UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOYCE EVOY,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:97 CV 2400 (CFD)
	:	
CITY OF HARTFORD,	:	
Defendant	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Joyce Evoy, filed this action against the defendant, City of Hartford, alleging a hostile work environment on the basis of her race, in violation of Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e et seq. (Count One). She also alleges retaliation in violation of Title VII (Count Two), and state law claims for intentional infliction of emotional distress (Count Three), negligent infliction of emotional distress (Count Four), negligent hiring (Count Five), and negligent retention (Count Six).[1] She seeks compensatory and punitive damages, and costs and attorney's fees.

The plaintiff, who is Caucasian, is employed as a radio telephone dispatcher for the Hartford Police Department. She contends that her former supervisor, Olla Pollard, an African-American police sergeant, discriminated against her on the basis of her race. Specifically, she contends that Pollard and other non-Caucasians in the police dispatch unit harassed her by making derogatory racial comments to her, and generally by subjecting her to more difficult work requirements. She also contends that they retaliated against her in a similar manner after she filed an administrative complaint. The plaintiff has named only the City of Hartford as a defendant.

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[1]The Court previously dismissed the plaintiff's negligent hiring claim (Count Five). In addition, the plaintiff does not allege a violation of 42 U.S.C. § 1981. See Pl.'s Mem. Opp'n Def.'s Mot. Summ. J. at 2 n.2.

The City has filed a motion for summary judgment as to each of the plaintiff's claims.

I. Summary Judgment

In the context of a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact." Miner v. City of Glens Falls, 999 F.2d 655, 661 (2d Cir. 1993) (internal quotation marks and citation omitted). In ruling on a motion for summary judgment, however, the Court resolves "all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992). Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991), cert. denied, 502 U.S. 849 (1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

II. Intentional Infliction of Emotional Distress

As an initial matter, the defendant's motion for summary judgment is GRANTED, absent objection, as to the plaintiff's intentional infliction of emotional distress claim (Count Three).

III. Negligent Infliction of Emotional Distress

The defendant's motion for summary judgment is also GRANTED as to the plaintiff's negligent infliction of emotional distress claim (Count Four). As indicated, this action arises from claims of discrimination involving the plaintiff's employment by the defendant. However, because

the plaintiff's employment has not been terminated by the defendant, the plaintiff may not assert a claim for negligent infliction of emotional distress under Connecticut law. See White v. Martin, 23 F. Supp. 2d 203, 208 (D. Conn. 1998) ("Plaintiff is still employed by the [defendant]. Therefore, the plaintiff cannot state a claim for negligent infliction of emotional distress . . ."), aff'd sub nom. White v. Commission of Human Rights, Opportunities, 198 F.3d 235 (2d Cir. 1999); Williams v. H.N.S. Management Co., 56 F. Supp. 2d 215, 221-22 (D. Conn. 1999); Leson v. ARI of Connecticut, Inc., 51 F. Supp. 2d 135, 143 (D. Conn. 1999); Cowen v. Federal Express Corp., 25 F. Supp. 2d 33, 39-40 (D. Conn. 1998) (citing Parsons v. United Techs. Corp., 700 A.2d 655, 667 (Conn. 1997)). But see Karanda v. Pratt & Whitney Aircraft, No. CV-98-582025S, 1999 WL 329703, at *5 (Conn. Super. Ct. May 10, 1999), called into doubt by Riley v. ITT Fed. Servs. Corp., No. 3:99CV2362(AWT), 2001 WL 194067, *6 (D. Conn. Feb. 22, 2001); see also Malik v. Carrier Corp., 202 F.3d 97, 103 n.1 (2d Cir. 2000).

IV. Negligent Retention

The defendant's motion for summary judgment is also GRANTED as to the plaintiff's negligent retention claim (Count Six). "It is well settled law of [the State of Connecticut] that a municipal corporation is not liable for negligence in the performance of a government function." Williams v. City of New Haven, 707 A.2d 1251, 1252 (Conn. 1998). However, a municipality's immunity may be limited or abrogated by statute. See id. at 1252-53 (citing as an example Conn. Gen. Stat. § 52-557n).

