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No. 16-2783

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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DEBORAH S. HUNT, Clerk

SARA J. KUBIK, **Plaintiff-Appellant,** v. CENTRAL MICHIGAN UNIVERSITY BOARD OF TRUSTEES et al., **Defendants-Appellees.**	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN **OPINION**

Before: MERRITT, MOORE, and ROGERS, Circuit Judges.

KAREN NELSON MOORE, Circuit Judge. Plaintiff Sara J. Kubik, a tenure-track professor who was not appointed to a new term, appeals the district court's grant of summary judgment to Defendants-Appellees Central Michigan University Board of Trustees and five individually named CMU employees on her claims of sex discrimination, hostile work environment, and retaliation under Title VII of the Civil Rights Act (Title VII), 42 U.S.C. § 2000e et seq., and Michigan's Elliott-Larsen Civil Rights Act (ELCRA), Mich. Comp. Laws § 37.2101 et seq. Because Kubik has not presented sufficient evidence to make out a prima facie case on any of these three claims, we **AFFIRM** the district court's grant of summary judgment.

I. BACKGROUND

Because the detailed history surrounding this case is laid out in the district court's opinion, *see* R. 56 (Dist. Ct. Op. & Order at 2–24) (Page ID #2444–66), we summarize it briefly

here. In August 2011, Kubik was hired at Central Michigan University (CMU) to serve as a tenure-track Assistant Professor, a position requiring her to show scholarly promise and achievement under specific "academic track" criteria in order to qualify for periodic reappointment before an ultimate tenure decision. Hired into the Journalism Department, Kubik began at CMU during fall 2011 and was reappointed during fall 2012 through CMU's standard process, which includes a departmental recommendation (here, by the Journalism Department's Personnel Committee), a recommendation from the dean of the department's college, and an ultimate decision by the provost. In the course of her fall 2012 reappointment, Kubik's scholarly progress was rated as "limited," and she was advised by colleagues, the current department chair (Maria Marron, a defendant), and her dean (Salma Ghanem), to improve her scholarly output.

In January 2013, Kubik informed CMU that she was pregnant with her second child; later that spring, in light of her pregnancy, she requested a tenure extension. Kubik gave birth in April 2013. The day after she gave birth, Marron emailed Kubik to tell her that "[s]tudents [we]re expressing concern about [adjunct professors] having to grade their final projects and exams" and to ask if Kubik could do the grading herself after returning from leave.

In May 2013, the Personnel Committee denied Kubik's tenure-extension request. The following week, Marron emailed Kubik about teaching preferences for the fall semester, seemingly giving her two options, one of which would require teaching five days per week at 8:00 AM, and the other of which would require three days at 8:00 AM and another two at 5:00 PM. Between the two options, Kubik selected the one that did not go into the evening.

That September, Kubik filed a complaint with CMU's Office of Civil Rights and Institutional Equity (OCRIE), alleging discrimination in the department's refusal to grant her tenure-extension request. Later that month, the Journalism Department's Personnel Committee (which included named defendants Marron, Lori Brost, and Timothy Boudreau), met and voted to recommend against Kubik's reappointment, with members citing her limited service and scholarship. (At the time, Kubik's scholarly output was one paper at a state conference.)

In October 2013, Kubik refiled her OCRIE complaint, alleging discrimination and a hostile work environment. In November, Kubik's dean departed from the department's recommendation, and Provost Michael Gealt (another defendant) ultimately decided to reappoint Kubik. Each, however, emphasized that Kubik needed to improve her scholarship.

In April 2014, OCRIE found that Marron had created a hostile environment but that her conduct did not impermissibly affect Kubik's reappointment process. Later that month, Kubik filed a complaint with the EEOC. In late May, CMU granted her tenure-extension request.

