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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1634-10T3

CARLA SHAW,

Plaintiff-Appellant,

v.

FEDEX CORPORATION, VERONICA PAYNE
and CYNDINA HICKS,

Defendants-Respondents.

Submitted October 25, 2011 - Decided July 20, 2012

Before Judges Simonelli and Hayden.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-3351-08.

Eldridge Hawkins, attorney for appellant.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and John W. Campbell of the Tennessee bar, admitted pro hac vice, attorneys for respondents (Jennifer A. Rygiel-Boyd and Mr. Campbell, on the brief).

PER CURIAM

Plaintiff, Carla Shaw, an African-American, appeals from the October 8, 2010 order granting summary judgment to defendants and dismissing plaintiff's claims of creation of a hostile work environment, retaliation, disability

discrimination, and intentional infliction of emotional distress. Having considered the record in light of the applicable legal principles, we affirm.

I.

Viewed most favorably to plaintiff, see Rule 4:46-2(c), Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), the summary judgment motion record discloses the following facts. Plaintiff worked for Federal Express Corporation (hereinafter FEC) from January 1989 until April 2006. FEC, incorporated in Delaware in 1971, has a place of business at Newark Liberty International Airport and is a wholly-owned subsidiary of defendant FedEX Corporation (FDX).[1]

In the early 1990s, plaintiff and defendant Cyndina Hicks began working together at FEC. They were co-workers; neither had supervisory or managerial authority over the other. In addition, they became friends and interacted socially in and out of the office for many years. For example, plaintiff attended a birthday party for Hicks' son. The last out-of-work social

[1] FDX is a publicly traded holding company incorporated in Delaware in 1997 with its principal place of business located in Tennessee. The two companies are separate and distinct corporate entities and maintain separate bank accounts and corporate records. FDX does not exercise day-to-day control over operations of FEC, its subsidiary, including employment decisions. FDX does not operate any facilities in New Jersey, nor does it have any employees working in the state.

interaction plaintiff recalled having with Hicks occurred in 2004 or 2005, when she invited Hicks to her housewarming party. According to plaintiff, she and Hicks also spoke on the phone outside of work. For example, when plaintiff was home on sick leave for three months in 2005, Hicks called her at least once every two weeks.

However, the friendship was stormy, with periods when the women were friendly, interspersed with periods when they did not speak to each other. In addition, plaintiff complained that Hicks repeated personal information she learned from plaintiff to others at work and said disagreeable things about her to other employees. At times when they were not getting along, plaintiff complained to her supervisor that Hicks was bullying her.

Starting in 2003, plaintiff and Hicks began engaging in loud, disruptive arguments at work. Plaintiff perceived that Hicks instigated the arguments and verbally harassed her by using epithets such as "retarded" and "monkey." At that time, defendant Veronica Payne was the immediate supervisor of plaintiff and Hicks. Payne and Hicks also are African-Americans. After viewing the interchanges between the women, Payne issued both Hicks and plaintiff letters of counseling on January 10, 2003. The letter to plaintiff provided in part:

> [T]his counseling is in direct response to the ongoing conflicts that have continued between Cyndina Hicks and you. For various reasons your relationship with Cyndina has deteriorated beyond repair. Unfortunately you both appear to harbor bad feelings towards each other which has made for a stressful work environment.

The letters also warned both parties that future episodes of misconduct could lead to disciplinary action, including termination. That day, Payne also met with plaintiff, Hicks and a human resources representative to urge the two co-workers to resolve their disagreements. Plaintiff did not appeal the counseling or file an internal Equal Employment Opportunity (EEO) complaint[2] alleging that Hicks' harassment was racially motivated.

In February 2005, plaintiff was injured in a car accident, causing her to take a short-term disability leave through May 2005. When she returned to work, her doctor cleared her for full duty. Plaintiff was then assigned to another department, where Bob Stewart became her supervisor. In September 2005, due to injuries from a fall at home, plaintiff's doctor provided written clearance for her to return to work with lifting

[2] FEC had a companywide EEO policy and a complaint procedure that was explained in the employee handbook given to all employees every year. Plaintiff never used the established procedure to file a complaint.

restrictions of fifty pounds. However, her position at the time did not entail lifting over fifty pounds.

