

United States Court of Appeals For the First Circuit

No. 25-1519

GINA RUSSO,
Plaintiff, Appellant,

v.

NEW HAMPSHIRE NEUROSPINE INSTITUTE, P.A.; and
URI M. AHN,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. Steven J. McAuliffe, U.S. District Judge]

Before

Aframe, Howard, and Dunlap,
Circuit Judges.

Robert S. Mantell, with whom Law Office of Robert S. Mantell,
Kamee Verdrager, and KVB Law were on brief, for appellant.

David J. Betancourt, with whom Dona Feeney and Feeney Friedman
Getman PLLC were on brief, for appellee Ahn.

Amanda E. Quinlan, with whom Adam M. Hamel and McLane
Middleton, Professional Association were on brief, for appellee
New Hampshire Neurospine Institute, P.A.

August 25, 2026

AFRAME, Circuit Judge. Gina Russo worked for eleven years as a physician's assistant ("PA") at New Hampshire Neurospine Institute, P.A. (the "Institute"). During her tenure, Russo had several negative interactions with Dr. Uri Ahn, an orthopedic surgeon with the Institute. Based on these interactions, Ahn accused Russo of disrespecting him, which resulted in the Institute terminating Russo's employment at Ahn's insistence. Nevertheless, the Institute allowed Russo to continue working while she negotiated a severance agreement. When Russo complained that the Institute terminated her employment because of sex discrimination, the Institute stopped negotiating and immediately ended Russo's employment.

Russo sued the Institute and Ahn (collectively, the "Defendants") alleging, inter alia, discrimination and retaliation under state and federal law. The district court granted summary judgment for the Defendants. Russo timely appealed. We conclude that summary judgment was appropriate on the sex discrimination claim but not on the retaliation claim. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

I.

A. Factual Background

On review of a grant of summary judgment, we describe the underlying facts in the light most favorable to Russo, the

non-moving party. See Walsh v. HNTB Corp., 169 F.4th 330, 336 (1st Cir. 2026).

The Institute is a professional association of medical doctors located in Bedford, New Hampshire. Some of the Institute's doctors are partners, meaning they hold ownership interests and voting rights, while others are regular employees. Ahn, an orthopedic spine surgeon, is a partner who served as the Institute's vice-president. The Institute has never employed a female doctor.

Russo began working for the Institute in March 2008 as a PA. At the time, the Institute had two main specialties, neurosurgery and orthopedic surgery, each of which "maintained largely separate operations." Russo primarily worked in neurosurgery. In August 2016, the Institute merged its neurosurgery and orthopedic surgery practices.

1. The October 15, 2016 Incident

On October 15, 2016, a few months after the merger, Russo and Ahn had their first negative interaction. Russo was on call and performing rounds at Elliot Hospital in Manchester, New Hampshire, where the patient of another Institute doctor, Paul Wang, "suddenly coded" because of an apparent "massive heart attack." Wang instructed Russo to remain with his patient. At the time, Dr. N. Ross Jenkins was serving as the on-call

neurosurgeon for the Institute and was conducting rounds at Concord Hospital in Concord, New Hampshire.

Ahn also was on-call. He, however, was traveling out of state with his family to attend his son's hockey game. Ahn called Russo to ask her to see a patient at St. Joseph's Hospital in Nashua, New Hampshire. Ahn described the patient in Nashua as an "urgent" case and asked Russo to see the patient "at that moment" because the patient had a lumbar epidural abscess, which can cause paralysis. Russo told Ahn that she did not believe she could go see his patient because "there was an emergent situation that had developed at the Elliot Hospital." Ahn "did not sound happy" with Russo's response so Russo said that she would call Jenkins and Wang.

Reporting back to Ahn, Russo explained that both Jenkins and Wang wanted her to remain at Elliot Hospital and asked Ahn if he "could get [to St. Joseph's] first." Ahn then "got angry" and said he would not go to St. Joseph's. He later described Russo's tone as "disrespectful," "hateful," and "resentful" and believed that Russo did not want to follow his instructions.¹ Russo ultimately went to St. Joseph's to attend to Ahn's emergent patient.

¹ Ahn's wife, Kerri Ahn, was in the car with him when he spoke to Russo and overheard the telephone conversation. Ahn's wife also described Russo's tone as "rude and hostile and unprofessional[.]"

Later, Ahn called Jenkins and Wang to determine if Russo had been lying about the coding patient at Elliot Hospital. During his call with Wang, Ahn complained that Russo had been "very rude," "very insubordinate," and "abrasive." Wang confirmed that Russo had "followed [his] directions," and Jenkins later noted that she "did the correct thing."

Ahn later reported the interaction with Russo to Anne Talbot-Kleeman, the Institute's executive director, expecting that Talbot-Kleeman would discipline Russo. Talbot-Kleeman urged Russo to "clear the air" with Ahn but did not otherwise discipline her. Russo stated she never had any follow-up discussion with Ahn about the October 15, 2016 incident.

2. The Summer 2017 Incident

In the summer of 2017, Russo was assigned to obtain consent for surgery from one of Ahn's patients. Following one of the Institute's templates, Russo informed the patient that one risk from the proposed surgery was an additional, future surgery, and the patient asked how to minimize that risk. Russo discussed an alternative to the surgery but also told the patient that she did not "know whether that's something [Ahn] would do or want to do." She then went to look for Ahn, who was unavailable. Because Russo could not find Ahn, she asked Dr. Neal Luther, another doctor at the Institute, about the surgical alternative. Based on Luther's response, Russo told the patient that though she did not

"know what Dr. Ahn's feeling would be on" the alternative option, it "was something that [Luther] said could be entertained." Russo did not tell Ahn about her interaction with the patient.

After the consent visit, Ahn received "an angry call" from the patient's wife expressing "doubts about the surgical plan[.]" Ahn felt that Russo had handled the consent process "inappropriate[ly]" and "severely damaged the trust the patient had in [his] judgment[.]" Ahn called Russo "[y]elling and screaming." He was "quite upset" with her and told her that it was "not [her] job to discuss anything[] other than bleeding and infection."

Around June 28, 2017, shortly after his call with Russo, Ahn requested Russo's removal from his surgical cases. Russo came to realize that she was not being scheduled with Ahn and did not ask to work with him; she would also tell the Institute staff when she was inadvertently scheduled to work with Ahn, and they would modify the schedule so that Ahn and Russo would remain apart.

Ahn had also requested that he not be scheduled for surgery with another female PA, Georgia Plamondon, and testified that he had asked not to operate with male PAs Mike Smith and Russell Denysyk. Russo acknowledged that Ahn did work with some female PAs, and that at one point, male PA Tim Miller was also not on Ahn's schedule.

3. The March 9, 2019 Incident

On March 9, 2019, Russo was working at the Catholic Medical Center when she received a call from Ahn, who was at Elliot Hospital. Ahn sought Russo's help discharging a patient, to which Russo asked if Ahn "need[ed] [her] to talk [him] through how to discharge the patient" or if he wanted her to discharge the patient when she went home. Ahn then yelled that Russo was "[fuck]ing passive-aggressive and disrespectful." In response, Russo "raised [her] voice" and replied, "I'm just trying to tell you. I'm just trying to find out how I can help you." Ahn felt Russo was "yelling" in a manner "that was unacceptable." Ahn told Russo to discharge the patient when she went home, which she did.

Ahn called Talbot-Kleeman to tell her about Russo's behavior, which he called "insubordinate and unprofessional." Ahn testified that, during the call, he "probably asked for [Russo's] termination"; Ahn also told Talbot-Kleeman and others that he "would not stay with the practice" so long as Russo was working there. A few weeks later, Ahn also sent an email to Talbot-Kleeman describing the interaction and noting "[i]t is clear that [Russo's] priority is to avoid work with [o]rthopedic [s]urgery" and that she had "crossed a line of respect to an employer."

On the same day that Ahn called Russo about the patient discharge, Russo emailed Talbot-Kleeman to document the call. Approximately one week later, Russo and Talbot-Kleeman met in

person to discuss the incident, and Russo expressed her view that Ahn was lazy and spent too little time with patients.

4. Ahn's Interactions with Others

Ahn also had confrontations with other Institute employees. During her deposition, Talbot-Kleeman noted that Ahn had a "history of difficulty getting along with" others in the practice, including herself, Smith, Denysyk, and two female employees, Cate Brewster and Maureen Sage. Another female PA, Laura Humen, told Russo that Ahn had left three voicemails "yelling" at her about incomplete work. Furthermore, several x-ray techs at Catholic Medical Center, both male and female, expressed concerns about Ahn, including that he was "very hard to work with."

Ahn testified that he once was talking with male PA Travis Palmer about Palmer's name when Palmer "mocked" Ahn's name. Ahn felt it "was a little disrespectful," but the two men later "talked about it and resolved it[,] and Ahn did not have further issues with Palmer. Russo also testified that Ahn "yell[ed]" at and was "disrespectful" toward male PA Tim Miller in the operating room, but Ahn took Miller aside after the incident. Following the confrontation, Ahn and Miller "were able to fix the problem."

5. The March 25, 2019 Board Meeting

On March 25, 2019, a few weeks after the patient-discharge incident, the Institute partners held a board meeting about Russo's possible termination. At the meeting, Ahn

stated that he could no longer work with Russo because she was "disrespectful, insubordinate, [and] difficult to work with" and further described her as "rude, abrasive, [and] unhelpful." Ahn expressed that he was unwilling to remain at the Institute if Russo continued to work there in what was described as a "her-or-me comment." He explained that he was "not going to stay at a practice as a partner being verbally abused," stating: "I won't tolerate that. I have enough self-esteem not to accept that."

The other partners also expressed their views of the situation. For example, Wang thought Russo was a "good PA" and he "had no complaints about her professionalism," although she could be "brash and opinionated." Jenkins also "said [he] had no problems" with Russo. Talbot-Kleeman reported Russo's statements regarding Ahn's laziness and that Russo said she would "never apologize."

After additional discussion, the partners unanimously voted to terminate Russo. This decision was based on the conclusion that "there was no other alternative," and it was impossible to "insulate" Ahn from Russo so "one of them ha[d] to go."

6. Post-Termination Decision Negotiations

The day after the board meeting, Talbot-Kleeman informed Russo that the partners had voted to terminate her employment. Talbot-Kleeman proposed "work[ing] out a transition schedule," and

Russo agreed. Per Talbot-Kleeman, the transition period would be "mutually beneficial" because Russo could continue working at the Institute while searching for other employment, and the practice could avoid being short-staffed. Talbot-Kleeman and Russo had further conversations about a potential transition plan on March 29, 2019, during which Russo expressed concerns about experiencing gender bias at the Institute.

On April 2, 2019, Talbot-Kleeman sent Russo a proposed separation and general release agreement that provided terms for Russo's transition. The agreement stated that Russo would work at the Institute through June 28, 2019, and would receive a \$15,000 severance payment. The Institute also contemplated allowing Russo to work at the Hillsborough County Nursing Home (the "Nursing Home") as an independent contractor with Dr. Zubin Batlivala, another Institute physician.

Two days later, on April 4, 2019, Russo made a counter-proposal that she would work until April 19 and then take her accrued paid time off until July 9, 2019. Russo also proposed that she would work at the Nursing Home during her vacation period and then after July 9, 2019. Talbot-Kleeman offered to revise the separation agreement accordingly and, in the meantime, the two "addressed [Russo's] work schedule and duties so that it met with [their mutual] approval." As a result, on April 11, 2019, Talbot-Kleeman sent a modified separation agreement that included

Russo's paid-time-off proposal, contained an independent contractor agreement, and reduced her severance to \$2,500.

Russo did not agree to the revised agreement, and on April 29, 2019, her counsel sent Talbot-Kleeman a letter (the "Demand Letter") reiterating the gender bias complaint that Russo had first raised a month earlier. The Demand Letter stated Russo's counsel could not "advise [Russo] to consider the proposed Independent Contractor Agreement," but also that Russo "remain[ed] willing" to (1) "provide . . . services as either an employee or as an Independent Contractor" and (2) "reach an amicable and private resolution to the employment matter." To that end, Russo proposed a severance payment of \$100,000. The Demand Letter concluded by noting, "[i]n the meantime, Ms. Russo . . . expect[ed] to be able to work in an environment that is free of workplace harassment, discrimination[,] and retaliation"

On April 30, 2019, the day after Russo sent her Demand Letter, Talbot-Kleeman wrote to another Institute employee that she was "still working out the details but . . . plan[ned] to have [Russo] done this week." On May 2, 2019, the Institute ended Russo's employment, and Talbot-Kleeman explained in a May 3, 2019 email to Russo that her immediate termination was "in light of the situation." Also on May 3, Talbot-Kleeman sent an instant message to Batlivala stating "[s]orry but I've had to tell [Russo] she is

done. She is making allegations that are unacceptable and demanding a large sum of money. A fair offer was made to her as well as a counter offer of her choosing, which she is now rejecting."

Russo asked Batlivala, Jenkins, and two other Institute doctors to provide recommendation letters, and all four men agreed to do so. On May 30, 2019, Talbot-Kleeman sent an instant message to several Institute doctors stating:

As you all know [Russo] has made threats of wrongful firing. I have not heard from her or her attorney recently[,] but she has reached out to some people for a reference. Given the situation I am advising her and her attorney that those requests must go thr[ough] our legal counsel. Her threat of legal action requires we follow this process.

Prior to Russo's termination, Jenkins could not recall ever being instructed to refrain from writing a letter of recommendation.

7. The Bailey Report

Russo obtained a new job shortly thereafter in early June 2019. The following month, the Institute hired independent investigator Elizabeth Bailey to determine if Russo had experienced sex discrimination. Bailey interviewed Russo, Ahn, and other Institute employees before drafting findings of fact and a report. As relevant here, Bailey reported that Ahn had expressed to her that he could not continue to work with Russo because he was afraid she would disrespect him again, and that "he couldn't

look himself in the mirror as a husband and father to small children if he allowed himself to be treated with such disrespect."

B. Procedural Background

On August 22, 2021, after exhausting administrative remedies, Russo sued the Defendants in federal court. As pertinent here, Russo brought claims of (1) sex discrimination against the Institute under Title VII and N.H. Rev. Stat. Chapter 354-A, (2) workplace retaliation against the Institute and Ahn under Title VII and N.H. Rev. Stat. Chapter 354, and (3) sex discrimination against Ahn under the New Hampshire law provision prohibiting aiding, abetting, and/or inciting discrimination.

On November 22, 2024, the district court granted summary judgment on the claims against Ahn. It reasoned that Russo could not establish Ahn aided and abetted the Institute in sex discrimination because (1) "Russo [did] not show[] that Dr. Ahn's reaction was 'over-the-top' or would otherwise support an inference that he reacted badly because of her gender"; (2) Russo had not made a "minimal showing" supporting the elements of a prima facie case; and (3) in any event, Russo did not show that the reasons for her termination were pretext for sex discrimination.²

² It also dismissed the retaliation claim against Ahn because "Talbot-Kleeman, not Ahn, terminated Russo's employment on May 2." Russo does not challenge that decision on appeal.

Later, at the district court's prompting, the Institute filed a motion for summary judgment arguing that it was also entitled to judgment based on the court's resolution of Ahn's motion. The court agreed and granted summary judgment for the Institute.

As to the Institute, the district court concluded that Russo could not establish discrimination because the practice terminated her employment due to Ahn's ultimatum and not from any information, true or otherwise, presented by Ahn about Russo. The court further determined that Russo could not demonstrate pretext for sex discrimination by either Ahn or the Institute. Regarding Russo's retaliation claim, the court concluded that while the Demand Letter constituted protected conduct, Russo had not experienced a materially adverse action because she ultimately received positive employment references, and she, not the Institute, ended the transition period. Russo timely appealed both summary judgment decisions.

II.

A. Standard of Review

We review the grant of summary judgment de novo. Walsh, 169 F.4th at 338. Summary judgment is appropriate only where the "undisputed material facts, taken 'in the light most favorable'" to Russo, demonstrate that the Defendants are entitled to judgment as a matter of law. Id. (quoting Escribano-Reyes v. Pro. Hepa

Certificate Corp., 817 F.3d 380, 386 (1st Cir. 2016)). Because Russo opposes summary judgment, she "bears the burden of producing specific facts sufficient to defeat summary judgment." Serrano-Colon v. U.S. Dep't of Homeland Sec., 121 F.4th 259, 269 (1st Cir. 2024) (citation modified).

B. Sex Discrimination

Title VII of the Civil Rights Act of 1964 prohibits "discriminat[ion] against any individual with respect to . . . compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). The parties agree that we should apply the burden-shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-05 (1973), to Russo's Title VII sex discrimination claims, which rely on circumstantial evidence. And, "[w]e apply the same standard to [Russo's] discrimination claim[s] under New Hampshire law because 'the New Hampshire Supreme Court relies on Title VII cases to analyze claims under RSA 354-A.'" Farid v. Trs. of Dartmouth Coll., 181 F.4th 193, 203 n.4 (1st Cir. 2026) (quoting Hudson v. Dr. Michael J. O'Connell's Pain Care Ctr., Inc., 822 F. Supp. 2d 84, 92 (D.N.H. 2011)).

Under McDonnell Douglas, we first consider whether Russo adduced sufficient evidence to establish a prima facie case of sex discrimination. See Walsh, 169 F.4th at 338-39. To do so, Russo "must identify evidence 'that: (1) she belonged to a protected

class, (2) she performed her job satisfactorily, (3) her employer took an adverse employment decision against her, and (4) her employer continued to have her duties performed by a comparably qualified person.'"³ Serrano-Colon, 121 F.4th at 270 (quoting Paul v. Murphy, 948 F.3d 42, 49 (1st Cir. 2020)).

Once Russo makes a prima facie showing, the burden shifts to the Defendants, who must "state a legitimate, nondiscriminatory reason for the adverse employment actions." Serrano-Colon, 121 F.4th at 270 (citation modified). If the Defendants do so, they are entitled to summary judgment unless Russo "raises a genuine issue of material fact that the reasons offered by the [D]efendants were a pretext for discrimination." Id. (citation modified).

We may assume without deciding that Russo can establish a prima facie case and move directly to McDonnell Douglas's second step. See Serrano-Colon, 121 F.4th at 270. The Defendants assert that the Institute terminated Russo because she disrespected Ahn, who felt that he could no longer work at the Institute if she continued to be employed there. In support of this argument, the Defendants contend: (1) Ahn believed Russo had been rude and

³ The parties dispute the proper formulation of the prima facie case for a sex discrimination case that involves the termination of an employee. We note that "the precise requirements of a prima facie case can vary depending on context and were never intended to be rigid, mechanized, or ritualistic." Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303, 311 (2025). Regardless, we need not decide the appropriate formulation here because we assume in Russo's favor that she can establish a prima facie case.

hostile to him; (2) Russo criticized Ahn to Talbot-Kleeman and stated she would not apologize to him; and (3) the Institute partners believed Ahn and Russo could no longer work together and it was impossible to employ them both. As such, the Defendants have articulated a non-discriminatory reason for terminating Russo's employment, thereby satisfying step two. See id. at 270-71.

Accordingly, we turn to the third McDonnell Douglas step. A plaintiff may succeed at this stage either (1) "directly by persuading the court that a discriminatory reason more likely motivated the employer" or (2) "indirectly by showing that the employer's proffered explanation is unworthy of credence." Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303, 309 (2025) (quoting Tex. Dep't. of Cmty. Affs. v. Burdine, 450 U.S. 248, 256 (1981)). Because there is "substantial overlap between [the] evidence of pretext and of discriminatory animus," we assess whether Russo has made a sufficient showing from which a rational factfinder could reasonably infer "that unlawful discrimination was a determinative factor in the adverse employment action." Kelley v. Corr. Med. Servs., Inc., 707 F.3d 108, 116 (1st Cir. 2013) (citation modified). Russo points to several considerations that she believes warrant such a conclusion. After examining these considerations, we conclude that no reasonable factfinder could find sufficient evidence of sex discrimination to warrant a trial.

1. Stereotyping

Russo first asserts that she experienced sex discrimination because she was subjected to stereotyping based on her gender. As we have explained before, "stereotyping, cognitive bias, and certain other 'more subtle cognitive phenomena which can skew perceptions and judgments'" can substantiate a discrimination claim under Title VII. Burns v. Johnson, 829 F.3d 1, 13 (1st Cir. 2016) (quoting Thomas v. Eastman Kodak Co., 183 F.3d 38, 61 (1st Cir. 1999)). Such a claim "arises when an individual suffers an adverse employment action because she either conforms or fails to conform to some stereotype or stereotypes attributable to her gender." Morales-Cruz v. Univ. of P.R., 676 F.3d 220, 224-25 (1st Cir. 2012). A plaintiff asserting stereotyping as a basis for a discrimination claim "must show that the employer actually relied on her gender in making its decision," as remarks based on stereotypes alone "do not inevitably prove that gender played a part in a particular employment decision." Price Waterhouse v. Hopkins, 490 U.S. 228, 250-51 (1989) (involving improper "belief that a woman cannot be aggressive, or that she must not be").

Russo centers her stereotype claim on Ahn's statement that he could not "look himself in the mirror as a husband and father to small children if he allowed himself to be treated with such disrespect." Russo asserts that this allegedly gender-charged statement shows that Ahn felt his masculinity was

threatened because of her assertiveness and that his negative perception of this quality was anchored in stereotype. Yet Ahn's sentiment clearly could "apply equally to persons of either gender." Morales-Cruz, 676 F.3d at 225. In other words, Ahn's feelings about his status in his family could be similarly affected by his perception that a man had disrespected him. Russo points to no utterance by Ahn that implicates women either directly or indirectly, and we have previously said that "terms . . . convey[ing] only gender-neutral meanings are insufficient to anchor a gender-stereotyping claim." Id.

Russo also contends that Ahn targeted her because she was insufficiently warm and welcoming to him. This argument, too, cannot sustain a stereotyping claim in the absence of other indicia that Ahn's statements about Russo's demeanor relied on broader, stereotyped notions about women's expected behavior compared to men. See id. (citing Weinstock v. Columbia Univ., 224 F.3d 33, 44 (2d Cir. 2000), for its conclusion that describing a woman as "nice" and "nurturing" was insufficient to establish stereotyping); see also Burns, 829 F.3d at 13-14 (assessing claim in light of general stereotype regarding women's capacity for leadership and citing additional cases). To put a finer point on it, there is no proof here from which a reasonable factfinder could draw an inference that Ahn thought women at large must be warmer

and friendlier than men and disliked Russo because she did not comport with that stereotype.

To be clear, there need not be an "explicit reference" to a plaintiff's sex in a stereotyping case because that "would make it exceedingly difficult to prove most sex discrimination cases today." Chadwick v. WellPoint, Inc., 561 F.3d 38, 46 (1st Cir. 2009); cf. Morales-Cruz, 676 F.3d at 226 (finding calling plaintiff "that girl," without further context, did not establish sex stereotyping). Rather, we consider whether "a jury could reasonably determine that a sex-based stereotype" motivated the employer's decision to take an adverse action against the employee. Chadwick, 561 F.3d at 46-47. There is no dispute here that Russo raised her voice at Ahn, at times did not follow his instructions (whether for good reasons or not), and failed to timely contact him about potentially important, patient-related matters. This is thus not a situation where Ahn's concerns about Russo appear to be grounded in notions that she failed to exhibit certain qualities that Ahn expected from women. Because no jury could reasonably conclude that a purported stereotype grounded Ahn's motivation to terminate Russo's employment, Russo cannot demonstrate pretext on this basis.

2. Animus

Russo also contends that Ahn's anger at her was an overreaction and therefore signaled pretext for sex

discrimination. In support of her argument, Russo quotes Burns for the proposition that being "inappropriately upset or angry . . . to the point of behaving unprofessionally" can be a marker of sex discrimination. 829 F.3d at 15 (quoting Thomas, 183 F.3d at 64).

Here, Ahn was angry at Russo. Drawing all reasonable inferences in Russo's favor, the record shows a jury might conclude that Ahn yelled at Russo on multiple occasions because he felt that she was disrespecting him. And while "such behavior is (or at least should be) out of line in the work arena," there is a consistent reason why Ahn "might have yelled and screamed at [Russo] . . . that ha[s] no nexus to her gender," i.e., he believed that she treated him poorly. Rivera-Rivera v. Medina & Medina, Inc., 898 F.3d 77, 94 (1st Cir. 2018) (affirming summary judgment for employer on hostile work environment claim).

We acknowledge that in some cases, becoming inappropriately angry or emotional can suggest a non-neutral response to a plaintiff because of a protected characteristic, permitting an inference of "conscious animus or less conscious bias." Thomas, 183 F.3d at 64. However, in those cases, an excessive emotional response was additional evidence that supplemented other reasons suggesting discrimination. See Burns, 829 F.3d at 15-16 (discussing such additional factors); Thomas, 183 F.3d at 62-65. But there is no other circumstantial evidence

here that permits an inference of discrimination. And because Ahn had a history of explosive emotional reactions to many other colleagues, both male and female, the record indicates that he engaged in undesirable workplace conduct toward Institute employees regardless of gender.

3. Comparators

Russo next alleges pretext based on evidence showing that Ahn treated women with more hostility than he treated men. For such comparator evidence to help Russo's cause, she must show that "others similarly situated to [her] in all relevant respects were treated differently by the employer." Ray v. Ropes & Gray LLP, 799 F.3d 99, 114 (1st Cir. 2015) (citation modified).⁴ We evaluate whether a comparator is appropriate through the lens of reasonableness, noting that the plaintiff and the comparators "must closely resemble one another in respect to relevant facts and circumstances." Diaz v. City of Somerville, 59 F.4th 24, 32 (1st Cir. 2023) (quoting Conward v. Cambridge Sch. Comm., 171 F.3d 12, 20 (1st Cir. 1999)). That is to say: "apples should be compared with apples." Id. (quoting Dartmouth Rev. v. Dartmouth Coll., 889 F.2d 13, 19 (1st Cir. 1989)).

⁴ Russo asserts that the proper formulation of the standard is whether a comparator is "similarly situated in material respects." (quoting Vélez v. Thermo King de P.R., Inc., 585 F.3d 441, 451 (1st Cir. 2009)). Because our analysis does not hinge on the precise formulation of the comparator standard, we decline to adopt one over the other here.

We first address Russo's assertion that Ahn was "domineering" and "impatient" with women. Undoubtedly, Ahn was abrasive to many of the women who worked at the Institute. But Russo herself testified that Ahn yelled at and was disrespectful to Miller, a man, and there is plenty of record evidence that Ahn was unpleasant to men and women alike. See Jerram v. Cornwall Cent. Sch. Dist., 464 F. App'x 13, 15 (2d Cir. 2012) (unpublished) (finding no disparate treatment where there was "little evidence" that a supervisor, who was "abrasive[] and sometimes disrespectful[,] treated women any worse than he treated men"). Because Title VII "does not set forth 'a general civility code for the American workplace,'" Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68 (2006) (quoting Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80 (1998)), we cannot say that Russo sustains a disparate treatment claim by showing Ahn's aggressiveness toward or impatience with her when he showed such intemperate behavior to employees regardless of gender.

Russo also maintains that Ahn would work through conflict calmly with men but not women. She cites Ahn's interactions with Palmer and Miller as illustrative. However, neither man is an appropriate comparator.⁵ We require comparators

⁵ Russo's third proposed comparator, male PA Drue Lorenz, is even more inapt. She has adduced no evidence that Lorenz disrespected Ahn or had any kind of personal conflict with Ahn;

to have "engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." Perkins v. Brigham & Women's Hosp., 78 F.3d 747, 751 (1st Cir. 1996) (quoting Mitchell v. Toledo Hosp., 964 F.2d 577, 583 (6th Cir. 1992)). We cannot say that the comparators Russo identifies engaged in sufficiently similar conduct to hers. Both Palmer and Miller were willing to speak with Ahn about their conflict, enabling repair of the professional working relationship. By contrast, Russo did not talk to Ahn after their first negative interaction even when Talbot-Kleeman counseled her to "clear the air" with him. It is also undisputed that Russo raised her voice to Ahn, told Talbot-Kleeman that she would never apologize to Ahn, and called Ahn lazy. The interactions involving the male PAs do not approach the level of mutual hostility that existed between Ahn and Russo.

The Institute's partners terminated Russo because they felt that she and Ahn could no longer "work together . . . in a productive manner[,]" so it is material that Miller and Palmer were willing to hash out their differences with Ahn when Russo was not. As a result, we do not think a "prudent person, looking objectively at the incidents, would think them roughly equivalent

rather, Lorenz was counseled by Ahn after the PA had interpersonal difficulties with other people.

and the protagonists similarly situated." Id. (quoting Dartmouth Rev., 889 F.2d at 19).

4. Inconsistencies

Russo also contends that the Institute's reasons for terminating her were pretextual because the explanations for various adverse actions changed over time. One way to show pretext is to establish that the employer's stated reason for an adverse action is so riddled with "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions . . . that a reasonable factfinder" would be unable to find that reason worthy of belief. Cocuzzo v. Trader Joe's E. Inc., 121 F.4th 924, 935 (1st Cir. 2024). Evidence that the employer has "wavered from the core explanation for its action" can support such a claim. Id. Where, however, an employer identifies rationales that "are grounded on and follow obviously from" the core reason for the termination, we do not consider those rationales to be the kind of weaknesses or contradictions that suggest pretext. Id.

Here, Russo argues that Ahn made three inconsistent assertions that demonstrate pretext. First, Russo claims that Ahn was inconsistent regarding the timing of when he sought her termination. This argument is rooted in Ahn's deposition testimony that he and Talbot-Kleeman believed that Russo should be terminated when Russo called him lazy sometime after March 21, 2019. Russo instead asserts that Ahn decided to seek her termination on

March 9, the same day as their acrimonious phone conversation about discharging a patient. However, Russo selectively reads Ahn's deposition testimony. He conceded during the deposition that he did not "know exactly, time-wise," when Russo called him lazy and he and Talbot-Kleeman discussed her termination, and characterized the March 9 incident as "the final straw." And the record supports that Ahn messaged Talbot-Kleeman on March 9 to inquire about Russo's termination.

None of these inconsistencies about the timing of when Ahn sought Russo's termination matter to a substantial degree because Ahn's core reason for discharging her was that she disrespected him and the March 9 incident tipped him over the edge. And to the extent there are minor inconsistencies about timing, we note that "thin evidence of pretext by itself [cannot] defeat summary judgment." Quintana-Dieppa v. Dep't of Army, 130 F.4th 1, 16 (1st Cir. 2025) (citation modified).

Next, Russo alleges that Ahn provided different reasons for excluding her from his operating room. But Russo does not assert on appeal that exclusion from the operating room was an adverse employment action. Thus, any reason given by Ahn about Russo's exclusion is not a "reason for the adverse employment action." Serrano-Colon, 121 F.4th at 270 (emphasis added and citation modified). In other words, any inconsistency in what Ahn

might have said about why he refused to operate with Russo is not probative for why he sought her termination.

Finally, Russo asserts that the Defendants offer varying descriptions of the events of March 9 and that these variances suggest pretext. But Russo never raised this argument to the district court, and we therefore do not consider it for the first time here. See Henderson v. Mass. Bay Transp. Auth., 977 F.3d 20, 33 (1st Cir. 2020). In any event, even if we considered this contention, it would not tip the balance in this case. That is because the purported changes in explanations are ancillary and do not go to the heart of the reason for Russo's termination. Cocuzzo, 121 F.4th at 935.

5. Discriminatory Atmosphere

Russo finally claims that an atmosphere of sex discrimination pervaded the Institute. Specifically, she highlights the Institute's all-male physician roster and its difficulty retaining various female PAs as evidence of a discriminatory culture. Such "circumstantial evidence of a discriminatory atmosphere . . . is relevant to the question of motive in considering a discrimination claim." Conway v. Electro Switch Corp., 825 F.2d 593, 597 (1st Cir. 1987). Although it is not on its own proof of discrimination, id. at 598, such evidence can assist a plaintiff in meeting her burden of showing pretext. Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 55

(1st Cir. 2000). But, as described above, Russo has presented no other competent evidence that the Defendants discriminated against her based on her gender. Thus, evidence about the gender breakdown of employees at the Institute is not, alone, sufficient to salvage her claim. See Ruiz v. Posadas de San Juan Assocs., 124 F.3d 243, 249 & n.10 (1st Cir. 1997).

We emphasize that we have considered each of Russo's arguments "not in splendid isolation, but as part of an aggregate package of proof offered by the plaintiff." Taite v. Bridgewater State Univ., Bd. of Trs., 999 F.3d 86, 94 (1st Cir. 2021) (quoting Mesnick v. Gen. Elec. Co., 950 F.2d 816, 824 (1st Cir. 1991)). After assessing Russo's evidence in totality, we nonetheless conclude that she has not raised a genuine issue of fact that her termination was motivated by sex discrimination.

That is because, read as a whole, the record demonstrates the following. Ahn was often difficult to Institute employees of both genders. Russo and Ahn had multiple fraught interactions over several years. Ahn viewed these interactions as precluding him from working any longer for an organization that employed Russo. Ahn's ultimatum that he would quit if the Institute retained Russo was the basis for the Institute's decision to terminate Russo's employment. While Ahn's negative views about Russo caused the decision to fire her, there is no evidence that Ahn's views were rooted in gender bias rather than personal

antipathy. Accordingly, we conclude that the district court correctly granted the Defendants summary judgment on Russo's sex discrimination claims.

C. Retaliation

We are left with Russo's retaliation claim against the Institute. Title VII bars "retaliation against an individual who has complained about discriminatory employment practices." Kinzer v. Whole Foods Mkt., Inc., 99 F.4th 105, 114-15 (1st Cir. 2024) (quoting Velazquez-Ortiz v. Vilsack, 657 F.3d 64, 72 (1st Cir. 2011)). A plaintiff may prevail on a retaliation claim even when the conditions she complains of do not amount to a Title VII violation. Id. at 115. To establish a case of retaliation, Russo must demonstrate that "(1) she engaged in protected conduct; (2) she was subjected to an adverse employment action; and (3) the adverse employment action is causally linked to the protected conduct." Serrano-Colon, 121 F.4th at 273 (quoting Rivera-Rivera, 898 F.3d at 94).

On appeal, Russo asserts burden shifting is not required as she has offered direct evidence of retaliation. We agree because we think here that the employer has "le[ft] behind direct evidence of their discriminatory animus, such as express declarations of their retaliatory intentions." Simas v. First Citizens' Fed. Credit Union, 170 F.3d 37, 48 (1st Cir. 1999). In such a case, "the McDonnell Douglas test is inapplicable." Trans

World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985). Russo adduced evidence that Talbot-Kleeman wanted her "done" because "[s]he [was] making allegations that are unacceptable," and the only allegations Russo made were her claims of sex discrimination. That was direct evidence of retaliatory animus. Cf. Moore v. Indus. Demolition LLC, 138 F.4th 17, 38 (1st Cir. 2025) (finding instruction to "[h]it the gate" after requesting accommodation to be "akin to direct evidence" (alteration in original)). Thus, we turn to the remaining contested questions: whether the Institute (1) subjected Russo to adverse actions and (2) took those actions because of her gender bias complaint in the Demand Letter.⁶

1. Adverse Actions

We address first whether Russo was subjected to adverse employment actions when the Institute (1) accelerated her termination during the transition period and (2) denied her a role as an independent contractor at the Nursing Home.⁷ Title VII's

⁶ The parties do not dispute that the Demand Letter constituted protected conduct.

⁷ On appeal, Russo does not argue that withholding of recommendation letters was an adverse action but instead argues it is "evidence of retaliatory motive." It may be that the denial of reference letters or giving negative references can constitute an adverse action in certain circumstances. See Duckworth v. Pratt & Whitney, Inc., 152 F.3d 1, 6 (1st Cir. 1998); cf. Ray, 799 F.3d at 107 (referencing a retaliation claim that survived summary judgment and went to trial). However, Russo has waived this argument by not raising it on appeal. See Vargas-Colón v. Fundación Damas, Inc., 864 F.3d 14, 24 (1st Cir. 2017) (deeming waived arguments that a party fails to develop on appeal).

"antiretaliation provision, unlike the substantive provision, is not limited to discriminatory actions that affect the terms and conditions of employment." Burlington, 548 U.S. at 64. Accordingly, it covers "materially adverse" actions that "could well dissuade a reasonable worker from making or supporting a charge of discrimination." Stratton v. Bentley Univ., 113 F.4th 25, 42 (1st Cir. 2024) (quoting Burlington, 548 U.S. at 57).

We begin with the accelerated termination. Every retaliation case "must be decided on its own facts," Stratton, 113 F.4th at 44, and the facts in Alvarez v. Royal Atlantic Developers, Inc., 610 F.3d 1253 (11th Cir. 2010), are particularly analogous here. In Alvarez, the defendants planned to fire the eponymous plaintiff once they found a replacement for her. Id. at 1260. After Alvarez complained of discrimination in a letter, her employers changed course and terminated her the next morning. Id. at 1261-62. The Eleventh Circuit held that, because Alvarez was fired "sooner than she otherwise would have been" after submitting her letter, she "establish[ed] the adverse action element of her retaliation claim." Id. at 1268.

Here, although the Institute decided to terminate Russo on March 25, 2019, the parties contemplated and nominally agreed

Similarly, Russo does not argue that the failure to receive a severance payment was an adverse action, and we consider this argument also waived.

that Russo would work through a transition period such that she would be employed at the Institute for at least several more months. Just a few days after receiving the Demand Letter, however, the Institute dropped that plan and accelerated Russo's termination such that her employment ended on May 2, 2019.

The Institute argues that the "only adverse employment action" occurred on March 25, 2019, when the partners voted to terminate Russo. We reject that view. Just because the partners agreed that Russo would be fired later does not insulate the Institute from any retaliatory actions taken in the interstitial period, having decided not to effectuate the termination decision immediately. We have previously said that employers may not "accelerate their disciplinary course due to an employee's protected conduct." Kinzer, 99 F.4th at 119. That is certainly true where, as here, moving up a termination would deprive an employee of an expected salary -- a "serious hardship" that could likely dissuade a "reasonable employee" from "filing a discrimination complaint." Burlington, 548 U.S. at 72-73. The loss of several months' guaranteed wages and benefits for sending a demand letter would discourage reporting discrimination. Thus, we view the Institute's decision to accelerate Russo's termination

period as a materially adverse action under the Burlington Northern standard.⁸

We consider next Russo's assertion that prohibiting her from working as an independent contractor at the Nursing Home was also an adverse action. The Institute argues that their ending voluntary negotiations over the independent contractor position cannot be adverse because Russo's Demand Letter rejected its offer for her to contract at the Nursing Home. This argument is better analyzed as related to causation (i.e., whether the Institute terminated negotiations because Russo engaged in protected conduct or because she rejected the practice's severance offer), so we will revisit it shortly in that context. See Paquin v. Fed. Nat. Mortg. Ass'n, 119 F.3d 23, 31-32 (D.C. Cir. 1997) (suggesting that rejecting an employee's unreasonable demand goes to causation). At this stage, however, "the appropriate question" is whether withdrawing the independent contractor opportunity would discourage a reasonable employee from complaining about discrimination. Stratton, 113 F.4th at 44.

We conclude that it would. "An employer's withdrawal of a voluntary benefit . . . may constitute adverse action," even

⁸ We leave open whether accelerated termination is an adverse action when the employee is paid in full and receives benefits through the original termination date, as that did not happen here. See Connell v. Bank of Bos., 924 F.2d 1169, 1179 (1st Cir. 1991) (holding, pre-Burlington Northern, that there was no adverse action in such circumstances).

when the employer "had no obligation to provide" that benefit. Paquin, 119 F.3d at 32; see also Passer v. Am. Chem. Soc., 935 F.2d 322, 331 (D.C. Cir. 1991) (holding "cancellation of a major public symposium in an employee's honor" was an adverse action). That is because such a withdrawal, "occurring at a time when the departing employee is most vulnerable, undoubtedly would make other employees think twice before filing a discriminatory termination charge." Flannery v. Recording Indus. Ass'n of Am., 354 F.3d 632, 643 (7th Cir. 2004) (involving a retaliatory withholding of a post-termination independent contracting agreement). Russo presented sufficient evidence to defeat summary judgment that the withdrawal of the independent contractor opportunity constituted an adverse action.

2. Causal Connection

Turning to causation, retaliation claims under Title VII "require proof that the protected activity was a but-for cause of the alleged adverse action by the employer." Stratton, 113 F.4th at 44 (citation modified). A plaintiff pressing such a claim "must show that their employer would not have taken the adverse action but for a desire to retaliate." Id.

At bottom, the question of causation rests on whether a jury could conclude whether the Institute caused the accelerated termination and withdrawal of the independent contractor opportunity because Russo sent the Demand Letter. Although the

Institute makes multiple arguments that there is no causal connection, we conclude that Russo could establish that the Demand Letter complaint about gender bias was the but-for cause of the adverse actions taken against her.

First, and as we alluded to earlier, the Institute claims that the record establishes beyond dispute that Russo ended the severance agreement discussions and that was why it "declined to engage further in negotiating," resulting in the accelerated termination and withdrawal of the independent contractor opportunity. Determining why severance negotiations fall apart is a question of causality. See Paquin, 119 F.3d at 32 (finding no causal connection when plaintiff failed to establish whether employer took back a severance offer because it expired or because of his protected activity).

In support of its position that Russo's termination of negotiations was the cause of the adverse actions, the Institute cites an unpublished Fourth Circuit disposition, David v. Winchester Medical Center, 759 F. App'x 166 (4th Cir. 2019). Assuming David is correct, it still does not help the Institute here. That case makes clear that a plaintiff who declines a severance offer "in explicit terms" presents a categorically different case from a situation where an employer "revoke[s] . . . the offer upon [a plaintiff's] mere mention of her legal rights." Id. at 169 (noting letter "clearly state[d]

that [the plaintiff] 'rejects the proposed severance agreement'). Here, Russo's Demand Letter expressed that she was willing to work at the Institute as either an employee or a contractor and that she was open to continued negotiation, as demonstrated by her severance counteroffer. That is far from an explicit rejection of the separation agreement; indeed, it suggests that "negotiations were still ongoing between the parties when the axe fell." Trainor v. HEI Hosp., LLC, 699 F.3d 19, 28 (1st Cir. 2012).

Moreover, Russo has adduced evidence that Talbot-Kleeman, the Institute's executive director, wanted to accelerate her termination and withdraw the independent contractor opportunity because of the content of the Demand Letter as it relates to sex discrimination. Chief among this evidence is Talbot-Kleeman's message to Batlivala making clear that Russo was "done" because "[s]he [was] making allegations that are unacceptable" Talbot-Kleeman also expressed to Russo that her termination was "in light of the situation." And Talbot-Kleeman instructed the Institute doctors that references could not be directly provided due to Russo's "threat of legal action."⁹ Together, these statements suffice to permit Russo's

⁹ This final comment about how to handle references for an employee suing an employer by itself could be insufficient as there may be non-retaliatory reasons for taking such an approach. But here the comment about the references, combined with Talbot-Kleeman's other, more direct statements suggesting retaliatory

retaliation claim to proceed to trial. See David, 759 F. App'x at 169 (suggesting a plaintiff could sustain a retaliation claim if the employer "revoked the offer upon [the employee's] mere mention of her legal rights").

The Institute also contends that there was no causal connection because Russo's firing predated any protected conduct, since the partners voted to terminate her on March 25, 2019, and she sent the Demand Letter approximately one month later. It is true that "[c]ausation moves forward, not backwards, and no protected conduct after an adverse employment action can serve as the predicate for a retaliation claim." Pearson v. Mass. Bay. Transp. Auth., 723 F.3d 36, 42 (1st Cir. 2013); see also Trainor, 699 F.3d at 27 ("There is a common-sense aspect to causation[.]"). But, as explained already, accelerating Russo's termination and withdrawing the independent contractor opportunity were separate adverse actions that postdate her Demand Letter. Thus, her protected conduct could have caused the adverse actions that followed.

Finally, the Institute avers that because it sought to help Russo transition from the practice even after her first mention of gender bias on March 29, 2019, no retaliation occurred

animus, place a cast on the remark about references that may give it evidentiary value in determining the Institute's reasons for taking the adverse actions at issue.

when it later imposed the adverse actions. This argument, too, is unavailing. We have said that "federal anti-retaliation provisions generally prohibit conduct taken in retaliation for any protected activity, not just a plaintiff's initial protected action." Alvarado v. Donahoe, 687 F.3d 453, 463 (1st Cir. 2012) (emphasis added). In short, it is no excuse for the Institute to have offered Russo certain benefits after her first protected complaint only to take adverse actions against her later when she persisted in those complaints.

Accordingly, Russo has adduced sufficient evidence for a reasonable factfinder to conclude that the Institute retaliated against her because of her complaint in the Demand Letter about sex discrimination when it accelerated her termination and denied her the independent contractor opportunity.

III.

For these reasons, we affirm in part and reverse in part. We remand for further proceedings consistent with this opinion. Each party shall bear their own costs.

So ordered.