In September 2014, the Personnel Committee met and again recommended against Kubik's reappointment. The committee also again based its decision on Kubik's lack of scholarly output and university service: Kubik had pointed, for example, to only two published pieces, one of which was a two-page, two-endnote article in the *Michigan Bar Journal*, and the second of which was a five-page, fifteen-endnote, co-authored draft to be published in *Compliance Today*. The committee meeting also featured animated discussion of Kubik's employment-discrimination complaints, which Kubik had discussed in the materials that she had submitted to the committee.

In October 2014, Kubik filed a new OCRIE complaint. In November, Dean Shelley Hinck (also a defendant) agreed that Kubik should not be reappointed, citing her lack of scholarship. In January 2015, Provost Gealt also agreed, noting that Kubik's scholarly record did "not sufficiently represent the academic standards anticipated, and required, by [the] by-laws."

Kubik brought suit in the United States District Court for the Eastern District of Michigan against CMU, alleging sex (pregnancy) discrimination, a hostile work environment, and retaliation under Title VII and the ELCRA. Kubik also named Marron, Brost, Boudreau, Gealt, and Hinck as individual defendants under the ELCRA. The district court ruled that Marron, Brost, and Boudreau could not be sued individually under the ELCRA and that Kubik had failed to establish a prima facie case for any of her claims. This appeal followed.

II. DISCUSSION

Kubik has raised three claims under Title VII and the ELCRA: a sex (pregnancy) discrimination claim;[1] a hostile-work-environment claim; and a retaliation claim.[2] This appeal

[1]We will refer to Kubik's discrimination claim as a "pregnancy-discrimination" claim, even though such claims are technically a subset of sex-discrimination claims. *See Boyd v. Harding Academy of Memphis, Inc.*, 88 F.3d 410, 413 (6th Cir. 1996).

[2]Because the ELCRA is so similar to Title VII, "[c]ases brought pursuant to the ELCRA are analyzed under the same evidentiary framework used in Title VII cases." *Ondricko v. MGM Grand Detroit, LLC*, 689 F.3d 642, 652 (6th Cir. 2012) (quoting *In re Rodriguez*, 487 F.3d 1001, 1007 (6th Cir. 2007)). Accordingly, we do so here.

requires us to decide whether the trial court was correct that Kubik could not make out a prima facie case on any of these three claims. We affirm.[3]

A. Standard of Review

We review a grant of summary judgment de novo. *Marshall v. The Rawlings Co. LLC*, 854 F.3d 368, 381 (6th Cir. 2017). We are required to "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A genuine issue of material fact exists if "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). In undertaking this review, we "must credit all evidence presented by the nonmoving party and draw all justifiable inferences in that party's favor." *In re Rodriguez*, 487 F.3d 1001, 1007 (6th Cir. 2007).

B. Pregnancy-Discrimination Claim

Kubik asserts a claim of sex discrimination based on circumstantial evidence. *See Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 926 (6th Cir. 1999). "Title VII single-motive claims proceeding on circumstantial evidence are analyzed under the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), and later modified by *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 252–53 (1981)." *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 706 (6th Cir. 2006). Michigan

[3]Also presented for review is whether Boudreau, Brost, and Marron are properly considered agents subject to individual liability under the ELCRA. Because we affirm summary judgment against Kubik's three claims with regard to all defendants, we need not reach this question.

courts apply the same, three-step test. *Hazle v. Ford Motor Co.*, 628 N.W.2d 515, 520–21 (Mich. 2001). Under this framework, plaintiffs must first establish "by the preponderance of the evidence a prima facie case," at which point "the burden shifts to the defendant 'to articulate some legitimate, nondiscriminatory reason'" for the adverse action asserted. *Burdine*, 450 U.S. at 252–53 (quoting *McDonnell Douglas Corp.*, 411 U.S. at 802). If the defendant can do so, the burden shifts back to the plaintiff to "prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." *Id.* at 253. "On a motion for summary judgment, a district court considers whether there is sufficient evidence to create a genuine dispute at each stage of the *McDonnell Douglas* inquiry." *Cline v. Catholic Diocese of Toledo*, 206 F.3d 651, 661 (6th Cir. 2000).