On October 14, 2005, Stewart issued plaintiff a Performance Reminder Letter for erroneously shipping boxes to the wrong country. Plaintiff did not appeal the warning through the established company complaint process,[3] though the letter advised her of this option.

On November 16, 2005, Stewart issued plaintiff another Performance Reminder Letter, this time for excessive tardiness. Stewart informed plaintiff in the letter that, since this warning constituted her second disciplinary action, she might be terminated if she received a third letter within the next twelve months. Plaintiff did not appeal this warning through the GFTP.

Additionally, in November 2005, FEC eliminated plaintiff's position through internal restructuring, and plaintiff had a thirty-day opportunity to find a position for which she qualified. Plaintiff accepted an international export cage agent position without looking at the online job description, which stated that the position required the ability to lift seventy-five pounds and to maneuver one hundred and fifty pounds. These requirements exceeded her lifting restrictions.

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[3] FEC has a procedure for appealing discipline and other adverse employment decisions known as the Guaranteed Fair Treatment Procedure (GFTP).

Payne again became plaintiff's direct supervisor in the new position, which also entailed regular contact with Hicks.

Plaintiff had not mentioned her lifting restrictions to Payne when starting her new position since her doctor's written restrictions were on file in the human resources department. In early April 2006, when Payne first became aware of plaintiff's lifting restrictions, she realized that plaintiff did not qualify for her current position. On April 15, a few days after Payne contacted the human resources department, a representative instructed Payne to follow the company policy of placing plaintiff on a leave of absence for ninety days to enable her to find a position for which she qualified with her restrictions.

Meanwhile, on April 5, FEC's Managing Director of the Newark facility issued a memo stating that all employees, without exception, who received three disciplinary letters within twelve months, must be terminated. On April 14, plaintiff and Hicks engaged in a heated verbal exchange during work, which plaintiff felt that Hicks had instigated. Plaintiff, according to her complaint, protested to Payne immediately after the incident that she felt some of Hicks' statements were racial slurs.

On April 18, 2006, Payne asked plaintiff and Hicks each to write a statement describing the incident. In her statement,

plaintiff reported that she had been getting along cordially with Hicks in the past month but when she walked past Hicks on April 14, Hicks accused her of being lazy. Plaintiff wrote further:

> Cyndina began to follow me inside the cage calling me a nappy head [R]aggedy [A]nn, lazy, and implying that I was retarded. Some of these names was called to me in the past which I have brought to management and Human Resource[s'] attention. Cyndina started calling me more names at that time. I replied that she can say whatever she like. I am ashamed to [] say that [I] stooped to her level and said that she was G[h]etto and Street and that's prob[a]bly why she has cuts in her face. . . . I walked to the . . . office a few minutes later Cyndina came in the office at this time a few seconds later more words were exchanged by the both of us. . . . I have never felt so ostracized and humiliated in my entire life.

After providing written statements, both plaintiff and Hicks were suspended with pay, pursuant to company policy, pending an investigation into the incident. Following her investigation, Payne concluded that both parties had engaged in unacceptable conduct in violation of company rules and informed the employees they would be suspended for one day and issued warning letters. On April 25, 2006, Payne discovered upon reviewing plaintiff's file that, due to the two prior warning letters issued by Stewart, the current letter constituted

plaintiff's third warning within twelve months. Consequently, in the warning letter Payne advised plaintiff that FEC's policy required termination of her employment. The warning letter to Hicks constituted her second warning in twelve months, and she was not terminated.

On April 17, 2008, plaintiff filed a civil action against FDX, alleging racial discrimination due to a hostile work environment, disability discrimination, and retaliation, all in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-12 to -42.

FDX answered, denying that it employed plaintiff, and removed the suit to federal court based upon diversity jurisdiction under 28 U.S.C.A. § 1332. The suit was returned to state court after plaintiff amended her complaint two months later to name Hicks and Payne as defendants. Plaintiff alleged in the amended complaint that both individual defendants as well as FDX created a hostile work environment during her employment and that Payne terminated her in retaliation for her complaints about Hicks' racial and insensitive remarks.

Further, plaintiff claimed that FDX terminated her because of her disability, contending that if she had not had a disability requiring lifting restrictions, the company would have permitted her to find another position rather than fire

her. Last, she also alleged intentional infliction of emotional distress by all three defendants.

