

COOK COUNTY COMMISSION ON HUMAN RIGHTS
69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Dorothy YANKAWAY, Complainant)	
)	
)	Case No. 2014E008
v.)	
)	
BEAUTY 4 U, Respondent)	Entered: November 10, 2015
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)	

ORDER FINDING SUBSTANTIAL EVIDENCE

On May 30, 2014, Complainant Dorothy Yankaway (“Yankaway”) filed a complaint against her former employer, Respondent Beauty 4 U. Yankaway alleges that while working at Beauty 4 U, her manager slapped or otherwise touched her buttocks in a sexual manner on three occasions when she and Chung were together at work. Compl. ¶ II.A, B, D. Under the Cook County Human Rights Ordinance (“Human Rights Ordinance”), an employer is strictly liable for the sexually harassing conduct of its supervisory employees. See Cook County Code of Ordinances (“County Code”), § 42-35(e). Thus, if Yankaway’s allegations against her manager are proven true, Beauty 4 U has violated the Human Rights Ordinance. See *id.* The Cook County Commission on Human Rights (“Commission”) has completed a preliminary investigation into Yankaway’s allegations and determined that there is sufficient evidence that a violation of the Human Rights Ordinance occurred to justify a hearing on the merits of Yankaway’s complaint.

BACKGROUND

Yankaway began working for Beauty 4 U in August 2012 as a salesperson. Yankaway Interview (Sept. 24, 2015). Beauty 4 U is owned by Dustin Choi (“Choi”). Choi Interview (Aug. 8, 2014). But Hee Sun Chung (“Chung”) served as the manager until early December 2013. Choi Interview (Sept. 15, 2015).

Yankaway alleges that sometime prior to August 2013,¹ Chung softly touched her buttocks as she was exiting the area behind the cash registers. Yankaway Interview (Sept. 24, 2015). At the time, Yankaway was unsure whether Chung had actually touched her and so did not confront him about the incident. *Id.*

On August 23, 2013, Yankaway claims that she was again walking past Chung at work when he slapped her buttocks. *Id.* This time Yankaway recalls that she asked Chung if he had touched her. *Id.* Yankaway reports that Chung denied touching her, but grinned while doing so

¹ Yankaway alleges in her complaint that this first incident occurred in May 2013 (Compl. ¶ II.A), but during her interview with Commission staff could no longer recall the exact month. Yankaway Interview (Sept. 24, 2015).

in such a way that Yankaway did not believe Chung and admonished him not to touch her. *See id.*

Finally, Yankaway told Commission investigators that while walking next to Chung in the hair section of Beauty 4 U on December 3, 2013, Chung slapped Yankaway's buttocks. *Id.* Yankaway again asked Chung if he had touched her, and Chung allegedly smiled again while saying "no."² *Id.* Yankaway was extremely upset about Chung conduct and claims that Chung apologized to her at the end of her shift. *Id.*

Nonetheless, on December 4, 2013,³ Yankaway complained to the police and Choi about Chung's conduct. Compl. ¶ II.E. The parties disagree about Choi's response to this complaint. Yankaway claims that Choi chastised her for involving the police and minimized the seriousness of Chung's conduct. *Id.* at ¶ II.F; Yankaway Interview (Sept. 24, 2015). Choi denied making negative comments to Yankaway about her police report (*see* Resp.) and told Commission investigators that he asked Chung about Yankaway's allegations. Choi Interview (Aug. 8, 2014). Choi relayed that Chung denied Yankaway's accusations. *Id.* Chung then allegedly told Choi that he did not want to work with Yankaway again and quit on the spot. *Id.*

It is undisputed that Yankaway never worked with Chung again, but quit Beauty 4 U a few months later. Yankaway Interview (Sept. 24, 2015); Choi Interview (Aug 8, 2014).

DISCUSSION

The Human Rights Ordinance expressly prohibits employers from engaging in sexual harassment. County Code, § 42-35(e). There are two variations of unlawful sexual harassment claims. In the first, commonly termed "*quid pro quo*" sex harassment, the Human Rights Ordinance prohibits any "any unwelcome sexual advance, request for sexual favors, or conduct of a sexual nature" when submission to such conduct "is an explicit or implicit term or condition" of employment or "is used as the basis for any employment decision." *Id.* at § 42-35(e)(2)(a)-(b). Yankaway's complaint here presents the second variation, commonly termed "hostile environment" sex harassment. Hostile environment sex harassment is defined as when unwelcome sexual advances, requests for sexual favors, or conduct of a sexual nature has "the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." *Id.* at § 42-35(e)(2)(c).

Importantly, in both variations of the claim, the Human Rights Ordinance holds an employer strictly liable for the sexually harassing conduct of its supervisors and managers. *Id.* at § 42-35(e) ("An employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer

² While the Commission's investigation found no other witnesses who could testify to seeing Chung slap Yankaway on any of the three alleged occasions, the Commission did find another former Beauty 4 U employee who claimed that Chung had brushed his hand against her buttocks on approximately 10 occasions between May 2013 and December 2013. Gardner Interview (Oct. 6, 2015) (former cashier).

³ The parties agree that Yankaway reported Chung's conduct to Choi, but Respondent contends that this complaint was made on December 9, 2013 – not December 4, 2013. *See* Resp.

knows or should have known of their occurrence.”). While an employer can relieve itself of liability under the Ordinance for the harassing conduct of co-employees by taking “immediate and appropriate corrective action,” there is no similar statutory safe harbor for an employer’s liability for the harassing conduct of supervisors and managers. *See id.*

The parties are in agreement (and the Commission’s investigation supports) that Chung was Yankaway’s supervisor at Beauty 4 U during the relevant time period. Thus, the Commission will allow Yankaway’s claim against Beauty 4 U to proceed to a hearing on the merits if there is substantial evidence that the sexual conduct to which Chung subjected Yankaway was sufficiently “severe or pervasive” as to alter the conditions of her employment at Beauty 4 U and to create a hostile or abusive work environment. *Porreca v. Anderson*, 2014E011, *18 (CCHRC July 10, 2015).

To determine whether this case meets that standard, the Commission considers various criteria including: the frequency of the harassing conduct; its severity; whether it was physically threatening or humiliating; or a mere offensive utterance; and whether it unreasonably interfered with an employee’s work performance.⁴ *Id.* at *18-19. The offending conduct must be sufficiently severe *or* pervasive, and there is an inverse relationship between the frequency and severity of incidents alleged. As such, a constant stream of relatively minor events may create a hostile environment by virtue of their pervasiveness, but even a single incident, by virtue of its severity, may rise to the level of actionable sexual harassment if it is sufficiently extreme. *Id.* at *19. Timing also matters: “isolated incidents,” especially if spread out over time, usually are insufficient, but relentless minor harassment may create a hostile environment. *See, e.g., Walker v. Cook Cty. Sheriff’s Office*, 2008E017 (CCHRC May 15, 2012), *aff’d, sub nom Sheriff’s Office v. Cook Cnty. Comm’n on Human Rights*, No. 13 CH 17663 (Ill. Cir. Ct. Feb. 11, 2015) (hostile environment age-based harassment found where supervisor harangued 54-year-old by repeatedly commenting that she was the oldest “ass” walking around the office, she was “older than God” or “older than dirt,” asking where she got her “old ass” clothes, and singing “Old Fogey from Mus(Skokie)” in front of coworkers).

“Physical harassment lies along a continuum[.]” *Porreca*, 2014E011 at *19 (quoting *Hostetler v. Quality Dining, Inc.*, 218 F. 3d 798, 808 (7th Cir. 2000)). At one end are relatively minor forms of physical contact, such as a “hand on the shoulder, a brief hug, or a peck on the cheek.” *Id.* Even if uncomfortable for the receiver, these actions support finding a hostile environment only if “[c]umulatively or in conjunction with other harassment” they are sufficiently pervasive. *Id.* At the other end of the spectrum, “[e]ven more intimate or more crude physical acts – a hand on the thigh, a kiss on the lips, a pinch of the buttocks – may be considered insufficiently abusive to be described as ‘severe’ when they occur in isolation.” *Id.*

Yankaway’s hostile environment sex harassment claim is based on three incidents spread out over the course of a six-month period in which her supervisor touched or slapped her buttocks at work. The offensive conduct is not isolated but also not as persistent as some of the

⁴ The test has “both an objective component – would a reasonable person find the conduct sufficient to create a hostile environment – and a subjective component – did this particular person perceive the conduct as creating a hostile environment. Both components must be met.” *Desparte v. Arlington Heights Kirby*, 2002E020, *6 (CCHRC June 26, 2006) (quoting *Gluszek v. Stadium Sports Bar & Grill*, 1993E052 *10 (CCHRC Mar. 16, 1995)).

worst cases filed at this Commission. *See, e.g., Tsimogiannis v. United Buying Service*, 1995E074 (CCHRC Oct. 12, 1999) (sufficiently pervasive where the supervisor inappropriately touched complainant several times a week, despite her protests, frequently stared at her and made inappropriate remarks about her body, repeatedly asked her out for dinner and drinks, despite prior refusals, and asked for an “exotic dance”). Nonetheless, the Commission has consistently taken a dim view of even relatively isolated unwanted groping in the workplace. *See, e.g., Desparte v. Arlington Heights Kirby*, 2002E020 (CCHRC June 26, 2006) (sufficiently severe where the supervisor asked a teenage employee for oral sex, groped her chest, and rubbed her leg up to her vagina).

On the basis of the facts adduced from its investigation, the Commission concludes that there is sufficient evidence upon which a reasonable hearing officer could find in Yankaway’s favor at a trial on the merits. The Commission will order such a hearing for the purpose of determining Beauty 4 U’s liability and what, if any, remedies would be appropriate.

CONCLUSION

For the foregoing reasons and those reasons set out in the adopted Investigation Report (Attachment 1), the Commission finds **SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance with respect to complaint 2014E008. The Commission will issue a notice of the date and time of an Initial Status for an Administrative Hearing. In accordance with CCHR Pro. R. 480.100(A), any party may file a request for reconsideration with the Commission within 30 days of the date of this order.

November 10, 2014

By delegation:



Ranjit Hakim
Executive Director of the Cook County
Commission on Human Rights