

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 10 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

PAMELA LAWSON,

Plaintiff - Appellant,

v.

REYNOLDS INDUSTRIES
INCORPORATED; TELEDYNE
REYNOLDS, INC.; TELEDYNE
INVESTMENT, INC.; TELEDYNE
TECHNOLOGIES INCORPORATED;
DAVID M. MCCORMICK,

Defendants - Appellees.

No. 06-55449

D.C. No. CV-04-06533-FMC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Argued and Submitted November 9, 2007
Pasadena, California

Before: B. FLETCHER and RYMER, Circuit Judges, and BEISTLINE**, District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Ralph R. Beistline, United States District Judge for the
District of Alaska, sitting by designation.

Pamela Lawson appeals summary judgment for her former employer, Reynolds Industries, Inc. and Teledyne Reynolds (collectively, “Reynolds”),¹ on retaliation claims brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5 *et seq.*; 42 U.S.C. § 1981; and the California Fair Housing and Employment Act, Cal. Gov’t Code §§ 12940 *et seq.* (FEHA). We affirm.

I

Lawson’s Title VII claim was untimely as the district court could find that the “2002” date on the original letter was a typo and that the letter was instead signed and mailed on September 8, 2003. Her complaint was filed months after this. *See Payan v. Aramark Mgmt. Serv., Ltd.*, 495 F.3d 1119 (9th Cir. 2007).

II

Lawson failed to present evidence from which a reasonable jury could have found that her termination was retaliatory or that Reynolds’s stated reasons for terminating her were pretextual. In the circumstances, no inference of retaliation arises on account of the nearly twelve-month gap between her protected complaints

¹ Lawson also named Teledyne Investment, Inc., Teledyne Technologies, Inc., and David M. McCormick as parties, but pursues the action only against Reynolds and Teledyne Reynolds on appeal.

and termination. *See Manatt v. Bank of America*, 339 F.3d 792, 802 (9th Cir. 2003). At oral argument counsel suggested that the last retaliatory act occurred during the meeting with McCormick and the counselor, but we see no basis in the record for so concluding. Lawson points to no other evidence seriously calling the legitimacy of Reynolds's reasons into question. She admitted initialing drawings that contained errors and does not controvert the substance of McCormick's account of insubordination at their July 16, 2002 session with Dr. Corman.

To the extent that she relies upon insensitive comments by co-employees, the employees were not at a level that could reflect corporate culture; the comments were isolated; and the employees were reprimanded. *See Clark County School District v. Breeden*, 532 U.S. 268, 271 (2001) (“[A] recurring point in our opinions is that simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’”); *Manatt*, 339 F.3d at 799 (“[T]wo regrettable incidents occurring over a span of two-an-a-half years, coupled with . . . other offhand remarks made by . . . co-workers and [a] supervisor, did not alter the terms and conditions of . . . employment.”).

Lawson relies on *Yanowitz*, 36 Cal. 4th at 1051 n.9, but the conduct there was far more egregious than here. As *Yanowitz* recognized: “Minor or relatively trivial adverse actions or conduct by employers or fellow employees that, from an

objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable, but adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the antidiscrimination provisions of [the FEHA].” *Id.* at 1054-55.

III

Referring Lawson for counseling was not an adverse employment action; Lawson herself thought the sessions with Dr. Corman were meaningful. Nor were the terms and conditions of her employment affected by the somewhat negative performance evaluation in 2002. While an undeserved negative performance review may constitute an adverse employment action, *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987), Lawson was given the highest or second-highest rating available in eight of ten categories, and the review was consistent with reviews she received before making any complaints in the areas identified as needing improvement.

IV

The district court did not abuse its discretion by excluding a statement in Lawson's declaration that was without foundation. Fed. R. Civ. P. 56(e).

AFFIRMED.