After the completion of discovery, defendants filed motions for summary judgment on all counts. The trial court granted defendants' motions and dismissed the complaint with prejudice. This appeal followed.[4]

II.

On appeal, plaintiff raises the following contentions for our consideration.

> POINT ONE - [THE TRIAL JUDGE]'S DECISION IN RENDERING SUMMARY JUDGMENT WAS A VIOLATION OF HIS JUDICIAL DISCRETION AND THE NEW JERSEY LAW FOR RENDERING SUMMARY JUDGMENT.
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> POINT TWO - AS TO ALL DEFENDANTS, [THE TRIAL JUDGE] ERRED IN DISMISSING PLAINTIFF'S COMPLAINT ON RETALIATION.
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> POINT THREE - DEFENDANT FEDEX CORPORATION IS APPROPRIATE PARTY DEFENDANT.
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> POINT FOUR - THE TRIAL JUDGE[']S INTERPRETATION OF THE LAW WAS WRONG AND A MANIFEST DENIAL OF JUSTICE TO PLAINTIFF ENTITLING PLAINTIFF TO THE RELIEF REQUESTED.

In reviewing a grant of summary judgment, we apply the same standard as the trial judge in determining whether there are any genuinely disputed issues of material fact sufficient to warrant resolution of the disputed issues by the trier of fact.

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[4] Plaintiff does not appeal the dismissal of the intentional infliction of emotional distress counts.

Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). We must first determine whether the moving party has demonstrated that there are no genuine disputes as to material facts, and then we decide "whether the motion judge's application of the law was correct." Atl. Mut. Ins. Co. v. Hillside Bottling Co., 387 N.J. Super. 224, 230-31 (App. Div.), certif. denied, 189 N.J. 104 (2006). In doing so, we view the evidence in a "light most favorable to the non-moving party." Henry v. New Jersey Dep't of Human Servs., 204 N.J. 320, 329 (2010) (citing Brill, supra, 142 N.J. at 523). Because our review of the issues of law is de novo, we accord no special deference to the motion judge's legal conclusions. Zabilowicz v. Kelsey, 200 N.J. 507, 512 (2009).

A. Plaintiff's Claim of Hostile Work Environment.

Construction of the LAD is influenced by the interpretation of the federal anti-discrimination law known as Title VII, 42 U.S.C.A. § 2000e to § 2000e-17. Lehmann v. Toys R' Us, Inc., 132 N.J. 587, 600-01 (1993). N.J.S.A. 10:5-12(a) prohibits employer discrimination in hiring, termination, compensation, and conditions and privileges of employment, on the basis of, among other categories, race and disability. In applying the

LAD to a claim of employment discrimination, our courts have applied the McDonnell Douglas[5] standard, which requires that:

> (1) the plaintiff must come forward with sufficient evidence to constitute a prima facie case of discrimination; (2) the defendant then must show a legitimate nondiscriminatory reason for its decision; and (3) the plaintiff must then be given the opportunity to show that defendant's stated reason was merely a pretext or discriminatory in its application.
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> [Henry, supra, 204 N.J. at 331 (citing Dixon v. Rutgers, The State Univ. of N.J., 110 N.J. 432, 442 (1988)).]

Moreover, our courts have construed N.J.S.A. 10:5-12 to prohibit not only obvious forms of employment discrimination, such as hiring and firing based on membership in a protected class, but also the creation of a "hostile work environment" by use of racist, sexist, or other derogatory and prohibited epithets or other conduct sufficiently opprobrious as to negatively alter the working environment. Cutler v. Dorn 196 N.J. 419, 430 (2010); Greenberg v. Camden Cnty. Vocational and Technical Sch., 310 N.J. Super. 189, 198 (App. Div. 1998).

