

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MARINA T. EISENBERG,

Plaintiff,

v.

D.C. BILINGUAL PUBLIC CHARTER SCHOOL,

Defendant.

2024 CAB 4299

Judge Carl E. Ross

Next Event: September 16, 2025

Remote Mediation Session

ORDER

Pending before this Court is Defendant’s Motion for Summary Judgment. The Court has considered the pleadings, the relevant law, and the entire record. For the following reasons, this Court hereby denies Defendant’s Motion.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2019, D.C. Bilingual Public Charter School (“DCB”) hired Plaintiff as its Director of Compliance and Operations. Pl. Statement of Material Facts in Dispute (“SUMF”) ¶ 9. On March 11, 2020, Mayor Muriel Bowser declared a Public Health Emergency due to the COVID-19 pandemic after which, the DCB staff began working remotely. *Id.* ¶ 24. Prior March 11, 2020, the Operations team had flexibility to work remotely on some occasions. *Id.* ¶ 28. The parties dispute the level of remote flexibility that Plaintiff had before March 2020, but agree that after March 2020, DCB allowed staff to work entirely remotely. *Id.* ¶¶ 9, 13, 25. On July 27, 2020, Plaintiff took leave for the birth of her second child. *Id.* ¶ 32. Before and during Plaintiff’s leave, Ms. Anello expressed distress about Plaintiff’s DCFMLA. *See, e.g.*, Ex. 8 (“[I]t reminds me of the time you told them you were expecting a baby, because they also panicked after that meeting.”); Ex. 9 ¶ 7 (“While [Plaintiff] was on leave, Ms. Anello made comments that expressed her

frustration that [Plaintiff] was out, the length of time she was out (sixteen weeks), and that other employees were going to have to ‘pick up the slack’ while she was not there.”).

On October 21, 2021, a Public Chart School Board (“PCSB”) consultant, Sharon Bostic (“Bostic”) conducted a site visit of DCB. Pl. SUMF ¶ 64. On October 28, 2020, Ms. Anello informed Plaintiff that DCB’s new policy categorized her position as “Essential 1” meaning that she would need to be present on site during operating hours and available on call at all other times. *Id.* ¶ 40. Defendant told Plaintiff that this new policy was required by the PCSB consultant’s audit of DCB. *Id.* Following the site visit, PCSB did not recommend or require the Director of Compliance and Operations role to be on-site. *Id.* ¶ 70.

Plaintiff alleges that she made unsuccessful efforts to work with Defendant to maintain her Director of Compliance and Operations role without working on-site full time. *Id.* ¶¶ 40-59 On November 12, 2020, Defendant offered to employ Plaintiff in the Compliance Manager role, a part-time position that did not offer benefits. *Id.* ¶ 54, 58. Plaintiff ultimately decided to take the Compliance Manager role and worked at DCB in that role until April 9, 2021. *Id.* ¶¶ 56, 64.

Plaintiff filed her Complaint on July 9, 2024, alleging fraudulent misrepresentation, negligent misrepresentation, retaliation in violation of the DCFMLA, and interference in violation of the DCFMLA. The Court denied Defendant’s Motion to Dismiss on November 7, 2024.

Defendant filed the instant Motion for Summary Judgment on July 18, 2025, seeking summary judgment on all of Plaintiff’s claims. Plaintiff filed an Opposition on August 8, 2025. Defendant filed a Reply in support of its Motion on August 15, 2025.

LEGAL STANDARD

“Summary judgment is a remedy that entitles the moving party to judgment as a matter of law when no genuine issue of material fact is present at the time the motion is made.” *Sturdivant*

v. Seaboard Serv. Sys., Ltd., 459 A.2d 1058, 1059 (D.C. 1983); accord D.C. Super. Ct. R. Civ. P. 56(a)(1). A material fact is “one which, under the applicable substantive law, is relevant and may affect the outcome of the case.” *Rajabi v. Potomac Elec. Power Co.*, 650 A.2d 1319, 1321 (D.C. 1994). “Any doubt as to whether or not an issue of fact has been raised is sufficient to preclude a grant of summary judgment.” *McCoy v. Quadrangle Dev. Corp.*, 470 A.2d 1256, 1259 (D.C. 1983).

