

**OUTTEN & GOLDEN LLP**

Kathleen Peratis

Monique E. Chase (*pro hac vice* motion forthcoming)

3 Park Avenue, 29th Floor

New York, New York 10016

Telephone: (212) 245-1000

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MONICA T. HARWELL,

Plaintiff,

v.

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

Defendant.

**COMPLAINT AND  
JURY DEMAND**

**No. 15 Civ.**

Plaintiff Monica Harwell (“Plaintiff” or “Ms. Harwell”), brings this suit against Defendant Consolidated Edison Company of New York, Inc. (“Con Ed,” the “Company,” or “Defendant”), by and through her attorneys, Outten & Golden LLP, and hereby alleges and complains, upon her own knowledge as to some matters and upon information and belief as to other matters, as follows:

**NATURE OF CLAIMS**

1. Ms. Harwell, an African American woman, has been employed by Con Ed since 1991, having been initially hired into a “non-traditional” entry level field worker position. Throughout her 21 years of employment with Con Ed, Ms. Harwell has received nearly unanimous positive performance evaluations. She has constantly strived to advance herself and her career. Hence, during her employment, she has obtained an AA degree (1998), a BA degree

(2003), a master's degree (2005), and a PTI Certificate in electrical engineering (2007). She has taken advantage of the opportunities that were available to her to broaden and deepen her skill set. She began applying for management positions in 2000 with a goal of advancing into and up the ladder of management. However, despite her hard work, her ambition and her good performance, Ms. Harwell has hardly advanced at Con Ed. She obtained the lowest-paid entry level management position at Con Ed, which is called 1L (the "L" stands for "lower paid"), in 2002 (after two years of rejected applications). Now, in 2015, after 13 years and dozens of rejected applications, she is a 2L. In virtually every case of Con Ed rejecting her applications, the successful applicant was a White man who was less qualified than Ms. Harwell by experience, education or both. Job by job, application by application, Con Ed has discriminated against Ms. Harwell on account of her race and sex. On information and belief, White men are promoted from entry level to first line management, and up each step on the management ladder, at a much faster pace than are Black women in general, or Ms. Harwell in particular. Ms. Harwell filed her charge of discrimination with the EEOC in 2009. She received a Finding of Probable Cause in 2011 and a Notice of Right to Sue in 2015.

2. Ms. Harwell brings this lawsuit against Defendant for sex discrimination, race discrimination, and harboring a hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and the New York City Human Rights Law ("NYCHRL"), Administrative Code of the City of New York § 8-107 *et seq.* She seeks injunctive and declaratory relief, compensatory and punitive damages, attorneys' fees and costs, and other appropriate legal and equitable relief pursuant to Title VII and the NYCHRL.

**PARTIES**

3. Plaintiff Monica Harwell is an African American woman who resides in Jersey City, New Jersey.

4. Defendant Consolidated Edison Company of New York, Inc., a wholly owned subsidiary of Defendant Consolidated Edison, Incorporated, is a corporation organized under the laws of New York State with its principal place of business at 4 Irving Place, New York, New York 10003. The Company delivers electricity, natural gas and steam to more than 5 million customers in New York City and Westchester County.

5. Ms. Harwell was hired by Defendant in August 1991, and currently remains employed by the Company.

6. Defendant is licensed to do business in the state of New York.

7. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Title VII and the NYCHRL.

**JURISDICTION AND VENUE**

8. This Court has federal question jurisdiction of the Title VII claim pursuant to 28 U.S.C. § 1331, as this matter arises under the laws of the United States.

9. This Court has diversity jurisdiction of the NYCHRL claim under 28 U.S.C. § 1332 as the parties are citizens of different states, and the matter in controversy exceeds the sum of \$75,000.

10. This Court has supplemental jurisdiction over Ms. Harwell's NYCHRL claim pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)-(c) and 42 U.S.C. § 2000e-5(f)(3) because Defendant conducts business and can be found in this district.

12. All conditions precedent to bringing this action have been performed or occurred.

13. On November 30, 2009, Ms. Harwell filed a Charge of Discrimination against Con Ed with the Equal Employment Opportunity Commission (“EEOC”), alleging unlawful race and sex discrimination in violation of Title VII.

14. In a determination dated November 7, 2011, the EEOC issued a Finding of Probable Cause in Ms. Harwell’s favor, attached hereto as Exhibit A.

15. The EEOC conciliation process and private mediation on February 23, 2015 failed to resolve Ms. Harwell’s claims with Con Ed.

16. On August 19, 2015, the EEOC issued a Notice of Right To Sue to Ms. Harwell.

### **FACTUAL ALLEGATIONS**

#### **Ms. Harwell’s Education and Record of Achievement**

17. Ms. Harwell began working for Con Ed in August 1991, as a General Utility Worker (GUW), the entry-level position for field workers in the Company’s Overhead Department. She was the only woman working in the department when she was hired.

18. Ms. Harwell currently works as a Scheduler, a second-line supervisor position called 2L (the “L” is for lower paid”), in the Company’s Westchester Overhead Department. She has held the position since 2011.

19. Throughout her tenure at Con Ed, Ms. Harwell has persisted in her efforts to advance her career at the Company. To that end, she has taken numerous classes and earned several degrees. In May 1998, she earned an associate’s degree in electronic engineering from Hudson County Community College in New Jersey, and she became the first woman to earn Con Ed’s High Voltage title, which enabled her to work on overhead electrical lines. In May 2003, Ms. Harwell earned a bachelor’s degree in organizational management from Manhattan College,

and in May 2005, she earned a master's degree in organizational leadership from Mercy College. In December 2007, Ms. Harwell earned a PTI Certificate in electrical engineering through Siemens Power Technologies.

20. In addition to her educational qualifications, from 2004- 2006, Ms. Harwell acquired field experience in a range of specialties at Con Ed and continues publically to represent the Company through her participation in recruitment programs with college students and her Board position for the nonprofit Nontraditional Employment for Women.

21. Management jobs at Con Ed are tiered, in ascending order: first line supervisor (designated as 1L (lower paid) or 1H (higher paid)), second line supervisor (2L (lower paid) or 2H (higher paid)), etc.

22. Most of the employees who transition to supervisory field positions typically have no more than a high school education with 5-7 years of relevant experience.

23. As a matter of hierarchy, "1H" field supervisors report to "2L" field supervisors. Field supervisory positions are the most lucrative at Con Ed, and the Company's policy ensures that 2L managers are paid at least 10 percent more than the highest paid 1H supervisor working under them.

24. 1H and 2H managers who supervise union crews work substantial overtime, have shift differentials, and earn valuable field experience that is the primary gateway to higher-level positions.

25. Con Ed posts management positions on its company's intranet. The postings list detailed qualifications for the position, including specific areas of knowledge and experience that candidates should possess, years of experience, and educational qualifications.

26. Candidates may be selected for an interview, which is conducted by the managers who supervise the position. Promotion decisions are based entirely on results from the interviews, in which managers score the answers to questions on a 1-5 scale.

**Con Ed Has Rejected and Delayed Ms. Harwell's Applications for Promotion**

27. Gaining field supervising experience is crucial for advancement at Con Ed. Ms. Harwell specifically pursued field jobs where she would gain experience directly supervising other employees. After serving as a GUW, and later, a Heavy Equipment Driver, Mechanic B, Ms. Harwell began applying for management level positions as a first-line supervisor supervising field crews in 2000.

28. Ms. Harwell applied for four to five 1H supervisor positions in Staten Island, and two 1H positions in Brooklyn. Despite her superior qualifications, she did not get an interview for any of them, nor was she offered the position. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant afforded an interview. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant who was offered the position.

29. Two years later, a manager in Con Ed's Long Island City training center offered Ms. Harwell a position as an instructor in the Learning Center. The position, not commensurate with Ms. Harwell's demonstrated interest in electric operations, was a lower-level 1L management position that did not provide overtime, shift differentials, or supervisory field experience. Rather, the position entailed instructing employees, including prospective supervisors, how to build, repair, and maintain the Company's overhead system. The position was not ideal, but Ms. Harwell accepted the job as a means to gain management experience.

30. Once assuming her role as an instructor in the Learning Center, Ms. Harwell began to apply for second-line supervisory jobs at the 2L level. She was afforded some interviews, but she was denied promotion each time.

31. Ms. Harwell questioned these rejections to upper management and was given a false explanation: that she lacked experience supervising union crews. In fact, a number of White males were promoted directly into 2L positions without any experience supervising union crews.