Applying Conn. Gen. Stat. § 52-577n, which generally codifies the common law doctrine of governmental immunity for municipalities, see Williams, 707 A.2d at 1253; Hughes v. City of New Haven, 96 F. Supp. 2d 114, 118-19 (D. Conn. 2000), the Court concludes that the plaintiff's

negligent retention claim is barred by the doctrine of governmental immunity. Section 52-577n, in part, provides that Connecticut municipalities are immune from liability on the basis of negligence for the performance of governmental acts, which are acts "performed wholly for the direct benefit of the public and are supervisory or discretionary in nature," as distinguished from ministerial acts requiring no judgment or discretion. Hughes, 96 F. Supp. 2d at 118-19 (quoting Elliott v. City of Waterbury, 715 A.2d 27, 40 (Conn. 1998)). Whether a defendant is entitled to governmental immunity for a particular act is therefore determined according to a two-part test: (1) whether the act involves a public or private duty; and (2) whether the act is discretionary or ministerial. See id.

In this case, the plaintiff challenges the defendant's conduct in retaining Olla Pollard as a sergeant in the police dispatch unit despite her "failures and inappropriate conduct." Am. Compl. ¶25 (p.14). Although the plaintiff herself may not be a sworn police officer, the Court concludes that the defendant's conduct in staffing the police dispatch unit, including its decision to retain Pollard, involved a public duty rather than a private duty. Decisions concerning the staffing of the police dispatch unit, and in particular decisions concerning supervision of that unit, clearly implicate the overall public safety functions of the police department. See Gordon v. Bridgeport Hous. Auth., 544 A.2d 1185, 1189 (Conn. 1988) ("If the duty which the official authority imposes upon [a municipality] is a duty to the public, a failure to perform it, or an inadequate or erroneous performance, must be a public and not an individual injury . . .").

The Court also concludes that the defendant's conduct was discretionary rather than ministerial. Connecticut law provides that a municipality's acts or omissions involving the failure to screen, hire, train, supervise, control, and discipline police officers are discretionary,

governmental acts as a matter of law. See Hughes, 96 F. Supp. 2d at 119 (citing several Connecticut opinions); Miner v. Town of Cheshire, 126 F. Supp. 2d 184, 196 (D. Conn. 2000) (arising from hostile work environment and retaliation claims involving police officers). Specifically, as in this case, the operation of a police department is a discretionary, governmental function shielding a municipality from negligence liability. See Gordon, 544 A.2d at 1195; see also Cook v. City of Hartford, No. CV89-0362482, 1992 WL 220102, *1 (Conn. Super. Ct. Aug. 31, 1992) (involving negligent hiring and retention of police officers). "The deployment of [police] officers is particularly a government function." Gordon, 544 A.2d at 1196.

The plaintiff has also failed to allege that her negligent retention claim falls within the exceptions to governmental immunity for discretionary acts. Connecticut law recognizes three exceptions to such immunity: (1) where the circumstances make it apparent to a municipal employee that his or her failure to act would be likely to subject an identifiable person to imminent harm; (2) where a statute specifically provides for a cause of action against a municipality or municipal official for failure to enforce certain laws; and (3) where the acts involve malice, wantonness, or intent to injure rather than negligence. See Purzycki v. Town of Fairfield, 708 A.2d 937, 941 (Conn. 1998). Only the first exception could conceivably apply in this case. Resolving all ambiguities and drawing all inferences in favor of the plaintiff, however, the Court concludes that the plaintiff has failed to provide sufficient evidence to raise a genuine issue of material fact as to whether the defendant's retention of Olla Pollard, the plaintiff's supervisor, subjected her to imminent harm.[2] Even assuming Pollard harassed the plaintiff and the defendant

[2]At least one Connecticut court has also determined that this exception does not apply, as in this case, to suits only against municipalities. See Knoob v. Town of North Branford, No. CV 960389536S, 2000 WL 1022714, at *3 (Conn. Super. Ct. July 10, 2000); cf. Miner, 126 F. Supp.

