

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEPHEN C. COYLE,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
GERRY MADDEN, DR.,	:	
Individually and d/b/a MADDEN	:	
ANIMAL HOSPITAL,	:	No. 03-4433
Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J.

December 17, 2003

I. INTRODUCTION

In his Complaint, Plaintiff Stephen C. Coyle implies that just because he worked like a dog does not mean that he should be paid like one. Plaintiff, a former veterinary technician at Madden Animal Hospital, was terminated after he told his employer, Defendant Dr. Gerry Madden, that he was entitled to overtime pay. Accordingly, he brings this action against Defendant for retaliatory discharge and failure to pay overtime under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 (“FLSA”), the Pennsylvania Wage Payment and Collection Law, 43 PA. CONS. STAT. ANN. § 260.1 (“PWPCCL”), and the Pennsylvania Minimum Wage Act, 43 PA. CONS. STAT. ANN. § 333.101 (“PMWA”), and for intentional infliction of emotional distress. Defendant feels that Plaintiff is barking up the wrong tree and now moves to dismiss the intentional infliction of emotion distress claim and the retaliatory discharge claims under FLSA, PWPCCL, and PMWA.

In his motion, Defendant argues, inter alia, that making an informal complaint to an employer regarding failure to pay overtime is not protected activity under the anti-retaliation provision of FLSA. Thus, the issue before the Court, which has not yet been squarely addressed by the Third

Circuit, is whether the anti-retaliation provision of FLSA protects employees who informally protest to their employers about wage and hour violations. For the reasons that follow, I hold that informal complaints made to an employer trigger protection under this provision of FLSA.

II. BACKGROUND¹

On December 10, 2000, Plaintiff began employment at Defendant's Madden Animal Hospital as a veterinary technician and was paid at a rate of nine dollars per hour. During his employment, he regularly worked more than forty hours per week. Despite working over forty hours per week, Plaintiff contends that Defendant failed to pay him overtime for the hours worked in excess of forty hours. Furthermore, Plaintiff asserts that none of his paychecks contained itemized deductions. (Compl. ¶ 12.)

On November 6, 2002, Defendant's new accountant visited the Madden Animal Hospital for the first time. (*Id.* ¶ 13.) In response to Plaintiff's inquiry, the accountant informed Plaintiff and other Madden Animal Hospital employees that, according to the law, hourly employees are entitled to overtime pay for any work week hours worked in excess of forty hours. (*Id.* ¶¶ 14-15.) Plaintiff requested that the accountant inform Defendant of the law regarding overtime, which the accountant agreed to do. Later that same day, the accountant informed Plaintiff that he had spoken with Defendant and informed Defendant of his obligation to pay overtime to hourly employees who work in excess of forty hours. (*Id.* ¶ 15.)

On November 15, 2002, Plaintiff asked Defendant whether he had spoken with the accountant about overtime pay, to which Defendant responded that he had not. (*Id.* ¶ 16.) When

¹ The following factual allegations taken from Plaintiff's Complaint are accepted as true for the purposes of this Motion.

Plaintiff informed Defendant that the accountant had told him otherwise, Defendant responded that it was not his policy to pay overtime and that he had never done so in the past. (*Id.* ¶ 17.) Plaintiff next explained that the accountant had informed him that the law required Defendant to pay overtime. (*Id.*) In response, Defendant told Plaintiff to immediately cut his hours to forty hours per week. (*Id.*)

When Plaintiff received his paycheck on November 15, 2002, it only included overtime pay for one of the two prior weeks. (*Id.* ¶ 18.) Plaintiff approached Defendant about receiving the back overtime that was owed to him but Defendant refused. (*Id.*) After consulting with his accountant sometime thereafter, on November 19, 2002, Defendant informed Plaintiff that he was indeed entitled to back overtime pay. (*Id.* ¶ 19.) On November 27, 2002, Plaintiff received two envelopes with three checks inside. (*Id.* ¶ 20.) One of the checks, dated November 25, 2002, was in the amount of \$689.85 and was purportedly a payment for all back overtime that Plaintiff was owed for 2000 and 2001 as the memo line of that check stated “overtime 00/01.” (*Id.*) Another check, also dated November 25, 2002, was in the amount of \$1,193.98 and was purportedly a payment for all back overtime Plaintiff was owed for 2002 as the memo line of that check stated “overtime 02.” (*Id.*) Neither of the checks specified the method of calculation or what deductions, if any, were taken. (*Id.*) As a consequence, Plaintiff had no way of verifying whether the amounts paid were accurate. (*Id.*)

On December 3, 2002, Defendant terminated Plaintiff. (*Id.* ¶¶ 22-23.) Defendant alleged the following bases for termination: (1) Plaintiff improperly stamped a rabies certificate; and (2) Plaintiff improperly informed a customer that he could leave the office with a cat who had a bite wound that was not inoculated. Both of these events allegedly occurred approximately three to four weeks prior

to Plaintiff's termination. (*Id.*) Plaintiff contends that these reasons are false and are not legitimate non-retaliatory reasons for termination. Prior to December 3, 2002, Plaintiff asserts that he had not been disciplined during his entire tenure with Defendant. (*Id.* ¶¶ 24-25.)

Moments after informing Plaintiff that he was terminated, Defendant handed Plaintiff a severance and release agreement. (*Id.* ¶ 27.) He asked Plaintiff to immediately sign the agreement, notwithstanding that the agreement stated, inter alia, that Plaintiff had adequate time to consider the terms of the agreement, he had read and fully understood the agreement and that he consulted with or had sufficient opportunity to consult with an attorney. (*Id.*) After Plaintiff's termination, Defendant instructed all of his employees to cease all contact with Plaintiff. (*Id.* ¶ 28.) Thereafter, Plaintiff brought suit alleging intentional infliction of emotional distress under state common law and retaliatory discharge and failure to pay overtime compensation under FLSA, PWPCCL, and PMWA. Plaintiff has since withdrawn the intentional infliction of emotional distress claim. Defendant now moves this Court to dismiss the retaliatory discharge claims under FLSA, PWPCCL, and PMWA.

III. STANDARD OF REVIEW

In considering a motion to dismiss for failure to state a claim upon which relief can be granted, courts must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *See Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). Furthermore, a motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations.

See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

IV. DISCUSSION

A. Retaliatory Discharge under FLSA

Under § 215(a)(3) of FLSA, it is unlawful for any person “to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to [FLSA].” 29 U.S.C. § 215(a)(3) (2003). In his motion, Defendant asserts that Plaintiff has failed to state a claim under FLSA because an informal complaint made to an employer concerning overtime payment does not fall within the protected activity contemplated by § 215(a)(3). Therefore, the issue before the Court is whether such an informal complaint is within the meaning of the phrase “has filed any complaint” under FLSA.

The majority of circuits have held that an informal assertion of rights under FLSA to an employer triggers protection under the language of § 215(a)(3). *See Lambert v. Ackerley*, 180 F.3d 997 (9th Cir. 1999) (en banc) (holding internal complaints to employer satisfy § 215(a)(3)); *Valerio v. Putnam Assoc.*, 173 F.3d 35 (1st Cir. 1999) (same); *EEOC v. Romeo*, 976 F.2d 985 (6th Cir. 1992) (same); *EEOC v. White & Sons Enters.*, 881 F.2d 1006 (11th Cir. 1989) (same); *Love v. Re/Max of Am., Inc.*, 738 F.2d 383 (10th Cir. 1984) (same); *Brennan v. Maxey’s Yamaha, Inc.*, 513 F.2d 179 (8th Cir. 1975) (same). These courts have found that the text, structure, and legislative purpose of FLSA support the conclusion that informal complaints fall within the “has filed any complaint” language of the statute based on the following reasoning. The language “has filed any complaint”