To establish a hostile work environment cause of action, the plaintiff must show that: (1) the conduct would not have occurred but for plaintiff's identity within a class protected

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[5] McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

by the LAD, and (2) the conduct was severe or pervasive such that (3) a reasonable person in the same protected class would believe that "the conditions of employment are altered and [that] the working environment is hostile or abusive." Cutler, supra, 196 N.J. at 430 (citing Lehmann, supra, 132 N.J. at 603-04). In determining if conduct is "severe or pervasive," it is necessary to assess the totality of the relevant circumstances. Taylor v. Metzger, 152 N.J. 490, 506 (1998). Factors to consider in making this assessment include "examination of (1) 'the frequency of all the discriminatory conduct'; (2) 'its severity'; (3) 'whether it is physically threatening or humiliating or a mere offensive utterance'; and (4) 'whether it unreasonably interferes with an employee's work performance.'" Godfrey v. Princeton Theological Seminary, 196 N.J. 178, 196 (2008) (quoting Green v. Jersey City Bd. of Educ., 177 N.J. 434, 447 (2003)) (internal quotation marks omitted).

To hold an employer liable for the acts of a plaintiff's co-workers management must have, or should have, known of the conduct and failed to address it. Heitzman v. Monmouth Cnty., 321 N.J. Super. 133, 145-46 (App. Div. 1999). As a co-worker does not have the power to alter the terms of employment, the plaintiff must show that a supervisor had the power to control the workplace and abused that power; that the employer failed to

enact anti-harassment policies and mechanisms; or that the employer had actual or constructive notice of the harassment and failed to take corrective action to end it. L.W. v. Toms River Reg'l Sch. Bd. of Educ., 189 N.J. 381, 403 (2007) (citing Lehmann, supra, 132 N.J. at 621-22).

However, "a hostile work environment discrimination claim cannot be established by epithets or comments which are 'merely offensive.'" Heitzman, supra, 321 N.J. Super. at 147 (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 21, 114 S. Ct. 367, 370, 126 L. Ed. 2d 295, 302 (1993)). Neither rude and uncivil behavior nor offensive comments alone create a hostile work environment under the LAD. Sheperd v. Hunterdon Developmental Ctr., 174 N.J. 1, 25 (2002); El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 179 (App. Div. 2005). Further, the test is strictly objective: the focus should not be on the plaintiff's actual, subjective reaction, nor on the defendant's intent, but on whether a reasonable person in the plaintiff's position would consider the work environment hostile. Cutler, supra, 196 N.J. at 431.

Plaintiff alleged that Hicks and Payne and other unnamed supervisors created a hostile work environment by failing to

stop Hicks' abusive and racist language.[6] Plaintiff complains that she considered the terms "monkey" and "nappy head Raggedy Ann" to be "racial slurs." She further contends that since 2003 Hicks called her hostile, abusive and racially charged names such as "lazy" and "retarded." However, the record shows that plaintiff continued to interact socially with Hicks after the 2003 counseling, even going to her home and inviting Hicks to her housewarming party. Additionally, plaintiff never filed any internal EEO complaints alleging racial harassment. While during the times they were not getting along plaintiff complained that Hicks was a bully and at times objected to her insensitive behavior, her continued voluntary friendship with Hicks over the next three years demonstrates that plaintiff did not consider Hicks' objectionable conduct to be severe or pervasive or that she felt unsafe or perceived that Hicks had altered the work conditions.

Additionally, in April 2006, during the argument started by Hicks, both employees exchanged racially charged insults. Shortly after the argument, plaintiff told her African-American supervisor that she considered the phrase "nappy head Raggedy

[6] Plaintiff also alleged in her complaint that Payne treated lighter skinned African-Americans better than darker skinned African-Americans but could not identify any instances when this occurred or provide any evidence supporting this claim.

Ann" to be a racial slur. Payne immediately investigated and, in light of plaintiff's admission that she exchanged insulting words with Hicks on the work floor, gave each employee a warning letter.

We reject plaintiff's argument that her circumstances were similar to those of the plaintiff in Taylor, where the county sheriff, in front of a high ranking undersheriff, referred to the plaintiff, an African-American sheriff's officer, by a very insulting racial slur and, later, berated her for feeling insulted. Taylor, supra, 152 N.J. at 502-03. As the Supreme Court noted, when the chief executive of the organization utters an unambiguously demeaning racial slur in front of another high ranking supervisor, the one severely insulting comment could be found to signal pervasive workplace racial hostility. Id. at 506.