In general, a plaintiff establishes a prima facie case by showing that "(1) he or she was a member of a protected class; (2) he or she suffered an adverse employment action; (3) he or she was qualified for the position; and (4) he or she was replaced by someone outside the protected class or was treated differently than similarly-situated, non-protected employees." *Wright*, 455 F.3d at 707 (quoting *DiCarlo v. Potter*, 358 F.3d 408, 415 (6th Cir. 2004)). In the specific context of pregnancy-discrimination claims, we have stated the test slightly differently, directing a plaintiff to show "that 1) she was pregnant, 2) she was qualified for her job, 3) she was subjected to an adverse employment decision, and 4) there is a nexus between her pregnancy and the adverse employment decision." *Cline*, 206 F.3d at 658. Here, the district court applied the standard-issue *McDonnell Douglas* test, ruling that Kubik could not satisfy its first prong (protected-class membership) for either the department's 2013 recommendation not to reappoint

her or CMU's 2014 decision not to reappoint her because "Kubik's pregnancy was too attenuated in point of time" from either event. R. 56 (Dist. Ct. Op. & Order at 29, 31) (Page ID #2471, 2473).

The gap between the end of Kubik's pregnancy and the first vote against her reappointment was only five months. We do not think that a gap of five months presents an insuperable bar for a plaintiff alleging pregnancy discrimination, but we do not see sufficient evidence to support such a claim here. When we have looked to a time gap for *evidence* of discrimination, we have looked for a gap shorter than the five months between the conclusion of Kubik's pregnancy and the first vote not to recommend her reappointment. *See, e.g.*, *Asmo v. Keane, Inc.*, 471 F.3d 588, 594 (6th Cir. 2006). But that does not mean that a five-month gap *precludes* relief; it simply means instead that additional evidence must be offered. That is why our pregnancy-specific test is better suited to such cases: it looks for "a nexus between [the] pregnancy and the adverse employment decision," *Cline*, 206 F.3d at 658, rather than setting an arbitrary cut-off that would allow an employer who wishes to fire an employee for her pregnancy simply to outlast the requisite waiting period.

Kubik has not met her burden in showing a nexus between her pregnancy and the votes not to reappoint her. A nexus requires some "connection . . . between the pregnancy and the [adverse action]." *Prebilich-Holland v. Gaylord Entm't Co.*, 297 F.3d 438, 443 (6th Cir. 2002). Thus, where an adverse action occurs soon after pregnancy, courts can infer a nexus from the temporal proximity. *See Asmo*, 471 F.3d at 594. But where the timeline is less probative, plaintiffs must offer other evidence. *See Huffman v. Speedway LLC*, 21 F. Supp. 3d 872, 877

(E.D. Mich. 2014), *aff'd*, 621 F. App'x 792 (6th Cir. 2015). For example, other evidence can come in the form of comments, *see, e.g.*, *Figgins v. Advance Am. Cash Advance Centers of Mich., Inc.*, 476 F. Supp. 2d 675, 691–92 (E.D. Mich. 2007), or "comparison to 'another employee who is similarly situated,'" *Latowski v. Northwoods Nursing Ctr.*, 549 F. App'x 478, 483 (6th Cir. 2013) (quoting *Ensley-Gaines v. Runyon*, 100 F.3d 1220, 1226 (6th Cir. 1996)).

Here, with all justifiable inferences made in her favor, Kubik has not presented sufficient evidence to establish a nexus between her pregnancy and the departmental votes against reappointment, let alone a nexus between her pregnancy and Provost Gealt's decision. The Personnel Committee voted three times on Kubik's reappointment: a year after she started, in fall 2012; five months after her pregnancy, in fall 2013; and in fall 2014. Only the record around the fall 2013 vote contains pregnancy-related commentary, and its references are fleeting, non-hostile, and non-discriminatory. *See* R. 52-26 (Personnel Rec. for 2015–2016) (pp. 3–5).[4] Moreover, the probative value of those references, within a group deliberation, is substantially diluted by numerous concerns about Kubik's scholarly output, much like those raised prior to her disclosure of her pregnancy. *See* R. 52-4 (2012 Article 6 Conference Summary); R. 52-9 (Personnel Rec. for 2013–2015); R. 52-12 (2013 Article 6 Conference Summary); R. 52-26

[4]The most hostile comment that Kubik cites, Appellant's Br. at 15, is from the following summary of the meeting: "One committee member noted that it was clear that Dr. Kubik is aware about the need for her to do more in research and service. One person noted that the department has been 'quite understanding and forgiving.' He said, 'Sara needs to really, really step it up. On research and service, she's woefully inadequate.' He said he would support her reappointment reluctantly." R. 52.26 (Personnel Rec. for 2015–2016) (pp. 4–5). Though it is conceivable, as Kubik appears to assume, that the reference to being "understanding and forgiving" expresses oblique disfavor toward Kubik's pregnancy, this evidence is, in context, insufficient to support an inference in her favor.

(Personnel Rec. for 2015–2016); *see also* R. 52-7 (Oct. 2012 Reappointment Narrative) (p. 35) (stating that "research is my weakest area this year"); R. 52-25 (Sept. 2013 Reappointment Narrative) (p. 10) (stating that "my scholarly and creative activities are lacking").

There is similarly limited evidence elsewhere of animus against Kubik's pregnancy that could serve as a link between the pregnancy and any votes or decisions regarding reappointment. There is evidence that Marron may have called Kubik's pregnancy a "sticky wicket,"[5] R. 52-30 (OCRIE Marron Disposition) (p. 12), as well as Marron's email to Kubik the day after Kubik's daughter's birth, R. 52-15 (Mid-April 2013 Kubik–Marron Emails) (pp. 1–2), which was inconsiderate to say the least. But in the absence of anything further, we cannot say that there is a genuine issue of material fact.[6] In short, even with all justifiable inferences in Kubik's favor,

[5]That is, "a difficult or delicate problem or situation." *Sticky wicket*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/sticky%20wicket (last visited Sept. 1, 2017).

[6]Nor does comparing Kubik with the faculty members that she points to—Brost and Sean Baker—support her case. By the time of the fall 2013 reappointment decision (after Kubik's second year), Kubik's applicable scholarly output totaled one paper at a state conference, R. 52-25 (Sept. 2013 Reappointment Narrative) (p. 10), and by the time of the fall 2014 reappointment decision (after her third year), she had added a presentation at another conference, plus the two brief, professional-track publications in the *Michigan Bar Journal* and *Compliance Today*, R. 52-45 (Sept. 2014 Reappointment Narrative) (p. 9). By contrast, according to Kubik's summary, Brost had "two presentations for her scholarly activities" in year one, a co-authored book chapter and a conference presentation in year two, and a presentation to a media organization (alongside an article in a professional magazine) in year three. Appellant's Br. at 32–33. And Baker had two conference papers/presentations and a book chapter in year two and added "two full length peer reviewed conference papers" and a "conference presentation" in year three, R. 41-15 (Baker Dep.) (Page ID #672–73); R. 52-5 (Comparator Article 6 Conference Summaries) (p. 16).

Kubik has not raised sufficient evidence to establish a nexus between these actions and her pregnancy.[7]

The changes to Kubik's teaching schedule, meanwhile, fail on prong three. "An adverse employment action is a 'materially adverse change in the terms or conditions of . . . employment because of [the] employer's conduct." *Mitchell v. Vanderbilt Univ.*, 389 F.3d 177, 182 (6th Cir. 2004) (quoting *Kocsis v. Multi-Care Mgmt., Inc.*, 97 F.3d 876, 885 (6th Cir. 1996)). To be materially adverse, a change in employment conditions must be more than simply inconvenient. *Id.* Here, Kubik has not shown that the change in her teaching schedule was disruptive enough to qualify. While some schedule changes could rise to this level, the facts here—teaching a normal course load within normal working hours, with no showing of special harm—do not.

The denial of Kubik's tenure-extension request would present a different question if it had remained in place, but it cannot justify relief here. An action is unlikely to qualify as materially adverse when it ends up having no effect. That may happen because of a quick rescission. *See, e.g., Keeton v. Flying J, Inc.*, 429 F.3d 259, 263–64 (6th Cir. 2005); *Bowman v. Shawnee State Univ.*, 220 F.3d 456, 462 (6th Cir. 2000). But it may also apply in other cases "where further remedial action is moot and no economic loss occurred." *See Kauffman v. Allied Signal, Inc., Autolite Div.*, 970 F.2d 178, 187 (6th Cir. 1992). Here, although CMU's initial

[7]Even if we assumed that Kubik had made out a prima facie case, this pregnancy-discrimination claim would still fail, but at step three of *McDonnell Douglas* rather than step one. CMU has provided a legitimate, nondiscriminatory reason that it did not reappoint Kubik—her limited scholarly work—and Kubik has not introduced sufficient evidence to permit a factfinder to treat this reason as pretext to conceal discriminatory animus against her for her pregnancy. *See, e.g., Latowski v. Northwoods Nursing Ctr.*, 549 F. App'x 478, 484–86 (6th Cir. 2013); *Idemudia v. J.P. Morgan Chase*, 434 F. App'x 495, 503–06 (6th Cir. 2011).

denial was *not* reversed right away, it was reversed nearly four months before Kubik submitted her third reappointment narrative. *See* R. 52-34 (Armistead Email re Tenure Extension). And Kubik has not presented sufficient evidence to suggest that CMU's *reappointment* decision was in some way influenced by its failure initially to grant her tenure-extension request. Thus, while CMU's denial might well have qualified as an adverse action under other circumstances, Kubik has not raised evidence here either to create genuine issue of material fact.

C. Hostile-Work-Environment Claim

Kubik's hostile-work-environment claim also fails. Like discriminatory actions, hostile-work-environment claims based on indirect evidence are analyzed under a version of the *McDonnell Douglas* framework. To make out a prima facie case, a plaintiff must show: "(1) she was a member of a protected class; (2) she was subjected to unwelcomed harassment; (3) the harassment was based on sex or race; (4) the harassment created a hostile work environment; and (5) employer liability." *Ladd v. Grand Trunk W. R.R.*, 552 F.3d 495, 500 (6th Cir. 2009).

Particularly relevant here are the third and fourth prongs. A plaintiff can satisfy the third prong by asserting "unequal treatment of an employee that would not occur but for the employee's gender." *See Williams v. Gen. Motors Corp.*, 187 F.3d 553, 565 (6th Cir. 1999) (emphasis omitted). To meet prong four, meanwhile, a plaintiff must show "that under the 'totality of the circumstances' the harassment was 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Clay v. United Parcel Serv., Inc.*, 501 F.3d 695, 707 (6th Cir. 2007) (citations omitted). In addition to a subjective component, this test has an objective component: "Conduct that is not severe or

pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). Thus, while a plaintiff can prevail "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive," *id.*, "'simple teasing,' offhand comments, and isolated incidents (unless extremely serious)" generally will not suffice, *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (citation omitted). Instead, the "conduct must be extreme." *Id.*

Regrettably, there are many more extreme examples of workplace harassment than what Kubik details, and we have "rejected hostile-environment claims arising from facts far more compelling than those alleged in this case." *In re Rodriguez*, 487 F.3d at 1010; *see, e.g.*, *Clark v. United Parcel Serv., Inc.*, 400 F.3d 341, 351–52 (6th Cir. 2005) (describing deeply disturbing cases in which no hostile work environment was found, including groping and leering over protracted periods of time); *cf. Jordan v. City of Cleveland*, 464 F.3d 584, 596–98 (6th Cir. 2006) (finding support for claim in a case in which plaintiff suffered more than a decade of abuse).

Though one might question the wisdom of setting this bar so high, binding precedents have set it at a level that Kubik's assertions, Appellant's Br. at 43–44, and her evidence do not meet. Kubik has not introduced sufficient evidence to substantiate some of her assertions for purposes of the third prong: For example, while she has introduced evidence that might permit the conclusion that her fall 2014 reappointment hearing was generally hostile, *see* R. 52-42 (Tr. of Sept. 2014 Personnel Comm. Meeting) (pp. 1–2, 6, 8–9), she has not introduced evidence to connect that hostility to her sex or pregnancy. And even for those assertions for which prong

three could be inferentially satisfied—for example, Marron's email the day after Kubik gave birth—the asserted hostile conduct is not sufficiently extreme. With all justifiable inferences made, Kubik's evidence still cannot support a prima facie case.

D. Retaliation Claim

Kubik's retaliation claim also fails. This claim is also based on indirect evidence and thus is subject to a *McDonnell Douglas* variant: Kubik "must prove by a preponderance of the evidence: 1) plaintiff engaged in activity protected by Title VII; 2) plaintiff's exercise of [such protected activity] was known by the defendant; 3) that, thereafter, the defendant took an employment action adverse to the plaintiff; and 4) that there was a causal connection between the protected activity and the adverse employment action." *DiCarlo*, 358 F.3d at 420 (quoting *Equal Employment Opportunity Comm'n v. Avery Dennison Corp.*, 104 F.3d 858, 860 (6th Cir. 1997)). If the plaintiff establishes a prima facie case, the burden shifts to the defendant to offer a nondiscriminatory reason for the adverse action; if the defendant successfully identifies a nondiscriminatory reason, the burden switches back to the plaintiff to show pretext. *See, e.g.*, *DiCarlo*, 358 at 420.

Here, Kubik clearly engaged in protected activity that defendants knew about. As for the third prong, the Supreme Court has made clear that an adverse employment action in the retaliation context is one that "well might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (quoting *Rochon v. Gonzales*, 438 F.3d 1211, 1219 (D.C. Cir. 2006)). This prong

thus extends beyond "so-called 'ultimate employment decisions'" to encompass a broader array of actions. *Id.* at 67.

Even assuming that Kubik can satisfy this prong with regard to, for example, the Journalism Department Personnel Committee's vote to recommend against reappointment, she cannot meet the fourth prong, causation. The standard for this prong, as the Supreme Court has made clear, is proof "according to traditional principles of but-for causation"—that is, "proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013). This standard is higher than the standard governing other discrimination claims, which requires only that "the motive to discriminate was *one of* the employer's motives." *Id.* at 2523 (emphasis added). Given the record here—the consistent concerns about Kubik's scholarship, raised even before her pregnancy (and thus long before her OCRIE complaint)—and this more exacting standard, we cannot say that Kubik has created a genuine issue of material fact.[8]

[8]Nor, relatedly, can Kubik prevail on a "cat's paw" theory of liability. This term "refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *Marshall v. The Rawlings Co. LLC*, 854 F.3d 368, 377 (6th Cir. 2017) (citations omitted). Kubik has not introduced sufficient evidence to call into question the independence of Provost Gealt's review, particularly given the longstanding concerns about Kubik's scholarship and Gealt's own decision to depart from the departmental recommendation in December 2013 and reappoint Kubik (while noting that she needed to improve her scholarship). *See* R. 52-26 (Personnel Rec. for 2015–2016); 52-53 (Jan. 2015 Gealt Letter) (p. 3).

III. CONCLUSION

Kubik's scholarly output, as she admits, was low—a shortcoming in her qualifications for reappointment that was documented by CMU and its employees throughout her employment. In light of the evidence presented, Kubik has not raised a genuine issue of material fact to establish a prima facie case for her Title VII and ELCRA claims. Because we thus need not decide whether Boudreau, Brost, and Marron were individually liable for purposes of the ELCRA, we do not reach the issue, but otherwise **AFFIRM** the district court's grant of summary judgment.