32. Ms. Harwell continued to pursue 2L management positions, but also applied for a number of lateral 1H field positions.

33. In April 2004, Ms. Harwell accepted a 1H position as an Operating Supervisor in Environmental Operations in the Bronx.

34. At the time, there were only five women working in the underground in the Bronx. While the position was at the same level as the Learning Center position, it allowed Ms. Harwell to gain experience supervising union crews.

35. In October 2005, Ms. Harwell again accepted a lateral 1H position in Rye, New York doing work in Quality Assurance in the Overhead Department.

36. Three months later, Ms. Harwell transitioned to become a Contractor Management Supervisor in Valhalla, New York. Though the Quality Assurance and Contractor Management positions did not require the regular supervision of workers in the field, Ms. Harwell became responsible for field inspections, fixing overhead lines, supervising outside contractors, and occasionally, supervising union crews during emergencies.

37. While holding 1H positions, Ms. Harwell applied for a number of 2L positions that Con Ed posted on its intranet. On average, she applied for a position every five months.

She was rejected for each job. She was sometimes not even afforded an interview. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant afforded an interview. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant who was offered the position.

38. In May 2008, Ms. Harwell asked a manager, Donald Schaaf, when Electric Operations would extend women manager positions. Mr. Schaaf replied, in words or substance, "You'll never see that happen." To date, there are no women in 2L positions in the Electric Operations Department.

39. In October 2008, Ms. Harwell applied for a position as a Field Planner in Rye, New York. On information and belief, she was qualified for the position, particularly as a number of 2L supervisors in the department had no more than a high school education and had moved directly into the 2L position without any experience as a 1H supervising union crews.

40. Ms. Harwell interviewed for the Field Planner position, but it was offered to Ken Downey, a White male with no experience in overhead work and whose highest level of education is high school.

41. When Ms. Harwell complained about the hiring process to Danny Chin, the manager in Rye who made the hiring decision, Mr. Chin initially told Ms. Harwell that he did not select her for the position because she had not supervised union crews.

42. Ms. Harwell reminded Mr. Chin that she in fact had such experience. Then, Mr. Chin claimed that he had hired Downey because he could help prepare budgets for the department. Ms. Harwell knew then that preparing budgets was not a part of the Operating job. Even if it was, Ms. Harwell's two degrees in organizational management and former



employment in the financial services industry rendered her more qualified than Downey for such a task.

43. A subsequent investigation by Con Ed's Labor Relations Department revealed that Downey's wife was a relative of a manager in Westchester County, who had helped him get the job. As a result of the investigation, the top three candidates for the position were re-interviewed in January 2009, including Ms. Harwell, Downey, and a third employee. Con Ed again offered the position to Downey.

44. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant afforded an interview. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant who was offered the position.

45. In February 2009, Ms. Harwell applied for an Operating General Supervision 2L position in the Engineering Control Room in Rye New York. She was interviewed, but again denied the job. Con Ed claimed there was a hiring freeze.

46. Four months later, Peter Boyle, a White male 2L supervisor (with no management experience previous to his 2L position and no post-high school education) told Ms. Harwell that because he was "fed up" with supervising crews, he had called Con Ed's control room and asked them to create a new Engineering Control Room position just for him – exactly the job Con Ed recently denied to Ms. Harwell because of a supposed hiring freeze. Boyle eventually got the job.

47. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant afforded an interview. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant who was offered the position.

48. From September 2009 to April 2010, Ms. Harwell applied for, and was denied promotion to seven 2L positions for which she was qualified.

49. Ms. Harwell was not afforded even an interview for five positions, although she was at least as qualified as those whom were afforded an interview: (1) District Operator in the System Operation Department; (2) Field Operations Planner in the Operations Services Department; (3) Project Specialist in the Smart Grid Implementation Group; (4) Field Operations Planner in the Bronx Substation Operations Department; and (5) Project Specialist in the Facilities Management Department.

50. Con Ed interviewed Ms. Harwell for the other two positions: (1) Field Operations Planner in the BQ Overhead & Services Department; and (2) Operating General Supervisor in the Staten Island Control Operations Department. The rejection emails Ms. Harwell received for these positions contained boilerplate language stating that another candidate demonstrate superior qualification or experience. On the contrary, Con Ed offered most of these positions to a White man who was less qualified than Ms. Harwell by experience or education or both.

51. In 2011, Ms. Harwell was selected for the 2L position of a Scheduler in the Bronx's then-newly created Work Resource Management Department.

52. While the Scheduler position is technically a 2L position, it is not comparable to the numerous 2L positions for which Ms. Harwell previously applied, was qualified, but was not selected.

53. For instance, the Scheduler position does not directly supervise union crews. As such, the Company's policy which mandates that a 2L supervisor with direct union reports make at least 10% more than the highest paid union member reporting to her does not apply. Since the

Scheduler position does not benefit from union-negotiated wages and wage increases, the position has a lower pay scale and smaller salary increases. (Please see paragraph 23 above.)

54. Additionally, the Scheduler position offers fewer opportunities for overtime, does not offer shift differentials, and has more limited promotional opportunities than other 2L positions. (Please see paragraph 24 above.)

55. Con Ed offered Ms. Harwell the position only after its first- and second-choice candidates declined the offer.

56. In the Scheduler position, Ms. Harwell continued to experience different, adverse treatment from supervisors and coworkers on account of her sex. For instance, in April 2011, Ms. Harwell worked alongside Sascha Archie, a male Scheduler who shared equal responsibility with Ms. Harwell in developing the Bronx scheduling program. Ms. Harwell and Mr. Archie reported to Thomas Thatcher, the general manager of Construction. Despite that Ms. Harwell shared equal responsibility with Archie for the same work and results, on their April 2011 performance evaluations, Mr. Thatcher evaluated Ms. Harwell as “Satisfactory” and Mr. Archie as “Exceptional.” Ms. Harwell confronted Mr. Thatcher about his evaluation of her, and he later orally acknowledged that her performance had been on par with Mr. Archie’s. He added that he must have inadvertently “overlooked” her performance because of how many employees he had to review.

57. As a Scheduler, Ms. Harwell has also been passed over for trainings and certificate courses that Mr. Thatcher routinely offered to her male colleagues. As one example, Mr. Thatcher put forward Mr. Archie for a Project Management class, but did not put Ms. Harwell forward. When Ms. Harwell inquired why he had not put her name forward, Mr. Thatcher simply replied, “I didn’t think you were interested.” Mr. Thatcher later added Ms.

Harwell's name to the class, but by then, the class was already full. As another example, Dennis Brady, Section Manager, required Ms. Harwell to justify her requests to attend a Gas Engineering class – a step not required of men who request training.

58. Ms. Harwell has applied to, and been rejected for five 3L positions. When receiving feedback on her interview performance with managers, Ms. Harwell has been repeatedly told that she interviews well, but could provide “better” answers to questions.

59. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant afforded an interview. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant who was offered the position.

60. Ms. Harwell interviewed for a 2H Project Management position in the Gas Operations Department in September 2015. Con Ed interviewed 4 people for 3 available positions in the department.

61. On information and belief, Ms. Harwell's qualifications were at least as good as each applicant who was offered the position.

**Ms. Harwell Has Endured a Racially and Sexually Hostile Environment**

62. In the late 1990s, when Ms. Harwell worked as a GUW in Staten Island, Con Ed failed to grant her access to the main entrance of the facility where she worked. Rather, she had to enter the building through the men's bathroom and endure countless occasions where her male colleagues exposed themselves to her while urinating.

63. During the same time period, Bobby George, a male employee who worked in the transportation garage alongside Ms. Harwell grabbed her utility belt, proceeded to rub his torso on her, and said that he wanted to “butt-fuck” her. When Ms. Harwell complained to Con Ed's

EEO Department, the EEO investigator inquired why Ms. Harwell had not stopped Mr. George from engaging in the behavior. Con Ed took no corrective action.

64. In addition to physical harassment, racial and sexualized language like “you’re a cunt,” and “you’re a pussy,” are frequently and unabashedly used by her male colleagues in the field and in the hallways at Con Ed. For example, in August 2007, John Turco repeatedly joked about an offensive racial remark made on the radio by Don Imus about the Rutgers women’s basketball team. When Ms. Harwell objected, Mr. Turco said, “What’s wrong Monica? You’re not a nappy headed ho?” Ms. Harwell reported the incident that month to Con Ed’s EEO Department. Although at least five other employees witnessed the incident, EEO claimed that no one could confirm Ms. Harwell’s report. Ms. Harwell additionally reported the incident to Andrea Schmitz, the Ombudsman. She, too, took no corrective action.

65. Ms. Harwell reported several more instances of discrimination and harassment throughout her tenure to Con Ed Management, to the internal EEO office, and to the company ombudsman. No action was ever taken, and in many instances, her supervisors placed the onus on her to deal with the situation.

66. Indeed, since starting as a Scheduler in 2011, Donny Miller, the Field Tech Specialist in the Bronx Overhead Department, consistently resists Ms. Harwell’s work plans and undermines her in front of other supervisors and union members – behaviors he does not exhibit towards his male colleagues. Ms. Harwell has repeatedly reported Mr. Miller’s conduct to Mr. Thatcher, however, to date, he continues to fail to address the issue.

#### **Ms. Harwell’s Damages are Substantial**

67. Ms. Harwell has suffered substantial economic damages, including lost pay, lost benefits, losses in pension and other benefits that are calculated based on pay, emotional injury

and other compensatory damages, on account of Con Ed's discrimination and hostile environment.

68. Defendant acted with malice and reckless indifference to Ms. Harwell's rights under Title VII and the NYCHRL.

**FIRST CAUSE OF ACTION**  
**Intentional Discrimination on the Basis of Race**  
**(Title VII)**

69. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully alleged herein.

70. On account of the conduct alleged herein, Defendant discriminated against Ms. Harwell because of her race in violation of Title VII.

**SECOND CAUSE OF ACTION**  
**Intentional Discrimination on the Basis of Gender**  
**(Title VII)**

71. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully alleged herein.

72. On account of the conduct alleged herein, Defendant discriminated against Ms. Harwell because of her gender in violation of Title VII.

**THIRD CAUSE OF ACTION**  
**Hostile Work Environment**  
**(Title VII)**

73. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully alleged herein.

74. On account of the conduct alleged herein, Defendant knowingly maintained a hostile work environment and failed to take corrective action in violation of Title VII.

**FOURTH CAUSE OF ACTION**  
**Intentional Discrimination on the Basis of Race**  
**(NYCHRL N.Y.C. Admin. Code § 8-107)**

75. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully alleged herein.

76. On account of the conduct alleged herein, Defendant discriminated against Ms. Harwell because of her race in violation of the NYCHRL.

**FIFTH CAUSE OF ACTION**  
**Intentional Discrimination on the Basis of Gender**  
**(NYCHRL N.Y.C. Admin. Code § 8-107)**

77. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully alleged herein.

78. On account of the conduct alleged herein, Defendant discriminated against Ms. Harwell because of her gender in violation of the NYCHRL.

**SIXTH CAUSE OF ACTION**  
**Hostile Work Environment**  
**(NYCHRL N.Y.C. Admin. Code § 8-107)**

79. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully alleged herein.

80. On account of the conduct alleged herein, Defendant knowingly maintained a hostile work environment and failed to take corrective action in violation of the NYCHRL.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter an award:

A. Declaring that the acts and practices complained of herein are in violation of Title VII and the NYCHRL;

B. Enjoining and permanently restraining these violations of Title VII and the NYCHRL; and directing that Defendant take such affirmative action as is necessary to ensure that the effects of its unlawful employment practices are eliminated;

C. Awarding Plaintiff back pay, front pay, and compensatory damages, in amounts to be determined at trial;

D. Awarding Plaintiff punitive damages for Defendant's malicious and reckless conduct, in amounts to be determined at trial;

E. Awarding Plaintiff such interest as is allowed by law;

F. Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;  
and

G. Granting such other and further relief as the Court deems just, equitable and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff demands, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, a trial by jury in this action.

Dated: New York, New York  
October 28, 2015

By:   
Kathleen Peratis

**OUTTEN & GOLDEN LLP**

Kathleen Peratis  
Monique E. Chase (*pro hac vice* motion  
forthcoming)  
3 Park Avenue, 29th Floor  
New York, New York 10016  
Tel: (212) 245-1000

*Attorneys for Plaintiff*