The moving party carries the burden of demonstrating “the absence of any factual issue.” *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979). “In meeting their burden to show that there is no genuine dispute to any material fact, the movant must provide ‘evidence from which, were it accepted as true, a trier of fact might find for the movant.’” *District of Columbia v. Delwin Realty, LLC*, No. 2020 CA 003611 B 2022 D.C. Super. LEXIS 44 *11-12 (D.C. Super. May 31, 2022) (quoting *Allen v. District of Columbia*, 100 A.3d 63, 67 (D.C. 2014)). After the moving party meets its initial burden, “the burden shifts to the non-moving party to show the existence of an issue of material fact.” *Landow v. Georgetown-Inland West Corp.*, 454 A.2d 310, 313 (D.C. 1982). The non-moving party must establish more than a speculative doubt and proffer “some significant probative evidence” beyond mere conclusory allegations. *Brown v. 1301 K St. Ltd. P’ship*, 31 A.3d 902, 908 (D.C. 2011); see also *Gilbert v. Miodovnik*, 990 A.2d 983, 988 (D.C. 2010). “There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Barrett v. Covington & Burling LLP*, 979 A.2d 1239, 1245 (D.C. 2009) (internal citation omitted).

In ruling on a motion for summary judgment, the Court reviews the record in the light most favorable to the non-moving party, “drawing all reasonable inferences from the evidence in the

non-moving party's favor." *Medhin v. Hailu*, 26 A.3d 307, 310 (D.C. 2011) (citing *Gilbert v. Miodovnik*, 990 A.2d 983, 987 (D.C. 2010)). However, where one party's version of the facts "is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). The Court reviews "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to determine whether there is a genuine issue as to any material fact," *District of Columbia v. Gray*, 452 A.2d 962, 964 (D.C. 1982) (internal citations omitted), but may not weigh evidence or resolve factual issues. *See Barrett*, 979 A.2d at 1244.

ANALYSIS

I. **Plaintiff's Fraud and Negligence Claims are not time-barred.**

Regardless of whether Plaintiff's fraudulent and negligent misrepresentation claims are subject to a one-year or three-year statute of limitations period, those claims, in the instant case, are not time-barred. Even if Defendant is correct that the fraudulent and negligent misrepresentation claims are subject to the DCFMLA statute of limitations, they would still be timely. The DCFMLA provides that "[n]o civil action may be commenced more than 1 year after the occurrence or discovery of the alleged violation of this chapter; *except, that this limitations period shall toll while a claim is pending administrative review.*" D.C. Code § 32-510(b) (emphasis added). On December 10, 2020, Plaintiff received the site survey and feedback report relevant to the fraudulent and negligent misrepresentation claims. *See* Pl. SUMF ¶ 72. The parties dispute whether Plaintiff should have recognized immediately upon receiving the report that it was false. *See* Mot. at 5; Opp'n. at 7. However, even if Plaintiff's receipt of the report did start the statute of limitations clock, her Complaint was still timely filed. Plaintiff filed a complaint of discrimination

with the D.C. Office of Human Rights on April 13, 2021. *See* Pl. SUMF ¶ 73. This tolled the statute of limitations from that date until OHR dismissed Plaintiff’s complaint with prejudice on March 15, 2024. *See* § 32-510(b); Compl. ¶ 7. Plaintiff filed her Complaint in D.C. Superior Court on July 9, 2024. *See* Compl. Therefore, Plaintiff took 240 days, or approximately eight months of untolled time to file her Complaint after December 10, 2020. While the Court takes no position on whether the one-year or three-year statute of limitations applies to the instant case, Plaintiff’s complaint falls within the one-year statute of limitations period that Defendant urges the Court to adopt. Accordingly, Plaintiffs fraudulent and negligence misrepresentation claims are timely.

II. Material factual disputes persist regarding Plaintiff’s fraudulent misrepresentation claim.

Record evidence demonstrates that material factual issues persist with respect to Plaintiff’s fraudulent misrepresentation claim. Fraudulent misrepresentation in the District of Columbia requires “(1) a false representation (2) made in reference to a material fact, (3) with knowledge of its falsity, (4) with the intent to deceive, and (5) an action that is taken in reliance upon the misrepresentation.” *In re Estate of McKenney*, 953 A.2d 336, 342 (D.C. 2008). “A false representation may be either an affirmative misrepresentation or a failure to disclose a material fact when a duty to disclose that fact has arisen.” *Sundberg v. TTR Realty*, 109 A.3d 1123, 1131 (D.C. 2015). A fact is material when it would be “likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.” *Id.*

Defendant first argues that no record evidence permits the Court to infer that Ms. Anello made false representations regarding the PCSB report with the intent to deceive Plaintiff. However, summary judgment “should be granted sparingly in cases involving motive or intent.” *See Spellman v. American Sec. Bank, N.A.*, 504 A.2d 1119, 1122 (D.C. 1986). Ms. Anello testified during her deposition that Ms. Bostic did not tell her that DCB needed to always have someone on

site while the school building was in operation. *See* Pl. Ex. 2, at 48:5-17. Yet, record evidence demonstrates that Ms. Anello told Plaintiff that upon her return from DCFMLA leave, she would need to be on site during operational hours and on call all other times. Pl. Ex. 6, at 138:8-139:12. Record evidence also reveals that Ms. Anello expressed distress about Plaintiff's DCFMLA leave prior to and during the leave. *See, e.g.*, Ex. 8 (“[I]t reminds me of the time you told them you were expecting a baby, because they also panicked after that meeting.”); Ex. 9 ¶ 7 (“While [Plaintiff] was on leave, Ms. Anello made comments that expressed her frustration that [Plaintiff] was out, the length of time she was out (sixteen weeks), and that other employees were going to have to ‘pick up the slack’ while she was not there.”). Based on this record evidence, the Court finds that a reasonable jury could find that Ms. Anello acted with the intent to deceive Plaintiff.

Defendant also argues that record evidence does not establish that Plaintiff reasonably relied on Ms. Anello's representation about the PCSB report. Specifically, Defendant argues that because Plaintiff previously expressed her unwillingness to work on site and reached out to other public charter schools to inquire about their remote work policies, the record demonstrates that her decision to return to the Compliance Manger role was a product of independent judgment rather than reliance on Ms. Anello's statement. Mot. at 7. Plaintiff disputes that she expressed unwillingness to work on site and notes that her research about other charter schools' reopening policies did not relate to the PCSB report. Opp'n at 11. Plaintiff also points to record evidence showing that it was reasonable for her to rely on PCSB's authority as the entity that oversees charter school compliance in D.C. *See* Pl. Ex. 6, at 70:4-72:20. Ultimately, whether Plaintiff reasonably relied on Ms. Anello's statement when deciding whether to return to the Director of Operations and Compliance position is a question for the fact finder because there exists a factual

dispute in the record. Accordingly, the Court denies Defendant's Motion with respect to Plaintiff's fraudulent inducement claim.

III. Material factual issues persist regarding Plaintiff's negligent misrepresentation claim.

Record evidence reveals that material factual disputes persist with respect to Plaintiff's negligent misrepresentation claim. "[A] plaintiff alleging negligent misrepresentations or omissions must show (1) that [the defendant] made a false statement or omitted a fact that he had a duty to disclose; (2) that it involved a material issue; and (3) that [the plaintiff] reasonably relied upon the false statement or omission to his detriment." *Sundberg*, 109 A.3d at 1131 (quoting *Redmond v. State Farm Ins. Co.*, 728 A.2d 1202, 1207 (D.C. 1999)). In the negligent misrepresentation context, a false representation can be either an affirmative misrepresentation or a failure to disclose a material fact. *Sundberg*, 109 A.3d at 1131. Only the later requires a duty to disclose. *Id.*

Defendant first argues that record evidence does not demonstrate that Plaintiff could have reasonably relied on Ms. Anello's statement because Plaintiff knew that PCSB did not have ultimate decision-making authority about the operation of public charter schools. Mot. at 8-9. However, Morgan Carey, Defendant's corporate designee, testified during her deposition that PCSB "put parameters into place of when we could and couldn't come into the building. We looked to them for guidance for those kind of things." Pl. Ex. 1, at 41:21. The record is not clear as to whether Defendant had sole authority to mandate where employees work, and it is less clear about Plaintiff's understanding about the legal contours of PCSB's authority over Defendant. There is sufficient record evidence for a jury to find that Plaintiff reasonably believed that DCSB's report tied Defendant's hands with respect to personnel being on site. *See* Pl. Ex. 6, at 71:10-72:11.

Defendant next argues that because it presented Plaintiff with options for her return from DCFMLA leave, her choice, rather than Defendant's actions, proximately caused her injuries. However, this argument misconstrues Plaintiff's central claim. Plaintiff argues that but for Defendant's actions, she never would have been in a position to make a choice she did not want to make and that this position itself was injurious. *See generally* Compl; Opp'n. Moreover, "[o]nly in exceptional cases will questions of . . . proximate cause pass from the realm of fact to one of law." *District of Columbia v. Carlson*, 793 A.2d 1285, 1288 (D.C. 2002). The Court, therefore, denies Defendant's Motion for Summary Judgment as to Plaintiff's negligent misrepresentation claim.

IV. Material factual disputes persist regarding Plaintiff's retaliation claim.

Record evidence demonstrates that material factual disputes persist with respect to Plaintiff's retaliation claim. To prove a DCFMLA retaliation claim, a plaintiff must demonstrate that "(1) she was engaged in a protected activity; (2) her employer took an adverse employment action; and (3) there was a causal connection between the two." *Chang v. Inst. For Public-Private P'ships, Inc.*, 846 A.2d 218, 329 (D.C. 2004); D.C. Code §§ 32-507(b)(1) (outlawing retaliation against an employee who "[o]pposes any practice made unlawful by this chapter"). The DCFMLA provides that an employee "shall be [r]estored to a position of employment equivalent to the position held by the employee when the family or medical leave commenced that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment." § 32-505(d)(2). Taking DCFMLA leave is a protected activity. *See Chang*, 846 A.2d at 329. An adverse action occurs when "a reasonable employee would have found the challenged action materially adverse." *Propp v. Counterpart Int'l*, 39 A.3d 856, 863-64 (D.C. 2012).

The District of Columbia Court of Appeals has adopted the *McDonnell Douglas* burden shifting framework to analyze DCFMLA retaliation claims. *See Teru Chang v. Institute for Public-Private P'ships, Inc.*, 846 A.2d 318, 329 (D.C. 2004). Under this framework:

[A] plaintiff bears the initial burden of producing evidence to sustain a prima facie case. If the plaintiff meets this burden, the employer must then produce evidence of a legitimate, nondiscriminatory reason for his action. If the employer offers a legitimate, nonretaliatory reason, the burden then shifts back to the plaintiff to present evidence that the employer's proffered reason is pretextual.

See id. However, where, as here, a defendant alleges non-retaliatory reasons for its conduct, the Court "need not pause to analyze whether [plaintiff] made out a prima facie case of retaliation," but instead may turn to the ultimate question of retaliatory intent. *See Furline v. Morrison*, 953 A.2d 344, 353 (D.C. 2008).

Defendant argues first that record evidence does not support that Plaintiff experienced an adverse employment action. However, record evidence demonstrates that after Plaintiff's DCFMLA leave, Defendant told her that its new policy categorized her position as "Essential 1," meaning that she would need to be present on site during operating hours and available on call at all other times. *See* Pl. Ex. 2, at 48:5-17. The record also establishes that these requirements were not in place prior to Plaintiff taking DCFMLA leave. *See* Pl. SUMF ¶ 9. A reasonable juror could find on this factual record that this change in Plaintiff's employment conditions was materially adverse.

Defendant next argues that it categorized Plaintiff's position as "Essential 1" for the nonretaliatory purposes of operational necessity and public health guidance. Specifically, Defendant asserts that Ms. Anello believed that DCB would need someone in the building at all operational times to ensure compliance with public health requirements. *See* Def. ¶ SUMF 71. However, Defendant never states what guidelines it is referring to or what they required.

Moreover, evidence in the record about Ms. Anello's statements regarding Plaintiff's DCFMLA leave support the argument that Defendant's actions were retaliatory. The factual record is mixed as to whether there was a causal connection between Plaintiff's DCFMLA leave and the change in her position. It is, therefore, a question for the factfinder, and the Court denies Defendant's Motion with respect to Plaintiff's retaliation claim.

V. Material factual disputes persist regarding Plaintiff's interference claim.

The factual record contains sufficient evidence supporting Plaintiff's interference for the claim to survive summary judgment. The DCFMLA prohibits employers from "interfer[ing] with, restrain[ing], or deny[ing] the exercise of or the attempt to exercise" any right created by the statute. D.C. Code § 32-507 (a). Under the statute, employees have the right to "be [r]estored to a position of employment equivalent to the position held by the employee when the family or medical leave commenced that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment." § 32-505(d)(2).

A jury could find on the present factual record that Defendant did not restore Plaintiff to an equivalent position she held before she took DCFMLA leave. Record evidence supports that Plaintiff worked both on site and off site prior to her leave and prior to the COVID-19 pandemic. *See* Pl. SUMF ¶ 9. It also shows that after her leave, her position changed to being entirely on site for all hours that the building was open, which could be from 6:00 AM until 11:00 PM. *Id.* Finally, the record shows that the alternative choice Defendant presented Plaintiff with would come with reduced pay, benefits, and job duties. *Id.* ¶ 58. Because the record contains a factual dispute regarding whether Defendant restored Plaintiff to an equivalent position after she took DCFMLA leave, the Court denies Defendant's Motion for Summary Judgment with respect to Plaintiff's interference claim.

ACCORDINGLY, it is by the Court this 22nd day of August 2025, hereby
ORDERED that Defendant's Motion for Summary Judgment **DENIED**.

SO ORDERED.



Judge Carl E. Ross

Copies to Parties.