IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Plaintiff, v. MATTHEWS DAYCARE & TRAINING CENTER, INC., a/k/a MATTHEWS CHILDCARE ACADEMY, INC. Defendant.	§	CIVIL ACTION NO. H-97-1013

MEMORANDUM AND ORDER

Pending is Defendant's Motion for Summary Judgment (Document No. 25) to which Plaintiff has filed a Response (Document No. 27). After carefully considering the motion, the response, and the applicable law, the Court concludes that Defendant's Motion for Summary Judgment should be GRANTED in part and DENIED in part for the reasons set forth herein.

I. Background

The Equal Employment Opportunity Commission ("EEOC") filed this action pursuant to § 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f)(1),[1] alleging unlawful

[1] Under section 2000e-5(f), the EEOC must satisfy several prerequisites prior to filing a civil action in federal court. The first, and most obvious, is a charge of discrimination filed with the EEOC by an aggrieved party within the appropriate time after the alleged discrimination has occurred. 42 U.S.C. § 2000e(5)(b), (e). Once a charge is timely filed, the EEOC must notify the employer of the charge and begin an investigation. Id. The goal of the investigation is to determine whether there is reasonable cause to believe that the charge is true. If the EEOC finds

unlawful pregnancy discrimination against Defendant Matthews Daycare on behalf of three former employees -- Antoinette Shaw, Brigetti Graves, and Latrice Smith -- and a class of similarly situated females. The EEOC claims that Defendant unlawfully perpetuated a policy of placing its pregnant employees on unpaid leaves of absences. In this lawsuit, the EEOC seeks a permanent injunction enjoining Defendant from engaging in discrimination against pregnant females, an order that Defendant institute and carry out policies, practices, and programs which provide equal employment opportunities for its female employees, and both compensatory and punitive damages on behalf of Shaw, Graves, and Smith. Defendant has now moved for summary judgment on all claims.

II. The Summary Judgment Standard

Rule 56(c) provides that "[summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to

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reasonable cause to exist, it must then attempt to eliminate the offending practice through "conference, conciliation, and persuasion." Id. If the EEOC is unable to secure a conciliation agreement with the employer concerning a charge for which it has found reasonable cause, it may then commence a civil action in its own name within thirty days after either the filing of a charge or the termination of state agency proceedings. Id. § 2000e-5(f). When the EEOC brings a civil action under 2000e-5(f), the EEOC acts both for the benefit of specific individuals and "to vindicate the public interest in preventing employment discrimination." General Tel. Co. of the Northwest, Inc. v. Equal Employment Opportunity Comm'n, 100 S. Ct. 1698, 1704 (1980); *compare* 42 U.S.C. § 2000e-6 (Section 707) (authorizing EEOC to file a Commissioner's charge alleging a "pattern or practice" of discrimination); *see generally* Equal Employment Opportunity Comm'n v. Harvey L. Walner & Assoc., 91 F.3d 963, 968-969 (7th Cir. 1996); Equal Employment Opportunity Comm'n v. Bailey Co, Inc., 563 F.2d 439, 444-45 (6th Cir. 1977), *cert. denied*, 98 S. Ct. 1468 (1978).

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A party seeking summary judgment bears the initial burden of informing the district court of the basis for the motion, and identifying those portions of the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which the moving party believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2554 (1986).

Once the movant carries this burden, the burden shifts to the nonmovant to show that summary judgment should not be granted. Id. at 2553-54. A party opposing a properly-supported motion for summary judgment may not rest upon mere allegations or denials of his pleading, but must set forth specific facts showing the existence of a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2514-15 (1986). Unsubstantiated assertions that a fact issue exists will not suffice. *See* Krim v. BancTexas Group, Inc., 989 F.2d 1435, 1442 (5th Cir. 1993); Thomas v. Price, 975 F.2d 231, 235 (5th Cir. 1992). The nonmovant "must adduce admissible evidence which creates a fact issue concerning the existence of every essential component of that party's case." Krim, 989 F.2d at 1442.