was negligent in retaining Pollard, see Am. Compl. ¶¶24-25, the Court concludes the defendant's conduct in retaining Pollard at most subjected the plaintiff to harm that occurred in varying instances, and to varying degrees, over a period of time. This type of harm is not "imminent" as a matter of law. See Hughes, 96 F. Supp. 2d at 120 (indicating imminent harm does not include harm that could occur at any time in the future, or not at all); Purzycki, 708 A.2d at 941-42 (suggesting the exception applies only in cases where a significant and foreseeable danger exists over a limited time period and a limited geographical area); Colon v. City of New Haven, 758 A.2d 900, 905 (Conn. App. Ct. 2000) (same); see also, e.g., Coletosh v. City of Hartford, No. CV 970573462S, 1999 WL 259656, at *2 (Conn. Super. Ct. Apr. 13, 1999); Cook, 1992 WL 220102, at *3. A contrary conclusion in this case would alter the "very limited recognition" this exception has received in Connecticut. Evon v. Andrews, 559 A.2d 1131, 1134 (Conn. 1989).[3]

V. Title VII

However, the defendant's motion for summary judgment is DENIED as to the plaintiff's remaining hostile work environment and retaliation claims (Counts One and Two). The Court concludes that there are genuine issues of material fact as to each of the plaintiff's remaining

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2d at 196 (immunizing a municipality without applying the exception). The court's decision appeared to rely on the common law distinction between municipalities and their officials: government officials were personally liable for their torts, more or less without exception, even where the governmental unit was protected by immunity. See Gordon, 544 A.2d at 1188.

[3]The Connecticut legislature has also provided for indemnification by municipalities of municipal employees who incur liability for certain of their own conduct. See Williams, 707 A.2d at 1253 (citing Conn. Gen. Stat. § 7-465(a)); see also Ahern v. City of New Haven, 459 A.2d 118, 121 (Conn. 1983) (indicating municipal liability under § 7-465(a) is derivative of a judgment against a municipal employee). Because the plaintiff in this case has failed to name an agent, officer, or employee of the municipality as a defendant to trigger indemnification pursuant to § 7-465, the doctrine of governmental immunity precludes the plaintiff's negligent retention claim on that basis as well. See Williams, 707 A.2d at 1254.

claims, including the following: (1) whether the plaintiff suffered severe or pervasive racial harassment that materially altered the conditions of her employment; (2) whether such conduct can be attributed to the defendant; and (3) whether the plaintiff suffered retaliation as a result of her filing administrative complaints of racial harassment.

The defendant also contends the plaintiff's specific allegations of racial harassment and retaliation occurring after June 1994 may not be considered by the Court because they were not enumerated in the plaintiff's administrative complaint, and thus because the plaintiff has not exhausted her administrative remedies as to those allegations. However, the Court concludes the plaintiff has not failed to exhaust her administrative remedies as to her hostile work environment and retaliation claims. The plaintiff's CCHRO complaint was filed on July 21, 1994. It alleged discriminatory conduct "going from 2/94 to 6/20/94." In paragraph two, the administrative complaint also alleged ongoing discrimination: "I am being harassed by my immediate supervisor . . . solely on the basis of my race. . . . The rules and regulations are being applied to me differently than to my coworkers at the same level." In addition, after June 1994, the plaintiff sent several letters to the CCHRO and the defendant complaining of ongoing discrimination. See Evoy Aff. ¶¶44, 53 & Exs. B-D. Accordingly, although the plaintiff never filed an amended administrative complaint, the Court concludes it may consider the plaintiff's alleged instances of racial harassment because the plaintiff properly raised the issue of ongoing harm in her administrative complaint. The Court may also consider the plaintiff's retaliation claim, which is "reasonably related" to her claim of ongoing harm, and which arises directly from her filing an administrative complaint. See Butts v. City of New York Dep't of Hous. Preservation & Dev., 990 F.2d 1397, 1402-03 (2d Cir. 1993).

VI. Conclusion

The defendant's motion for summary judgment [Document #73] is therefore GRANTED IN PART and DENIED IN PART. Only the plaintiff's hostile work environment and retaliation claims (Counts One and Two) remain in this case.

SO ORDERED this 25th day of June 2001, at Hartford, Connecticut.

_____/s/_____
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE