex when they were removed from their work assignments and reassigned into other assignments pursuant to the Agency's policies and/or practices because they were pregnant, without assessing whether these employees could continue to perform the essential functions of their positions of record, with or without an accommodation, and without the process and protections afforded to employees with comparable short-term disabilities. The proposed class included all women who were employed as CBPOs and Agriculture Specialists and placed on temporary light duty pursuant to the Agency's Temporary Light Duty policy due to their pregnancy, at any time after July 18, 2016.

The AJ noted that the Agency and the union entered into a collective bargaining agreement (CBA) in 2011. Relevant portions of the CBA regarding temporary light duty include Article 33, Section 11.A, that a "pregnant employee or an employee returning to work after an injury, illness or pregnancy with a medical certificate indicating that the employee should work restrictively and that full recovery is expected, will be considered for light duty by her supervisor on a case-by-case basis. An assignment to light duty appropriate to the specific medical condition will normally be granted for a temporary period, if such work is available and the assignment will not unduly disrupt work operations." In 2017, the CBA was amended to remove reference to pregnancy. Appeal Record at 888, 907.

In January 2013, the Agency issued a Temporary Light Duty directive ("Agency Directive"), which stipulated that temporary light duty was available to employees due to a medical illness or injury; pregnancy; or treatment from a licensed physician or practitioner for an off-duty injury or illness.

The Agency subsequently revised the Agency Directive to remove the provision that employees who sustained an on-the-job injury have priority for light duty assignments. Appeal Record at 916-32.

Class Agents argued that the Agency Directive distinguishes pregnancy from other short-term disabilities and permits the Agency to place employees into temporary light duty positions without regard to whether they can perform the essential duties of their positions. In support of their argument, Class Agents provided six factors to show commonality for class certification. For example, the Agency Directive consistently applies to all field offices; the Agency failed to provide supervisors the necessary guidance and training about the implementation of the temporary light duty policy in an unlawful manner; and employees in eleven, out of twenty, field offices provided sworn accounts that they were involuntarily placed on temporary light duty after disclosing their pregnancies.

The Agency countered that there was no commonality based on the evidence, such as Agency officials' deposition testimony that managers did not have the authority to order an employee's placement onto temporary light duty. In addition, the provided sworn statements from pregnant employees came from relatively few employees who were involuntarily placed on temporary light duty, but that the other pregnant employees were presumably placed on temporary light duty in response to their requests, and involuntary placements were so rare and unusual that it cannot be the result of an Agency-wide policy.

The AJ found that Class Agents submitted probative evidence that the Agency subjected pregnant employees to a policy that distinguished pregnancy from other short-term impairments and involuntarily placed them on temporary light duty based on pregnancy, without regard to whether they could perform the essential functions of their positions. Specifically, twenty-four (24) pregnant employees submitted sworn testimonies that they were involuntarily placed on temporary light duty after the Agency learned of their pregnancies, and they were put into less desirable positions that resulted in loss of opportunities for overtime pay; additional training; and use of a firearm. These employees were from eleven different field offices, including the eight largest field offices, from which nearly 80% of all temporary light duty placements for pregnant employees originated.

Further, the AJ determined that there was a dispute over the interpretation of the Agency Directive, and whether the Agency's lack of training on it was evidence of an unlawful discriminatory policy, presented questions common to the class supporting certification. The AJ concluded that the sworn testimonies provided evidence of discrimination in the same manner, with the same set of adverse actions, to satisfy the commonality requirement for class certification.

While the Agency argued against typicality, claiming that each putative class member's claim was unique, the AJ determined that Class Agents' claims were sufficiently typical to encompass the general claims of the class members.

Regarding numerosity, Class Agents proffered that the putative class contained 515 pregnant employees who were placed on temporary light duty, or went on leave, pursuant to the Agency's Directive or policy during the relevant time. The Agency opposed the assertion and argued that Class Agents only submitted evidence that 23 class members were involuntarily placed onto temporary light duty,<sup>3</sup> and there was no evidence that all 515 pregnant employees suffered any harm or loss.

The AJ found that Class Agents satisfied the numerosity requirement. The AJ noted that, at the certification stage, Class Agents are not required to submit sworn statements from a significant number of putative class members to establish numerosity. See, e.g., Valentin P. v. Dep't of the Army, EEOC Appeal No. 0120113722 (Dec. 6, 2016) (while only identifying 20 class members, class agent was able to establish numerosity because he was able to show that the putative class consisted of over 800 employees subject to the agency's policy).

The AJ concluded that the 24 pregnant employees provided sufficient probative evidence that the Agency's Temporary Light Duty policy was applied to the 515 pregnant employees in a manner that may have violated the PDA. The AJ also determined that the sworn testimonies demonstrated that the putative class members were sufficiently dispersed geographically to render joinder impracticable. The AJ further stated that he did not need to determine if every pregnant employee subjected to the Agency's Temporary Light Duty policy was harmed at the class certification stage.

The AJ also found that Class Agents submitted evidence to show that they have no conflicts with the class and their representatives would fairly and adequately represent the interests of the class. The AJ then ordered the Agency to use reasonable means to notify all class members of the certification of the class complaint.

The Agency issued its final order rejecting the AJ's decision and filed the instant appeal, with a brief in support of its appeal. Class Agents opposed the Agency's appeal.

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<sup>3</sup> In its opposition to Class Agents' motion for class certification, the Agency noted that 21 allegations came from sworn declarations and two from prior equal employment opportunity (EEO) complaints, for a total of 23. Class Agents submitted affidavits from six EEO complaints, and the Agency attested that the other four pregnant employees alleged claims that "diverged significantly in scope" from the 23 putative class members. Appeal Record at 857-8. However, the AJ determined that one of these four employees alleged involuntary temporary light duty, for a total of 24. AJ Decision, footnote 9.

## ANALYSIS AND FINDINGS

### *Standard of Review*

In rendering this appellate decision, we must scrutinize the AJ's legal *and* factual conclusions, and the Agency's final order adopting them, de novo. See 29 C.F.R. § 1614.405(a) (stating that a "decision on an appeal from an Agency's final action shall be based on a de novo review . . ."); see also Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.B. (Aug. 5, 2015) (providing that an administrative judge's determination to issue a decision without a hearing, and the decision itself, will both be reviewed de novo). This essentially means that we should look at this case with fresh eyes. In other words, we are free to accept (if accurate) or reject (if erroneous) the AJ's, and the Agency's, factual conclusions and legal analysis – including on the ultimate fact of whether intentional discrimination occurred, and on the legal issue of whether any federal employment discrimination statute was violated. See *id.* at Chap. 9, § VI.A. (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

### *Class Certification*

EEOC Regulation 29 C.F.R. § 1614.204(a)(2) states that a class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that: (i) the class is so numerous that a consolidated complaint of the members of the class is impractical; (ii) there are questions of fact common to the class; (iii) the claims of the agent are typical of the claims of the class; and (iv) the agent of the class, or if represented, the representative will fairly and adequately represent the interests of the class. EEOC Regulation 29 C.F.R. § 1614.204(d)(2) provides that a class complaint may be dismissed if it does not meet these four requirements of a class complaint or for any of the procedural grounds for dismissal set forth in 29 C.F.R. § 1614.107. A class agent, as the party seeking certification of the class, carries the burden of proof, and it is her obligation to submit sufficient probative evidence to demonstrate satisfaction of the four regulatory criteria. Anderson, et al. v. Dep't of Def., EEOC Appeal No. 01A41492 (Oct. 18, 2005); Mastren, et al. v. U.S. Postal Serv., EEOC Request No. 05930253 (Oct. 27, 1993).

On appeal, the Agency challenges the AJ's determination that Class Agents satisfied the numerosity, commonality, and typicality requirements for class certification.

### Numerosity

The numerosity prerequisite states that the potential class must be sufficiently numerous so that a consolidated complaint by the members of the class, or individual, separate complaints from members of the class is impractical. See 29 C.F.R. § 1614.204(a)(2)(i). The focus in determining whether the class is sufficiently numerous for certification is the number of persons affected by the Agency's alleged discriminatory practice(s). See White, et. al. v. Dep't of the Air Force, EEOC Appeal No. 01A42449 (Sept. 1, 2005). The Commission has held that the relevant factors to determine whether the numerosity requirement has been met are the size of the class, the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action at issue, and the size of each member's claim. Carter, et. al. v. U.S. Postal Serv., EEOC Appeal No. 01A24926 (Nov. 14, 2003). In determining whether the class is sufficiently numerous, the AJ needs to consider the number of persons who possibly could have been affected by the Agency's discriminatory practices and who, thus, may assert claims. Simon V., et al. v. Dep't of Justice, EEOC Appeal No. 0720110008 (Sept. 15, 2015), request for recon. denied, EEOC Request No. 0520160037 (Feb. 11, 2016).

The Agency argues that the AJ incorrectly found that there were over 500 class members and that there were only, at most, 24. While the Agency does not dispute that over 500 Agency employees were placed on temporary light duty since July 2016 for reasons related to pregnancy, it contends that only 24 employees were placed on temporary light duty against their wishes.<sup>4</sup> The Agency distinguishes this case from Valentin P. by asserting that there was "no action" taken with respect to all 500 employees. Agency Appeal Brief at 7. However, the Agency only offers speculation that "no action" was taken against them.

We find that evidence in the record supports that other pregnant employees were possibly affected by the Agency's discriminatory practices. For example, a class member ("Class Member 1") testified that she went on light duty for her first pregnancy but during her second pregnancy, she was able to continue performing her usual duties primarily from her desk, just without her weapon, but her case was unique, and she was aware of "many other pregnant" employees who had to change positions on light duty. Class Member 1 also stated that the managers overseeing light duty decisions "confronted" her about revealing that she was able to perform her regular duties because it would "set an undesirable precedent of allowing pregnant women to stay in their positions." Appeal Record at 651-3.

Another class member averred that she hid her pregnancy for as long as possible because she was aware from the experiences of other pregnant employees that she would be immediately instructed to go on light duty due to her pregnancy. Appeal Record at 636. We find that these statements refute the Agency's blanket position that "no action" was taken against all 500 pregnant employees.

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<sup>4</sup> The Agency acknowledges that it did not provide data for two of its field offices, and that an additional four employees would be consistent with the rate of involuntary temporary light duty, for a total of 28 employees, which is still well below the threshold for numerosity.

The Agency contends that, to be like Valentin P., it would have had to exclude all pregnant employees from temporary light duty or force them all onto it. Class Agents counter that the Agency's temporary light duty policy allegedly deprived each class member with the option to stay in their positions of record. As noted above, the numerosity requirement is met by showing the number of persons who *possibly* could have been affected by an agency's discriminatory practices and who, thus, *may* assert claims (emphasis added).

Class Agents provided a sworn declaration from a Paralegal working under the supervision of their attorneys. The Paralegal attested that the Agency produced spreadsheets including the information of employees who had been placed into temporary light duty assignments from January 1, 2013, through October 10, 2021. After removing duplicates and limiting the temporary light duty assignments for pregnant employees from July 18, 2016, until October 1, 2021, the Paralegal determined that the total number of potential class members was 515 employees. Appeal Record at 701-3. As such, we find that Class Agents met their burden to provide sufficient evidence that there were up to 515 employees who were possibly affected by the Agency's policy and/or practices related to their placement on temporary light duty due to pregnancy, and thus, may be able to assert claims.

While there are no specific numerical cut-off points, most courts are generally reluctant to certify a class with thirty or fewer members, and the Commission has previously found that a class of forty members satisfied the numerosity requirement. See Tessa L., et al. v. Dep't of Agriculture, EEOC Appeal No. 0720170021 (Nov. 9, 2017). Here, there are up to 515 putative class members. Further, the evidence shows that these employees' duty stations were across approximately sixteen Agency field offices. Appeal Record at 702-3. Accordingly, we find that the AJ properly concluded that the over 500 geographically dispersed putative class members satisfied the numerosity requirement for class certification.

### Commonality and Typicality

With regard to commonality and typicality, the purpose of these requirements is to ensure that a class agent possesses the same interests and has experienced the same injury as the members of the proposed class. See Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147 (1982). While these two criteria tend to merge and are often indistinguishable, they are separate requirements. Id. Commonality requires that there be questions of fact common to the class; that is, that the same Agency action or policy affected all members of the class. Class Agents must establish some evidentiary basis from which one could reasonably infer the operation of an overriding policy or practice of discrimination. Belser, et al. v. Dep't of the Army, EEOC Appeal No. 01A05565 (Dec. 6, 2001).

Typicality, on the other hand, requires that the claims, or discriminatory bases, alleged by a class agent be typical of the claims of the class, so that the interests of the putative class members are encompassed within a class agent's claim. The underlying rationale of the typicality and commonality requirement is that the interests of the class members be fairly encompassed within the class agent's claim. Falcon, 457 U.S. at 156.

The Agency argues that the “sole fact” relied upon by the AJ was the temporary light duty policy’s mention of pregnancy by name for eligibility of temporary light duty, which does not meet the standard to show an overriding policy or practice, particularly when the Agency Directive makes clear that temporary light duty is a voluntary process initiated by the employee. The Agency further asserts that supervisors acted contrary to the plain meaning of the policy, acting in isolation, and there is no indication that any were acting from direction by their supervisors or from the Agency in general. As such, with the individualized assessments from different supervisors acting on their own initiative, there are no common questions of fact for a class complaint. Agency Appeal Brief at 11-12.

However, we find that the record contains evidence to undermine the Agency’s assertion. For example, a Supervisory CBPO in El Paso attested that the Port Director or the Director of Field Operations decided to order three new mothers who had been on temporary light duty back to full duty.<sup>5</sup> He added that prior practice was for employees to remain on light duty for a year after giving birth. Appeal Record at 232-3.

In addition, a Port Director testified at a Merit Systems Protection Board hearing that the Director of Field Operations for the Port of El Paso (“Director”) expressed concerns that so many CBPOs were on light duty. The Director wanted “a system to deal with and track the CBPOs who were on light duty” and assigned someone to monitor the light duty situation and report back to her. The Director confirmed that she changed the way that the Field Office handled light duty. The Director also testified that pregnant women were placed on light duty until they deliver and may remain on light duty for a short time after that. Appeal Record at 259, 265, 267. The Agency did not rebut this evidence that the El Paso Port Director and/or Director of Field Operations made decisions for temporary light duty assignments, rather than an employee’s direct supervisor. While this evidence is only for the El Paso Field Office, the Agency fails to cite to a single piece of evidence showing that any individual supervisor acted independently regarding the temporary light duty assignment for a class member.

The Agency also asserts that its policy stipulates that an employee initiates the request for temporary light duty, but the evidence shows that pregnant employees suffered from a practice to immediately place them onto temporary light duty once a pregnancy was disclosed. Class Agents averred in their declarations that they were required to go on temporary light duty after informing the Agency of their pregnancies, without any consideration as to whether they could perform their regular duties, and they were not asked if they needed accommodations for their positions of record. Due to their reassignments into these light duty positions, Class Agents’ compensations were affected, in addition to their abilities to qualify for promotions; take trainings; and bid on positions. Appeal Record at 805-12.

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<sup>5</sup> A Senior Labor Relations Specialist explained that a field office is headed by a Director of Field Operations, with an Assistant Director of Field Operations and then Port Directors below them in the chain of command. Appeal Record at 468-70.



The additional sworn declarations prove that other pregnant employees experienced similar treatment after the Agency learned of their pregnancies. Multiple employees added that they were told that they were a “liability” because they were pregnant. Appeal Record at 612-72, 822-31. Class members who carried weapons averred that they were required to return their weapons because they were pregnant and had to requalify upon their return to full duty. They were then assigned to various light duty positions, such as cashier positions, which affected their ability to work overtime or earn additional compensation, such as night differential pay. *Id.* Class Member 1 attested that each time she went to the gun range, an instructor asked if anyone was injured or pregnant, and she understood that the Agency did not allow pregnant employees to requalify for a weapon. Appeal Record at 651.

Despite working at different duty stations across the country, these declarations reveal that employees were treated in a consistent manner once the Agency learned that they were pregnant. Class Agents, as an Agricultural Specialist and a CBPO, allege claims that raise common questions and are typical of the class members. Accordingly, we find that the AJ’s determination that they established commonality and typicality for class certification is supported by record evidence.

#### Adequacy of Representation

The Agency did not provide any arguments related to the adequacy of representation. As such, we find no reason to disturb the AJ’s conclusion that Class Agents and their current attorneys are adequate to represent the interests of the class.

#### Class Definition

In the event that the Commission found that class certification was warranted, the Agency also requested a modification to the class to include “[a]ll women who were employed as U.S. Customs and Border Protection (‘CBP’) Officers and Agriculture Specialists and were *involuntarily* placed on temporary light duty pursuant to CPB’s Temporary Light Duty Policy due to their pregnancy, at any time after July 18, 2016.” Appeal Brief at 13. However, as noted by the AJ, whether a class member was harmed due to the voluntary (or involuntary) nature of a temporary light duty assignment is more appropriately determined at the liability stage. AJ Decision at 12. As such, we decline to grant the Agency’s request, and the class remains defined as:

all women who were employed as CBPOs and Agriculture Specialists and placed on temporary light duty pursuant to the Agency’s Temporary Light Duty policy due to their pregnancy, at any time after July 18, 2016.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order rejecting the AJ's certification of the class and REMAND the complaint for further processing, in accordance with the ORDER below.

### ORDER

The Agency is ORDERED to perform the following:

1. Notify class members of the accepted class claim within fifteen (15) calendar days of the date this decision is issued, in accordance with 29 C.F.R. §1614.204(e).
2. Forward a copy of this class complaint file and a copy of the notice to the Hearings Unit of the EEOC's New Orleans Field Office within thirty (30) calendar days of the date this decision is issued. The Agency must request that an Administrative Judge be appointed to hear the certified class claim, including any discovery that may be warranted, in accordance with 29 C.F.R. §1614.204(f).

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation of evidence of the Agency's actions.

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999).

**If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

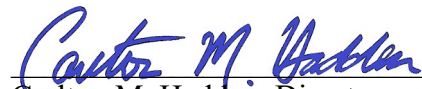
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

August 30, 2023  
Date