In considering a motion for summary judgment, the district court must view the evidence through the prism of the substantive

evidentiary burden. Anderson, 106 S. Ct. at 2513-14. All justifiable inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 106 S. Ct. 1348, 1356 (1986). "If the record, viewed in this light, could not lead a rational trier of fact to find" for the nonmovant, summary judgment is proper. Kelley v. Price-Macemon, Inc., 992 F.2d 1408, 1413 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 688 (1994) (citing Matsushita, 106 S. Ct. at 1351). On the other hand, if "the factfinder could reasonably find in [the nonmovant's] favor, then summary judgment is improper." Id. (citing Anderson, 106 S. Ct. at 2511).

Finally, even if the standards of Rule 56 are met, a court has discretion to deny a motion for summary judgment if it believes that "the better course would be to proceed to a full trial." Anderson, 106 S. Ct. at 2513. *Accord* Veillon v. Exploration Services, Inc., 876 F.2d 1197, 1200 (5th Cir. 1989); 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2728 (1983).

III. Analysis

A. *Administrative Prerequisites and "The Single Filing Rule."*

In order to pursue a Title VII claim of discrimination, a plaintiff must file a charge of discrimination with the EEOC within 300 days after the alleged unlawful employment practice occurred. *See* 42 U.S.C. § 2000e-5(e). The purpose of the Title VII filing

requirement is to give notice of potential Title VII liability to an alleged wrongdoer and to allow the EEOC to attempt to conciliate with the wrongdoer rather than go to court. Foster v. Gueory, 655 F.2d 1319, 1323 (D.C. Cir. 1981). Many courts, however, have recognized an exception to the EEOC filing requirement known as the "single filing rule."[2] The Fifth Circuit has stated that "in a multiple-plaintiff, non-class action suit, if one plaintiff has filed a timely EEOC complaint as to that plaintiff's individual claim, then co-plaintiffs with individual claims arising out of similar discriminatory treatment in the same time frame need not have satisfied the filing requirement." Allen v. United States Steel Corp., 665 F.2d 689, 695 (5th Cir. 1982) (citing Crawford v. United States Steep Corp., 660 F.2d 663, 665-66 (5th Cir. 1981)). The "single filing rule" has also been applied in employment discrimination cases brought by the EEOC. *See, e.g.*, Equal Employment Opportunity Comm'n v. Wilson Metal Casket, 24 F.3d 836, 840 (6th Cir. 1994). The rationale behind the "single filing rule" is the belief that it would be wasteful for numerous employees with the same grievances to file identical complaints with the EEOC.

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[2] *See*, e.g., Allen v. United States Steel Corp., 665 F.2d 689, 695 (5th Cir. 1982); Equal Employment Opportunity Comm'n v. Wilson Metal Casket Co., 24 F.3d 836, 840 (6th Cir. 1994); Snell v. Suffolk County, 782 F.2d 1094, 1100 (2d Cir. 1986); Ezell v. Mobile Housing Bd., 709 F.2d 1376, 1381 (11th Cir. 1983); Allen v. Amalgamated Transit Union Local 788, 554 F.2d 876, 883 (8th Cir.), *cert. denied*, 98 S. Ct. 266 (1977); Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 472 (D.C. Cir. 1976), *cert. denied*, 98 S. Ct. 1281 (1978); Henderson v. AT & T Corp., 933 F. Supp. 1326, 1332 n.5 (S.D. Tex. 1996); Equal Employment Opportunity Comm'n v. United Ins. Co. of Amer., 666 F. Supp. 915, 917 (S.D. Miss. 1986).

See Wheeler v. American Home Prods., Corp., 582 F.2d 891, 897 (5th Cir. 1977).

The "single filing rule," however, cannot revive claims that are no longer viable when the relevant filing is made. Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 472 (D.C. Cir. 1976), *cert. denied*, 98 S. Ct. 1281 (1978); *see also* Henderson v. AT & T Corp., 933 F. Supp. 1326 1332 n.5 (S.D. Tex. 1996); Equal Employment Opportunity Comm'n v. United Ins. Co. of Amer., 666 F. Supp. 915, 917 (S.D. Miss. 1986). Thus, in the Title VII context, a non-filing party must have suffered a similar adverse employment action within 300 days of the date the filing party submitted a charge of discrimination with the EEOC.[3]

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[3] *See, e.g.*, Laffey, 567 F.2d at 472 (in a Title VII class action, timely filing cannot revive stale claims under guise of single filing rule); Gitlitz v. Compagnie Nationale Air France, 129 F.3d 554, 557 (11th Cir. 1997) ("It is clear that a plaintiff who has not filed an EEOC charge may 'piggyback' on the timely filing of an EEOC charge by another plaintiff who faced similar discriminatory treatment in the same time frame."); Wilson Metal, 24 F.3d at 840 (applying "same time frame" requirement); Williams v. Owens-Illinois, Inc., 665 F.2d 918, 924-25 (9th Cir.) (applicable period of limitations for class members should have been calculated by subtracting 300 days from the date of initial charge filed with the EEOC), *cert. denied*, 103 S. Ct. 302 (1982); *see also* Henderson, 933 F. Supp. at 1332 n.5 (non-filing plaintiff's claims were time-barred as filing plaintiff's EEOC charge was filed well more than 300 days after non-filing plaintiff learned she was being replaced by a younger man); Lange v. Cigna Individual Fin. Servs. Co., 766 F. Supp. 1001, 1002-03 (D. Kan. 1991) (single filing rule may be applied only to "non-complying plaintiffs who could have filed EEOC charges at the time the complying plaintiff filed his or her EEOC charge"); *cf.* Payne v. Travenol Lab., Inc., 673 F.2d 798, 813-14 (5th Cir.) ("The opening date for membership in a class for a Title VII claim should be set by reference to the earliest charge filed by named plaintiff."), *cert. denied*, 103 S. Ct. 451, *and cert denied*, 103 S. Ct. 452 (1982).

In this case, only one of the three individual claimants -- Antoinette Shaw -- timely filed an administrative charge of discrimination with the EEOC. Shaw's charge was filed on September 14, 1993. Accordingly, the EEOC may rely on Shaw's filing to support its claims for damages on behalf of Latrice Smith and Brigetti Graves only if it can demonstrate that these individuals experienced a similar act of discrimination within 300 days of September 14, 1993. The parties agree that the 300 days began on November 18, 1992.

1. Latrice Smith

Smith worked for Matthews Daycare until April or May, 1992 when she was placed on unpaid leave of absence after informing her employer that she was pregnant. Smith did not seek re-employment after being placed on maternity leave, nor did she seek re-employment with Defendant after her child was born. (Document No. 26, Smith EEOC Affidavit, Exhibit 3; Smith Deposition, Exhibit 1, at 28). Accordingly, Smith's termination in April/May 1992, is the relevant date for assessing the timeliness of the EEOC's claim for damages on her behalf. The EEOC argues that even though Smith was laid off outside of the 300-day window established by Shaw's filing, its claims on her behalf are nevertheless actionable because "the discrimination against [Smith] was part of Defendant's ongoing pattern and practice of placing pregnant females on involuntary leave of absence ... [which] began at least in May 1992." (Document No. 27, Response, at 26). Accordingly, the EEOC

contends that Smith's claims fall within the now well-established continuing violation exception to the 300-day filing requirement.

A continuing violation theory of discrimination is based on an "unlawful employment practice that manifests itself over time, rather than as a series of discrete acts." Ross v. Runyon, 858 F. Supp. 630, 637 (S.D. Tex. 1994). The continuing violation theory, if accepted by the court, operates to relieve a plaintiff from "the burden of proving that the entire violation occurred within the actionable period." Berry v. Board of Supervisors of L.S.U., 715 F.2d 971, 979 (5th Cir. 1983). A continuing violation theory, however, may not be used to "'resurrect claims about discrimination concluded in the past, even though its effects still persist.'" Id. (quoting McKenzie v. Sawyer, 684 F.2d 62, 72 (D.C. Cir. 1982)).

To establish a continuing discrimination violation, a plaintiff must allege and prove that the discrimination was part of an illegal employment practice that was continuously maintained, and that the illegal employment practice was applied within 300 days of the filing of a charge of discrimination with the EEOC. *See* Gonzalez v. Firestone Tire & Rubber Co., 610 F.2d 241, 249 (5th Cir. 1980). Three factors are weighed in determining whether a plaintiff has pled a valid continuing violation:

> The first is subject matter. Do the alleged acts involve the same type of discrimination, tending to connect them in a continuing violation? The second is frequency. Are the alleged acts recurring (e.g., a biweekly paycheck) or more in the nature of an isolated work assignment or employment decision? The third factor, perhaps the most important, is degree of permanence. Does the act have the degree of permanence which should trigger an employee's awareness of and duty to assert his or her

> rights, or which should indicate to the employee that the continued existence of the adverse consequences of the act is to be expected without being dependent on a continuing intent to discriminate?

Berry, 715 F.2d at 981. Subsequent decisions that have applied these factors have confirmed that the third factor, the degree of permanence, is indeed the most significant factor in determining whether a plaintiff has alleged a valid continuing violation. *See* Alldread v. City of Grenada, 988 F.2d 1425, 1432 (5th Cir. 1993).

Applying the three Berry factors to the uncontroverted summary judgment evidence, the Court concludes that Smith's stale discrimination claim cannot be resurrected under the continuing violation theory. Particularly in this case where the EEOC is relying on direct evidence of discrimination, the final factor -- the degree of permanence -- precludes application of the continuing violation doctrine. Indeed, Smith states in her affidavit that when she was first informed that she was being put on a leave of absence, Mr. Matthews, the owner of Matthews Daycare, expressly told her that "he had to let [her] go, put [her] on leave until [her] pregnancy was over" because "he didn't have any insurance or that his insurance wouldn't cover [her] because of [her] pregnancy." (Document No. 27, Smith Affidavit, Exhibit D). This direct evidence was plainly sufficient to put Smith on notice that her rights had been violated and that a potential discrimination claim had accrued.

Even if it is ultimately proved that Defendant maintained a pattern and practice of unlawful discrimination, the alleged

discrimination against Smith concluded when she was laid off in April/May 1992. The EEOC has presented no authority in which a court has applied a continuing violation to resurrect a former employee's untimely claim of unlawful *layoff or discharge*. To the contrary, several courts have expressly held that "continuing violations based on a system of discrimination do not permit challenges to presently maintained employment practices by employees who left a defendant's employ prior to commencement of the charge filing period." *See* United Insurance, 666 F. Supp. at 918 (citing Olson v. Rembrandt Printing Co., 511 F.2d 1228, 1234 (8th Cir. 1975)); *see also* Laffey, 567 F.2d at 473 (refusing to apply continuing violation theory to claims of plaintiffs who had left company's employ more than 90 days prior to the class filing with the EEOC).[4] Ordinarily, "a severing of the employment relationship terminates a discrimination against the severed employee, and activates the time period for filing charges with the Commission, concerning any violation which occurred at separation

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[4] *See generally* Trevino v. Celanese Corp., 701 F.2d 397, 402 (5th Cir. 1983) (distinguishing failure to hire claims from failure to promote claims for purposes of continuing violation); Dumas v. Town of Mount Vernon, Ala., 612 F.2d 974, 977 (5th Cir. 1980) (stating that refusal to hire, like termination, has usually been viewed as a discrete event); Clark v. Olinkraft, Inc., 556 F.2d 1219, 1222 (5th Cir. 1977) (distinguishing plaintiff's systemic failure to promote claims from cases holding that failure to hire does not constitute a continuing violation), *cert. denied*, 98 S. Ct. 1251 (1978); *see also see also* Equal Employment Opportunity Comm'n v. Cushman & Wakefield, Inc., 643 F. Supp. 209, 214 (S.D.N.Y. 1986) (noting that "[a]cts concerning hiring and termination do not constitute continuing violations, while policies concerning promotion and pay generally qualify to toll the statutory period") (citations omitted).

or which may have been continuing up to the date thereof." Laffey, 567 F.2d at 473; *see also* Berry, 715 F.2d at 979 ("[A] plaintiff ... may not employ the continuing violation theory to resurrect claims about discrimination concluded in the past ...."). The mere allegation of an illegal pattern or practice of discrimination cannot transform what is otherwise a discrete employment action into a continuing violation. In this case, once Smith was laid off, her employment relationship with Defendant was terminated. Smith was obligated to seek relief from the allegedly unlawful layoff within the statutory 300 day period. Accordingly, Defendant is entitled to summary judgment on the EEOC's allegations stemming from Smith's layoff in April/May 1992.

2. Brigetti Graves

Graves estimates that she was placed on an unpaid leave of absence in October 1992, also prior to the November 18, 1992 cutoff established by Shaw's filing. (Document No. 27, Graves Deposition, at 16). Unlike Smith, however, Graves attempted to return to her job at Matthews Daycare beginning in February 1993 after the birth of her child. Initially, Matthews refused to rehire Graves, allegedly because her six-week old baby was too young for Graves to bring her to the daycare facility while Graves worked there.

The EEOC argues that Graves experienced a series of discriminatory acts both before and after the November 18, 1992 accrual date, which make it appropriate to apply the continuing violation doctrine. The EEOC contends that Defendant's initial

refusal to allow Graves to return to work in February 1993 was discriminatory. According to the EEOC, this initial refusal to rehire Graves constitutes a present violation of a continuing illegal employment practice sufficient to excuse it from proving that Graves's layoff occurred within the actionable period.

The Fifth Circuit has recognized an equitable "continuing violation" exception to the Title VII limitations period where the original violation occurs outside the statute of limitations, but is closely related to other violations that are not time-barred and are considered part of one, continuing violation. Hendrix v. City of Yazoo City, Miss., 911 F.2d 1102, 1103 (5th Cir. 1990). A plaintiff, however, must show more than a series of discriminatory acts. He must show an organized scheme leading to and including a present violation, *see* Berry, 715 F.2d at 981, which is the cumulative effect of the discriminatory practice, rather than any discrete occurrence, that gives rise to the cause of action. *See* Messer v. Meno, 130 F.3d 130, 135 (5th Cir. 1997); Glass v. Petro-Tex Chemical Corp., 757 F.2d 1554, 1561 (5th Cir. 1995).

In the instant matter, the continuing violation is inapplicable on the undisputed facts of this case because there is no proof of a violation of Title VII occurring within the relevant limitations period. The only purported violation alleged is Defendant's refusal to re-hire Graves in February 1993 because her six-week old child was too young to enter the daycare center. Although the EEOC claims that this conduct was in and of itself discriminatory, it has offered no evidence linking Matthews's

reason for refusing to rehire Graves to Grave's earlier pregnancy. Indeed, the EEOC has cited no authority for the proposition that actions taken with respect to a newborn child equate to actions "because of or on the basis of" pregnancy.[5] Moreover, it appears that the courts which have addressed this issue have generally concluded that child rearing concerns arising after pregnancy are not medical conditions that relate to pregnancy or childbirth within the meaning of the PDA. *See, e.g.*, Piantanida v. Wyman Center, Inc., 116 F.3d 340, 342 (8th Cir. 1997) (claim of discrimination based on status as a new parent was not cognizable under the PDA); Piraino v. International Orientation Resources, Inc., 84 F.3d 270, 274 (7th Cir. 1996) (holding that plaintiff had successfully alleged pregnancy discrimination and stating that "[t]his is therefore *not* a case in which the claim relates *only* to an employer's refusal to hire (or reinstate) a mother with a young child, without a hint of any role that the earlier pregnancy played in the decision) (emphasis added); Fleming v. Ayers & Assoc., 948 F.2d 993, 996 (6th Cir. 1991) (employer's refusal to reinstate

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[5] Title VII "prohibits various forms of employment discrimination, including discrimination on the basis of sex." The Pregnancy Discrimination Act amended the definitional section of Title VII, 42 U.S.C. § 2000e(k), as follows:

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as persons not so affected but similar in their ability or inability to work....

employee to avoid high future medical costs of employee's newborn child did not constitute pregnancy discrimination). Similarly, the EEOC has offered no evidence from which a rationale juror could conclude that Defendant's refusal to hire Graves because of the age of her child has any linkage whatsoever to Grave's gender. *See* Fleming, 948 F.2d at 997 (concluding that medical expenses of newborn child are not gender specific). In sum, the EEOC has produced no evidence of *any* independent actionable conduct directed toward Graves occurring within the limitations period. Accordingly, Defendant's refusal immediately to reinstate Graves cannot convert the initial layoff into a continuing violation. *See* Huckabay v. Moore, 1998 WL 260979, at *36 (5th Cir. May 22, 1998) ("[T]he mere perpetuation of the effects of time-barred discrimination does not constitute a violation of Title VII in the absence of independent actionable conduct occurring within the statutory period."). [6]

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[6] *See generally* Equal Employment Opportunity Comm'n v. City of Norfolk Police Dept., 45 F.3d 80, 84 (4th Cir. 1995) (reasoning that refusal to reinstate was actionable if it constitutes a "new" act of discrimination); Burnam v. Amoco Container Co., 755 F.2d 893, 894 (11th Cir. 1985) ("failure to rehire subsequent to an allegedly discriminatory firing ... cannot resurrect the old discriminatory act" but there can be a "new and discrete act of discrimination in the refusal to rehire itself"); Allen v. Diebold, Inc., 807 F. Supp. 1308, 1322 (N.D. Ohio 1992) (concluding that "no termination complaint could ever be time-barred if a subsequent discriminatory failure to rehire is alleged), *aff'd*, 33 F.3d 674 (6th Cir. 1994); Clark v. Emerson Electric Mfg. Co., 430 F. Supp. 216, 218 (N.D. Miss. 1977) (stating that "[e]ven where a discharged employee reapplies for employment after his initial discharge, such reapplication is insufficient to convert the initial discharge into a continuing violation).

But even assuming the refusal to re-hire did constitute a present violation, the EEOC has not demonstrated with competent summary judgment evidence its entitlement to rely upon a continuing violation theory to revive the discriminatory layoff claim under the analysis set forth in Berry. First, the initial layoff and the subsequent refusal to re-hire are markedly distinct. Second, with respect to the frequency factor, there is no evidence that the alleged discriminatory acts taken against Graves were either persistent, continuing, or recurring. Indeed, Graves returned to her former position at Matthews Daycare in April 1993 when her baby was old enough to enter the daycare facility. Lastly, as to the final, and most important factor, the degree of permanence, Graves's deposition demonstrates that although she did not have direct evidence of a discriminatory motive until February 1993, Graves knew as early as October 1992 that Defendant was placing her on a leave of absence because he felt that she might get hurt lifting the children and that the daycare facility did not have worker's compensation insurance to cover that type of injury. (Document No. 27, Graves Deposition, at 33).

The EEOC argues that this was not enough information to put Graves on notice of a potential claim; rather, the EEOC maintains that because Matthews did not inform Graves until sometime in February, 1993, that his initial decision to lay her off was because of his concerns about employing pregnant females, that is the relevant date for assessing the state of Graves's knowledge. The caselaw makes clear, however, that the time of accrual of a

claim under Title VII commences "when the plaintiff knows or reasonably should know that the discriminatory act has occurred." Delaware State College v. Ricks, 101 S. Ct. 498, 513 (1980). In Merrill v. Southern Methodist Univ., 806 F.2d 600, 605 (5th Cir. 1986), the Fifth Circuit expressly rejected the argument that in determining whether a particular claim is time-barred, the proper inquiry should be the date the victim first perceives that a discriminatory motive caused the act. Instead, the Court held, in most cases the accrual date should be the actual date of the discriminatory act. The EEOC's suggestion that Graves's cause of action should be deemed timely because she did not appreciate the discriminatory nature of her layoff until February 1993 then is without merit.[7] *See* Pacheco v. Rice, 966 F.2d 904, 906 (5th Cir. 1992) (citing cases). In sum, after considering Graves's testimony regarding Matthews's statements in October 1992 and in view of the permanent nature of her layoff, the degree of permanence factor militates against applying the doctrine of continuing violation. Graves's layoff in October 1992 was both a significant and discrete event, sufficient in and of itself to trigger the limitations period. Because Graves's cause of action accrued in October 1992, more than 300 days before Shaw filed a charge of discrimination, the EEOC's claim for damages on Graves's behalf are barred as a matter of law.

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[7] Indeed, the EEOC does not even offer an explanation why Graves did not file a complaint in February 1993 when she allegedly was first provided with direct knowledge of Defendant's discriminatory motivation for laying her off in October 1992.

B. *Antoinette Shaw's Claims*

There is no dispute that Shaw timely filed a charge of discrimination with the EEOC. Defendant, however, has failed to demonstrate that it is entitled to summary judgment on the claims asserted on behalf of Shaw. Accordingly, Defendant's Motion for Summary Judgment is DENIED on this claim.

IV. Order

For the foregoing reasons it is

ORDERED that Defendant's Motion for Summary Judgment (Document No. 25) is GRANTED as to Plaintiff's claims for damages filed on behalf of Latrice Smith and Brigetti Graves. Defendant's Motion for Summary Judgment is otherwise DENIED.

The Clerk will enter this Order and send copies to all counsel of record.

SIGNED at Houston, Texas this 9TH day of June, 1998.

EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE