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United States District Court,
S.D. New York.

Lisa NOON, Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES, Defendant.

No. 12 Civ. 4544(CM)(FM). | Dec. 11, 2013.

Opinion

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

McMAHON, District Judge.

*1 Plaintiff Lisa Noon filed this action against Defendant International Business Machines ("IBM"), alleging employment discrimination and retaliation in violation of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101, *et seq.* Defendant moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the reasons set forth below, Defendant's motion is denied.

BACKGROUND[1]

Plaintiff Lisa Noon began working for IBM in May 2000. *See* Def. 56.1 Statement at ¶ 1. She started in a non-executive position classified at the "Band 10" level.[2] *See id.* In June 2007, Plaintiff was promoted to the Band D executive level as a Director in a software group. *See id.* at ¶ 2. In June 2008, she became a Director on the Cloud Computing team under Lauren States, the team's Vice President. *See id.* at ¶ 3. Plaintiff was based in Florida but she traveled extensively, including numerous trips overseas. *See* Pl. Dep. at 80, 87. She had eleven subordinates in three different countries. *See* Abrams Aff. Ex. 19.

Though IBM had previously sanctioned business class travel on certain flights, it changed its travel policy in October 2008. *See* Abrams Aff. Ex. 15 at 2; Bloom Aff. Exs. 7, 8. Due to cost concerns, the new company policy only allowed coach class air travel. *See id.*

During a business trip to China in October 2008, Plaintiff began experiencing pain in her arms and back. *See* Pl. Dep. at 81; Abrams Aff. Ex. 15 at 1–2. In November 2008, Plaintiff was diagnosed with degenerative stenosis of the spine, which resulted in one herniated and two bulging cervical discs and bone spurs. *See* PL Dep. at 83–84, 139–140; Shapiro Dep. at 29–31; Dagher Dep. at 26–27. Plaintiff's condition caused debilitating pain that was exacerbated when she was limited in her range of motion or required to stay in the same position for extended periods. *See* Pl. Dep. at 140–41; Dagher Dep. at 29, 70. On December 16, 2008, Plaintiff's doctor wrote a prescription recommending that she travel in roomier business class airplane seats in order to avoid aggravating her spinal condition. *See id.* at 70–71, 93–94; Abrams Aff. Ex. 8.

Plaintiff maintains that soon thereafter she communicated her doctor's recommendation to either States or Karen Coakley, the Human Resources partner for the Cloud Computing team. *See* Pl. Dep. at 152–53. Plaintiff was instructed to submit a request for an accommodation on an official IBM form called a medical treatment report ("MTR"). *See id.*

Around this time, States had a very positive opinion of Plaintiff's work performance. On January 10, 2009, States told Plaintiff: "I am grooming you to be me." *See* Abrams Aff. Ex. 5. States believed Plaintiff had the potential to rise to the Vice President level. *See* States Dep. at 41–42. At the end of January 2009, States gave Plaintiff a performance rating of "2 ..."-the second highest possible rating. *See* Def. 56.1 Statement at ¶¶ 17–18.

*2 On January 12, 2009, Plaintiff submitted an MTR to IBM requesting two accommodations for her disability: (1) a lightweight laptop and (2) business class airplane tickets on any flights over eight hours. *See id.* at ¶ 16. Plaintiff requested a lighter laptop because her doctor advised her not to lift more than 10 pounds, and her seven-pound laptop contributed to the weight of the briefcase she carried while traveling. *See* Abrams Aff. Ex. 9; Pl. Dep. at 177. Plaintiff's physician recommended business class travel so that she could mitigate the impact of travel on her body by moving around more easily on prolonged flights. *See id.* at 151–52; Abrams Aff. Ex. 9.

On January 13, 2009, Plaintiff traveled to Europe for business and visited both England and Germany. *See* Abrams Aff. Ex.

A factual dispute exists, however, over whether IBM told Plaintiff that she had no employment opportunities available after her long-term disability leave. Plaintiff asserts that States said there would not be an executive position available to Plaintiff when her health improved and that, in any event, States would not support her for such a position. *See* Abrams Aff. Ex. 15 at 12–13. Plaintiff also asserts that, through her counsel, she inquired into whether IBM had any executive positions available in June and July 2010. *See* Abrams Aff. at ¶¶ 35–36. IBM's counsel allegedly informed Plaintiff's attorney "that no executive positions were then available and that she was unable to identify any other position suitable for Ms. Noon." *Id.* at ¶ 36.[5] After this conversation, Plaintiff sought out employment elsewhere. *See* Pl. Dep. at 105.

Defendant contends that Plaintiff did not contact IBM to return to work in early 2011, and that she left the company "voluntarily." Def. Memo at 21. It also claims that States tried to assist Plaintiff in finding executive positions at IBM while Plaintiff was on long-term disability leave in 2010. *See* Abrams Aff. Ex. 34 at 4–5.

Construing the facts in the light most favorable to Plaintiff, she has offered adequate evidence that there was a "materially adverse" change in her professional opportunities at IBM while she was on long-term disability leave. States allegedly indicated that there were no executive positions available for Plaintiff, and IBM's attorney said that there were no suitable positions at all. Though Plaintiff found a position at another company prior to the end of her disability leave, a jury could reasonably find that IBM's communications with Plaintiff amounted to either an effective termination or a failure to rehire, either of which would qualify as an adverse employment action. *See Munoz–Nagel v. Guess, Inc.*, No. 12 Civ. 1312(ER), 2013 WL 1809772, at *5–6 (S.D.N.Y. Apr. 30, 2013); *Morrison*, 363 F.Supp.2d at 590.

*9 Plaintiff has met her burden of demonstrating that she suffered at least one "adverse employment action." *See Brady*, 531 F.3d at 134. This Court need not address whether any of Plaintiff's remaining allegations would constitute adverse employment actions as well.

2. Plaintiff Has Shown Evidence of Discriminatory Intent.

IBM also contends that Plaintiff has not met her burden of demonstrating that an adverse employment action was taken against her *because of* her disability-*i.e.*, with discriminatory intent. *See* Def. Memo at 22. This argument fails.

The " 'timing or sequence of events leading to the [adverse employment action]' can be a circumstance that gives rise to an inference of discrimination." *Behringer*, 2010 WL 5158644, at *11 (quoting *Chertkova v. Conn. Gen. Life Ins. Co.*, 92 F.3d 81, 91 (2d Cir.1996)).

Here, Plaintiff contends that she was gradually pushed out of the Cloud Computing team because of her disability. Her version of the sequence of events is as follows: In 2008, Plaintiff was traveling internationally and working long hours. *See* Abrams Aff. Ex. 15 at 1. She was diagnosed with degenerative stenosis of the spine in November 2008. Plaintiff requested two accommodations from IBM in January 2009: a lightweight laptop and business class travel. After she took two international business trips in January and February 2009 without these accommodations, Plaintiff suffered from extreme pain. In February 2009, IBM rejected Plaintiff's requests for accommodations due to their cost and suggested alternatives: a new position that did not require international travel, a special project, a leave of absence, or a part-time position. Once Plaintiff went on short-term disability leave in March 2009, Hall joined the team and started using Plaintiff's job title. In May 2009, Plaintiff returned to a position that was essentially a demotion; Hall assumed responsibility for many of Plaintiff s clients and subordinates. In July 2009, States told Plaintiff that she should again consider other positions (including non-executive positions), long-term disability leave, or leaving the business altogether. Plaintiff went on short-term disability leave again from September 2009 to January 2010. In the meantime, Hall was promoted to Director of Cloud Computing.

Plaintiff also asserts that States's attitude towards Plaintiff changed markedly after she disclosed her disability and requested accommodations. *See* Pl. Dep. at 261–62. In January 2009, States told Plaintiff that she was "grooming" her and gave Plaintiff a high performance rating. *See* Abrams Aff. Ex. 5; Def. 56.1 Statement at ¶ 17. But on February 26, 2009–after the discussion about accommodations-States told Plaintiff to consider alternatives to the Cloud Computing team and to "think[ ] about [her] career and [her] future." Abrams Aff. Ex. 15 at 5. While Plaintiff was searching for another IBM position in June and July 2009, States denigrated Plaintiff's job performance to other IBM managers. And in January 2010, States told Plaintiff that she would not support her for an executive position when she returned to IBM from

disability leave. The evidence offered by Plaintiff indicates that States had a dramatic change of heart about Plaintiff's potential at IBM soon after Plaintiff disclosed her disability and requested accommodations.

***10** This sequence of events gives rise to an inference that IBM reduced Plaintiff's responsibilities and later refused to offer her a position because States wanted to replace Plaintiff with Hall, an employee without a disability who could travel internationally without the need for an expensive accommodation.

Plaintiff has met her burden of showing both an adverse employment action and evidence of discriminatory intent for her "adverse employment action" discrimination theory.

B. Failure–to–Accommodate Theory

Plaintiff also asserts that IBM discriminated against her under the ADA by failing to accommodate her disability. IBM argues that it offered several reasonable accommodations and that it was not required to provide the particular accommodations that Plaintiff requested.

As mentioned above, an employer's failure to provide a disabled employee with a reasonable accommodation is a form of discrimination. *See* Rodal, 369 F.3d at 118; 42 U.S.C. § 12112(b)(5)(A). Generally, it is the responsibility of a disabled employee to inform her employer that she needs an accommodation. *See McElwee v. County of Orange,* 700 F.3d 635, 641 (2d Cir.2012). If the employee requires a reasonable accommodation in order to perform the essential functions of her position, the employer must provide one. *See Lovejoy–Wilson v. NOCO Motor Fuel, Inc.,* 263 F.3d 208, 217 (2d Cir.2001). The employer is not required to provide the particular accommodation requested by the employee, as long as it provides an alternative accommodation that is reasonable and effective. *See* 29 C.F.R. Pt. 1630, App'x § 1630.9; *McElwee,* 700 F.3d at 641; *Bielski,* 674 F.Supp.2d at 424. However, providing some form of alternative accommodation does not immunize an employer from ADA liability. *See Powers v. Polygram Holding Inc.,* 40 F.Supp.2d 195, 199 (S.D.N.Y.1999).

The reasonableness of a particular accommodation is a "necessarily fact-specific" question. *See Wernick v. Fed. Reserve Bank of N.Y.,* 91 F.3d 379, 385 (2d Cir.1996). An accommodation that would impose "undue hardship" on an employer is not "reasonable." *See* 42 U.S.C. § 12112; *McElwee,* 700 F.3d at 641. A court may find undue hardship where an accommodation "would require significant difficulty or expense." *Rodal,* 369 F.3d at 121–22. The ADA cites examples of appropriate forms of accommodation, including "job restructuring, part-time or modified work schedules, reassignment to a vacant position, [and] acquisition or modification of equipment or devices ..." 42 U.S.C. § 12111(9)(B). Not every modification or restructuring will be a reasonable accommodation that satisfies an employer's obligations; it depends on the circumstances of a particular employee. *See Lovejoy–Wilson,* 263 F.3d at 217–18; *Norville v. Staten Island Univ. Hosp.,* 196 F.3d 89, 99 (2d Cir.1999). Summary judgment for a defendant employer is "nevertheless appropriate if the evidence shows that the employer offered an accommodation that was 'plainly reasonable.' " *Bielski,* 674 F.Supp.2d at 424 (quoting *Wernick,* 91 F.3d at 385).

***11** Plaintiff requested two accommodations from IBM to enable her to travel for work without aggravating her spinal condition: (1) a lightweight laptop and (2) business class travel on flights over eight hours. Plaintiff asserts that she first mentioned the business class travel request to either States or Coakley soon after receiving a doctor's note on December 16, 2008 and before submitting an MTR on January 12, 2009. *See* Pl. Dep. at 145, 152–53; Abrams Aff. Ex. 8. Plaintiff then followed IBM's required process of submitting the MTR to request both the business class travel and the lightweight laptop. *See* Pl. Dep. at 152–53; Abrams Aff. Ex. 9; Coakley Decl. at ¶ 8.

IBM (through Sitta) refused Plaintiff's request for a lightweight laptop in February 2009, reasoning that Plaintiff's existing seven-pound laptop fell within her 10–pound lifting restriction. *See* Abrams Aff. Ex. 10. Instead, IBM offered Plaintiff an alternative accommodation-a rolling laptop bag. Sitta explained to Plaintiff that the rolling bag would obviate the need to carry the bag while traveling; thus, it would comply with Plaintiff's lifting restriction, even if the bag weighed over 10 pounds with the laptop and other items inside. *See* Abrams Aff. Exs. 10, 11. Sitta acknowledged that Plaintiff might need to lift the rolling bag at security checkpoints and when placing luggage into the overhead bin on an airplane. *See* Sitta Dep. at 30; Pl. Dep. at 178. Sitta advised Plaintiff to lift the laptop and the rolling bag separately if she needed to, apparently assuming that each item would weigh under 10 pounds. *See* Abrams Aff. Ex. 10; Pl. Dep. at 177–78. Sitta alternatively advised Plaintiff to ask fellow passengers for assistance. *See* Pl. Dep. at 178; Sitta Dep. at 30.

Plaintiff informed Sitta via email that the rolling laptop bags she found "all weigh[ed] close to or over 10 pounds." Abrams Aff. Ex. 11. Plaintiff did mention one bag that weighed 7.7 pounds, but she contends that this bag was too small to fit both her laptop and her "peripherals." *Id.;* Pl. Opp. at 6. In an email dated February 10, 2009, Plaintiff wrote to Sitta: "Well, I can get [a rolling laptop bag], but I can't lift it. Buying a case that all by itself is over 10 lbs, with a laptop that weighs over 10 with battery and power is not going to work." Abrams Aff. Ex. 11. Plaintiff did not obtain a rolling bag, because she did not think that it would have obviated the need to lift over 10 pounds. *See* Pl. Dep. at 175, 177–79.

IBM also did not grant Plaintiff's request for business class travel. As of October 2008, IBM required all executives to fly coach class. *See* Bloom Aff. Exs. 7, 8. IBM only made medical exceptions to this policy with approval from senior executives. *See* States Dep. at 48–49. Plaintiff contends that States never discussed the cost of the business class travel request with an HR partner or with a senior executive who could approve it. *See* Pl. 56.1 Statement at ¶ 31. Instead of requesting an exception, States eliminated Plaintiff's need to travel internationally by transferring her international responsibilities to Hall. *See id.* at ¶ 32; Pl. Opp. at 20–21. States explained that she never requested an exception to the travel policy because Plaintiff did not have any international trips scheduled after Sitta issued her recommendation on February 13, 2009. *See* States Dep. at 56–57; States Decl. at ¶ 8.

*12 IBM points to other alternative accommodations it offered Plaintiff: (1) a "special project" that would allow Noon to work exclusively from her home; (2) a part-time schedule; (3) paid leaves of absence; and (4) an ergonomic work station. *See* Def. Memo at 1–2, 7. IBM asserts that these accommodations were "plainly reasonable" because they were consistent with Plaintiff's physical limitations. *See* Def. Memo at 11–12, 15–16.

Plaintiff took advantage of multiple paid leaves of absence, and she accepted IBM's offer for an ergonomic work station. Abrams Aff. Exs. 20, 28, 30, 31; Pl. Dep. at 243, 265. She did not switch to a part-time schedule or accept States's offer to be reassigned to the "special project" that States would not describe in detail. *See* Pl. Dep. at 126, 267; States Dep. at 59. Plaintiff believed that "[t]here was no special project." Pl. Dep. at 267. States asserted that the Cloud Computing team had plenty of work to keep everyone busy, that the project would have been a "meaningful assignment," and that Plaintiff would have maintained her Band D executive classification. States Dep. at 59–60.

A reasonable factfinder could conclude that Plaintiff requested reasonable accommodations and that IBM did not provide reasonable alternative accommodations.

With respect to Plaintiff's request for a lightweight laptop, IBM's alternative offer of a rolling laptop bag might be deemed unreasonable because it required Plaintiff to endure the difficulty of lifting the bag at security checkpoints and on airplanes, lifting items in the bag separately, or asking a stranger for assistance. Plus, the parties dispute whether a suitable rolling bag would have weighed over 10 pounds without a laptop inside; if it did, Plaintiff's lifting restriction would have further eliminated the option of lifting the items separately. A jury might consider the expense of purchasing a lighter laptop to be a reasonable request for an accommodation under the circumstances.

Plaintiff's request for business class travel might also be deemed reasonable, given her doctor's recommendation. While business class tickets are more expensive than coach class tickets, Plaintiff's request for business class travel was limited to flights over eight hours. IBM had previously authorized business class travel, and it had a procedure for granting medical exceptions to the new travel policy. One could conclude that the extra cost of business class tickets for Plaintiff was not an "undue hardship" on IBM. *See* McElwee, 700 F.3d at 641.

IBM did offer Plaintiff alternatives that avoided the need for travel-a reassignment to a special project, a part-time schedule, and leaves of absence. While these are recognized as appropriate forms of accommodation, *see* 42 U.S.C. § 12111(9)(B); *Powers,* 40 F.Supp.2d at 199, it does not follow that every such job alteration will satisfy the "reasonable accommodation" standard under every set of circumstances. *See Simmons v. N. Y.C. Transit Auth.,* 340 Fed. App'x 24, 26 (2d Cir.2009); *Lovejoy–Wilson,* 263 F.3d at 217–18; *Powers,* 40 F.Supp.2d at 199.

*13 A job reassignment is not a reasonable accommodation where a "position comparable to the employee's former placement is available" but the employee is transferred to an inferior position-one that involves a "significant diminution in salary, benefits, seniority or other advantages that [the employee] possessed in her former job." *Simmons,* 340 Fed.

App'x at 26 (citing Norville, 196 F.3d at 99). Here, Plaintiff had a great deal of responsibility as a global Director of the Cloud Computing team before she went on leave in March 2009. One could determine that the proposed transfer to a "special project" would have been an inferior position because it would have harmed Plaintiff's seniority and career advancement at IBM.

One might also conclude that merely offering Plaintiff a part-time schedule or leave of absence was not a reasonable accommodation that satisfied IBM's ADA obligations, given the negative effects these alternatives could have on Plaintiff's seniority and career advancement. It might be more difficult for Plaintiff to succeed at IBM while she is working reduced hours or not working at all. A factfinder might determine that this became evident when Plaintiff's disability leaves were followed by a reduction in her responsibilities in May 2009 and a lack of a job offer in July 2010.

In sum, a juror might find that it was unreasonable for IBM to reduce Plaintiff's job responsibilities or hours rather than enable her to continue in her existing position by granting her requests for a lightweight laptop and business class travel.

Finally, IBM required Plaintiff to travel to Europe and Japan without *any* accommodations.[6] Plaintiff asserts that she had informed IBM about her need for business class travel twice by January 12, 2009–the day before she left for the Europe trip. The company did not officially respond to her travel request until Sitta issued the Certification Form on February 13, 2009, which was after she returned from Japan. Plaintiff also asked for a lightweight laptop on January 12, 2009, but Sitta did not offer the rolling laptop bag option until February 3, 2009. IBM did not propose the alternatives of a special project, part-time schedule, or leave of absence until late February 2009. In the meantime, Plaintiff's two international trips caused her a great deal of pain. Though a factfinder might conclude that IBM responded to Plaintiff's request for accommodations within a reasonable timeframe, he could just as well determine that IBM's failure to accommodate Plaintiff on these trips defeats IBM's claim that it provided reasonable alternatives. It is not inherently reasonable for a company to wait several weeks to respond to a request for accommodations, and it would have been possible to book business class travel or to purchase a lightweight laptop quickly.

Under the circumstances, IBM's alternative accommodations were not "plainly reasonable" such that summary judgment in its favor is appropriate. Plaintiff has met her burden of showing that IBM failed to provide her with a reasonable accommodation.

C. Pretext

***14** Because Plaintiff has established a prima facie case of discrimination under both the "adverse employment action" and "failure-to-accommodate" theories, the burden shifts to the Defendant to offer a legitimate, non-discriminatory reason for its challenged actions. Rodal, 369 F.3d at 118 n. 3.

Defendant contends that it has met this burden. It asserts that States made a legitimate business decision to restructure the Cloud Computing team in May 2009 because "she determined that IBM's clients would be better served if she increased capacity and realigned the group's resources to deliver services to clients more efficiently." Def. Memo at 22. IBM argues that Plaintiff has not shown any evidence that this reason is a pretext and that the "real reason" was the Plaintiff's disability or her request for accommodations. *See id.* at 23.

As discussed above, *see supra* at § II.A.2, Plaintiff has provided evidence of a sequence of events that would allow a reasonable factfinder to infer that the true motivation behind the restructuring of the Cloud Computing team was to replace Plaintiff with an employee with no disability. IBM was concerned about the costs of travel, as evidenced by the change to its travel policy. Sitta and States also cited cost concerns in discussing Plaintiff's requested accommodations. And only after Plaintiff disclosed her disability and requested accommodations did States bring on a new team member-Hall. Plaintiff lost clients, subordinates, and responsibilities to Hall, and he was promoted to Director soon after Plaintiff went back on disability leave. Unlike Plaintiff, Hall had no disability that would have required costly accommodations.

Plaintiff has satisfied her burden of offering evidence that IBM's purported reason was a pretext. Thus, summary judgment on the discrimination claims is improper.

III. ADA Retaliation Claim

The ADA also prohibits employers from retaliating against employees for requesting accommodations pursuant to the ADA. *See* 42 U.S.C. § 12203; *Lovejoy–Wilson*, 263 F.3d at 222. Like discrimination claims, ADA retaliation claims are subject to the *McDonnell Douglas* burden shifting analysis. *See id.* at 223–24; *Solomon*, 2011 WL 3877078, at *10.

To establish a prima facie case of retaliation under the ADA, a plaintiff must show that: "(1) [s]he engaged in an activity protected by the ADA; (2) the employer was aware of this activity; (3) the employer took adverse employment action against [her]; and (4) a causal connection exists between the alleged adverse action and the protected activity." *Treglia v. Town of Manlius*, 313 F .3d 713, 719 (2d Cir.2002) (citing *Cifra v. Gen. Elec. Co.*, 252 F.3d 205, 216 (2d Cir.2001)).

Here, Plaintiff engaged in protected activity by requesting accommodations for her disability, *see Weixel v. Bd. of Educ. of City of New York*, 287 F.3d 138, 149 (2d Cir.2002), and IBM does not contest that it knew about the request. Defendant argues that Plaintiff cannot make out a prima facie case of retaliation because IBM took no adverse employment action against Plaintiff, and because Plaintiff cannot show that her protected activity caused an adverse action. *See* Def. Memo at 24–25. IBM also argues that, even if Plaintiff can establish a prima facie case, she cannot show that IBM's legitimate, non-discriminatory explanation for its actions is a pretext for impermissible retaliation. *See* Def. Reply at 10. These arguments fail.

A. Adverse Employment Action

*15 For claims of retaliation, the Supreme Court has set forth a broader definition of "adverse employment action" than the one used for discrimination claims. *See Kessler v. Westchester County Dep't of Soc. Servs.*, 461 F.3d 199, 207 (2d Cir.2006) (citing *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 69 (2006)). Though this definition was developed in the context of Title VII retaliation claims, the Second Circuit has invoked it for ADA retaliation claims as well. *See Behringer*, 2010 WL 5158644, at *15 (citing *Ragusa v. Malverne Union Free Sch. Dist.*, 381 Fed. App'x 85, 90 (2d Cir.2010)). For the purposes of establishing a prima facie case of retaliation, an employer's action is "materially adverse" if it is "harmful to the point that [it] could well dissuade a reasonable worker" from engaging in ADA-protected activity. *Malverne*, 381 Fed. App'x at 90 (quoting *Hicks v. Baines*, 593 F.3d 159, 165 (2d Cir.2010)); *see also Kessler*, 461 F.3d at 207.

As discussed above, *see supra* at § II.A.1, Plaintiff has offered sufficient evidence to establish that IBM took adverse employment actions against her under the stricter definition of "materially adverse" used for discrimination claims. Thus, she has certainly demonstrated that IBM's actions met the broader adverse action definition for retaliation claims. IBM's actions—reducing Plaintiff's job responsibilities and refusing to offer her a position after her long-term disability leave-were "harmful to the point that [they] could well dissuade a reasonable worker" from requesting an accommodation. *See White*, 548 U.S. at 69.

B. Causal Connection and Pretext

Temporal proximity between an employee's protected activity and an employer's adverse employment action can support an inference that the two occurrences were causally connected. *See Malverne*, 381 Fed. App'x at 89; *Lovejoy–Wilson*, 263 F.3d at 224. As discussed above, *see supra* at § II.A.2, IBM transferred Plaintiff's international job duties and several of her subordinates to Hall just a few months after she requested accommodations and right after she returned from her first disability leave. Further, Plaintiff had conversations with Sitta about the costs of her requested accommodations and the reasons why IBM did not consider them to be justified. Plaintiff also maintains that States did not want to ask her superiors to pay for the business travel accommodation. This sequence of events supports an inference that the request for accommodations caused the adverse employment action; IBM resolved the problem of paying for Plaintiff's requested travel accommodations by taking away her responsibilities that required extended travel.

This same evidence supports a conclusion that IBM's proffered reason for the reorganization of the Clouding Computing team was pretextual, and that IBM really eliminated Plaintiff's international responsibilities in order to avoid paying for accommodations. Thus, Plaintiff has satisfied her burden under *McDonnell Douglas*, and summary judgment on the retaliation claim is improper.

CONCLUSION

*16 For the foregoing reasons, Defendant's motion for summary judgment is denied. The Clerk of the Court is directed to close out the motion at Docket No. 20 and to remove same from the Court's list of pending motions.

Footnotes

1 The facts are taken from the parties' 56.1 Statements and other discovery. Because this is a motion for summary judgment, where the facts are disputed this Court must view the facts in the light most favorable to the non-moving party-the Plaintiff. *See Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587(1986).

2 IBM's non-executive employees are classified in Bands 1 through 10, with 10 being the most senior. Executive employees are classified in Bands A through D, with A being the most senior. *See* Coakley Decl. at ¶ 5.

3 Though the Complaint alleges that States "harass[ed]" Plaintiff when she returned from disability leave, Plaintiff does not bring an ADA harassment claim. *See* Compl. at ¶ 48. Rather, Plaintiff cites the harassment as evidence that IBM took adverse employment action against her. *See* Pl. Opp. at 22.

4 Courts use the same definition for "adverse employment action" in discrimination claims brought under the ADA, Title VII of the Civil Rights Act of 1964 ("Title VII"), and the Age Discrimination in Employment Act of 1967. *See Brady*, 531 F.3d at 134; *Patrolmen's Benevolent Ass'n of NY. v. City of New York*, 310 F.3d 43, 51 (2d Cir.2002); *Galabya v. N.Y.C. Bd. ofEduc*, 202 F.3d 636, 640 (2d Cir.2000); *Solomon v. Southampton Union Free Sch. Dist.*, No. 08 Civ. 4822(SJF)(ARL), 2011 WL 3877078, at *5 (E.D.N.Y. Sept. 1, 2011).

5 Defendant argues that evidence of communications between Plaintiff's attorney and IBM's attorney is inadmissible evidence of settlement discussions under Rule 408 of the Federal Rules of Evidence, and that this Court should disregard such evidence. *See* Def. Reply at 8. IBM contends that, because this discussion occurred after Plaintiff filed a charge of discrimination with the EEOC, it was a settlement discussion. *See id.* Excluding evidence of Plaintiff's inquiry into the positions available to her after long-term disability leave would not further Rule 408's purpose of encouraging settlement discussions. *See* FED. R. EVID. 408 Advisory Committee Notes. IBM's statement that it had no positions suitable for Plaintiff was "not an attempt to compromise the claim." *Pierce v. F.R. Tripler & Co.*, 955 F.2d 820, 827 (2d Cir.1992); *see also Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 909 (2d Cir.1997). This Court will not ignore this evidence.

6 Defendant argues that Plaintiff's request for business class travel never became "ripe," since IBM did not require her to travel internationally anytime after Sitta issued the Certification Form on February 13, 2009. *See* Def. Memo at 13–15. However, it is undisputed that Plaintiff traveled to both Europe and Japan after she requested travel accommodations on January 12, 2009.

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