In contrast, Hicks was plaintiff's co-worker, with no power to alter the terms of employment or the workplace. She was also a long-time friend, although intermittently a bad-tempered and hostile one, with whom plaintiff regularly socialized in and out of the workplace during the time she alleged that the workplace environment was hostile due to Hicks' behavior. While the term "nappy head Raggedy Ann" can be viewed as a racist insult, during the same argument that Hicks uttered those words,

plaintiff herself made insulting and racially insensitive remarks.

More importantly, plaintiff has not produced any evidence of the employer adopting or approving Hicks' statements that plaintiff felt were racial slurs; indeed, Hicks was swiftly disciplined for her aggressive and insulting behavior. Viewing the totality of the evidence in the light most favorable to plaintiff, we are convinced that no rational fact-finder could conclude, in the context of plaintiff's and Hicks' ongoing volatile personal relationship and management's swift investigation and discipline of both parties, that Hicks' objectionable statements were so pervasive or severe that a reasonable African-American would believe that the conditions of employment had been altered and that the working environment was racially hostile or abusive.

B. Retaliation Claim.

Plaintiff also contends that FDX terminated her in retaliation for her complaints of a hostile work environment in violation of N.J.S.A. 10:5-12(d). While the trial judge did not directly address the retaliation claim in his statement of reasons for dismissing the complaint, the judge dismissed the entire complaint with prejudice. The judge need not specifically address each and every claim where the evidence

taken together does not support the plaintiff's allegations. Brill, supra, 142 N.J. at 532-33.

In prohibiting retaliation for the exercise of protected rights, the LAD "operates not only to fight discrimination wherever it is found, but to protect those who assist in rooting it out." Quinlan v. Curtiss-Wright Corp., 204 N.J. 239, 260 (2010). A prima facie claim of retaliation under the LAD requires that a plaintiff show: 1) she was in a protected class; 2) she engaged in protected activity known to the employer; 3) she was thereafter subjected to an adverse employment consequence; and 4) there was a causal link between the protected activity and the adverse employment consequence. Victor v. State, 203 N.J. 383, 409 (2010); Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super. 252, 274 (App. Div. 1996). Under the McDonnell Douglas framework, if the plaintiff makes a prima facie showing, then the burden shifts to the employer to provide a non-retaliatory motive for the adverse employment action. Henry, supra, 204 N.J. at 331-32.

Considering the evidence in the light most favorable to plaintiff, we find that she did not present a prima facie case of retaliation. Assuming that plaintiff has established the first three requirements, she has failed to provide any evidence

of a link between her complaint about a hostile work environment and her termination.

Even if plaintiff had presented a prima facie case of retaliation, her case would fail under a McDonnell Douglas analysis. Defendants presented evidence that plaintiff lost her job pursuant to company policy that mandates termination after an employee receives three warning letters within twelve months. Plaintiff provided no evidence to refute this explanation. Although she claimed that others who did not complain about a race-based hostile work environment and received three warning letters were not fired, she offers no evidence to substantiate this allegation. As defendants articulated a legitimate reason for terminating plaintiff and plaintiff provided no evidence that would cast doubt on this policy, we find that the trial judge properly dismissed this claim. See Greenberg, supra, 310 N.J. Super. at 199.

C. Individual Defendant Claims.

Next, plaintiff contends that the trial judge erred in granting summary judgment on her individual claims against Hicks for creating a hostile work environment and Payne for creating the hostile work environment and terminating her in retaliation for complaining about it. However, we find it unnecessary to reach this issue, having found no grounds for liability in

connection with those claims. Suffice it to point out that the LAD prohibits unlawful employment practices and unlawful discrimination by an employer, not co-workers. N.J.S.A. 10:5-12(a); Cicchetti v. Morris Cty. Sheriff's Office, 194 N.J. 563, 573 (2008); Lehmann, supra, 132 N.J. at 592; Heitzman, supra, 321 N.J. Super. at 144-45. Moreover, as a supervisor is not an employer under the LAD, to hold a supervisor individually liable, the person must have aided or abetted the discriminatory conduct. N.J.S.A. 10:5-12(e). To demonstrate "aiding and abetting," the plaintiff must show that: 1) the party whom the defendant aided performed a wrongful act that caused an injury; 2) the defendant was aware of her role in generally illegal or tortious activity; and 3) the defendant knowingly and substantially assisted the principal violation, which requires active and purposeful conduct rather than mere omissions or negligence. Tarr v. Ciasulli, 181 N.J. 70, 84 (2004). Additionally, a person cannot be found to have aided and abetted discrimination if he or she was the perpetrator of discrimination. See Herman v. Coastal Corp., 348 N.J. Super. 1, 27 (App. Div.), certif. denied, 174 N.J. 363 (2002). Plaintiff has neither alleged that Payne aided or abetted Hicks nor provided any evidence to demonstrate that she knowingly and substantially assisted the claimed principal violation.

D. Disability Discrimination Claim.

Additionally, plaintiff contends that FDX terminated her because of a disability in violation of N.J.S.A. 10:5-12(a). To establish a prima facie case of disability discrimination under the LAD a litigant must show that: 1) the plaintiff was handicapped or disabled within the meaning of the statute; 2) the plaintiff was qualified to perform the essential functions of the position, with or without accommodation; 3) the plaintiff suffered an adverse employment action because of the handicap or disability; and 4) the employer sought another to perform the same work after plaintiff had been removed from the position. Victor v. State, 401 N.J. Super. 596, 609 (App. Div. 2008) aff'd, 203 N.J. 383 (2010).

The trial court dismissed this claim on the grounds that plaintiff did not qualify as handicapped under the LAD. We disagree with this unnecessarily narrow reading of the statute. "The term 'handicapped' in LAD is not restricted to 'severe' or 'immutable' disabilities and has been interpreted as significantly broader than the analogous provision of the Americans with Disabilities Act (ADA)." Viscik v. Fowler Equip. Co., 173 N.J. 1, 16 (2002) (citing Failla v. City of Passaic, 146 F.3d 149, 154 (3d Cir. 1998)); see also Victor, supra, 203

N.J. at 421 (noting that a back injury can constitute an actionable disability under the LAD).

Even with all inferences made in favor of plaintiff, the record does not provide any evidence that she suffered an adverse employment action due to her disability. When Payne learned that plaintiff was unable to fulfill the requirements of her current position, the human resources department directed her to follow company policy and put plaintiff on a leave of absence until she could find a position for which she qualified. However, before that arrangement had been effectuated, plaintiff was terminated due to having accrued three warning letters within twelve months. Again, even if plaintiff had established a prima facie case, the employer provided a legitimate nondiscriminatory reason for her termination, and plaintiff has not provided evidence showing the stated reason was a pretext. Since the evidence failed to establish disability discrimination, we are satisfied that this claim was properly dismissed.

E. Appropriate Party Claim.

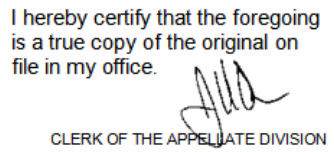
Plaintiff argued that the trial court erred in dismissing FDX on the grounds that FEC, not the parent company FDX, was plaintiff's employer. However, we do not find it necessary to reach this issue as we have found no employer liability in

connection with plaintiff's claims. We add only the following comment.

In her amended complaint, plaintiff sued FDX, not her actual employer, FEC, which is a subsidiary of FDX. In order to impose liability on FDX for violations of the LAD by FEC, plaintiff must present evidence sufficient to pierce FEC's corporate veil. Richard A. Pulaski Constr. Co. v. Air Frame Hangars, 195 N.J. 457, 472-73 (2009); State, Dep't of Envtl. Prot. v. Ventron Corp., 94 N.J. 473, 500 (1983). In Ventron, the Supreme Court noted:

> We begin with the fundamental propositions that a corporation is a separate entity from its shareholders, and that a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise. Even in the case of a parent corporation and its wholly-owned subsidiary, limited liability normally will not be abrogated.
>
> [Ibid. (internal citations omitted).]

Nonetheless, in order to prevent fraud or injustice, the corporate veil may be pierced to show that a subsidiary is "'a mere instrumentality of the parent corporation.'" Ibid. (quoting Mueller v. Seaboard Commercial Corp., 5 N.J. 28, 34-35 (1950)). We are satisfied that the record is devoid of any evidence that the corporate form was established or used to

perpetrate fraud or injustice. See Pulaski, supra, 195 N.J. at 472.

Affirmed.