is ambiguous. See *Valerio*, 173 F.3d at 41; *Ackerley*, 180 F.3d at 1004; cf. *Lambert v. Genesee Hosp.*, 10 F.3d 46, 55 (2d Cir. 1993) (holding that § 215(a)(3) is unambiguous and informal complaints are not protected activity). Despite the text’s ambiguity, courts have reasoned that the broad purpose of the FLSA would suggest an equally broad reading of this provision of the statute. Specifically, courts cite *Tennessee Coal, Iron & R. Co. v. Mucoda Local No. 123*, 321 U.S. 590, 597 (1944), in which the Supreme Court held that “[FLSA is] remedial and humanitarian in purpose. . . . such a statute must not be interpreted or applied in a narrow, grudging manner.” *Ackerley*, 180 F.3d at 1003; see also *Brennan*, 513 F.2d at 181; *White & Sons Enters.*, 881 F.2d at 1011-12. Furthermore, the language of the statute describes two kinds of protected activity, filing a complaint and causing a proceeding to be instituted. If Congress intended for only formal “complaints” to a government agency or the courts be protected under the “filed any complaint” language, then the “caused to be instituted any proceeding” language would be superfluous. As the First Circuit observed, “if ‘filed any complaint’ were read to encompass only filings with a court or government agency, one would wonder why the additional language ‘or instituted or caused to be instituted any proceeding under or related to this chapter’ was inserted.” *Valerio*, 173 F.3d at 41; see also *Ackerley*, 180 F.3d at 1004 (*quoting Valerio*). Finally, several courts have aptly reasoned that the operative triggering factor in the anti-retaliation statute is the assertion of statutory rights, not the filing of a formal complaint with a government agency or the courts. *Romeo*, 976 F.2d at 989 (holding that employee who communicated substance of allegations to employer but did not refer to statute by name triggered § 215(a)(3) protection); *Love*, 738 F.2d at 387 (“[T]he Act also applies to the unofficial assertion of rights through complaints at work.”); *Brennan*, 513 F.2d at 181; *White & Sons Enters.*, 881 F.2d 1011; *Ackerley*, 180 F.3d at 1008 (holding that “so long as an employee

communicates the substance of his allegations to the employer (e.g., that the employer has failed to pay adequate overtime . . .), he is protected by § 215(a)(3)”; *Valerio*, 173 F.3d at 44.

Although the Third Circuit has not squarely addressed the issue of whether an informal complaint to an employer can constitute protected activity within the language of § 215(a)(3), in *Brock v. Richardson*, 812 F.2d 121 (3d Cir. 1987), it liberally interpreted the language of § 215(a)(3) to conclude that retaliation against an employee based on the employer’s mere belief that the employee made a formal complaint or engaged in other activity specified in § 215(a)(3) is sufficient to bring the employer’s conduct within that section. *Id.* at 125. In doing so, more importantly, the Third Circuit provided guidance for interpreting § 215(a)(3). Citing *Tennessee Coal, Iron & Railroad Co*, the *Brock* court reasoned that “[t]he Fair Labor Standards Act is part of the large body of humanitarian and remedial legislation enacted during the Great Depression, and has been liberally interpreted.” *Id.* at 123.

Additionally, in noting that “[the] anti-retaliation provision was designed to encourage employees to report suspected wage hour violations by their employers,” the Third Circuit looked at other courts that used the Act’s “animating spirit” to apply “to activities that might not have been explicitly covered by the language [of § 215(a)(3)].” *Id.* at 124. In doing so, the Third Circuit specifically acknowledged that “[the Act] has been applied to protect employees who have protested Fair Labor Standards Act violations to their employers.” *Id.* at 124-25 (citing *Love*, 738 F.2d at 387). In fact, both the Sixth and Ninth Circuits have read *Brock* to hold that an informal complaint by an employee is sufficient to trigger protection under the Act. *See e.g. Romeo*, 976 F.2d at 989; *Ackerley*, 180 F.3d at 1003-4. Regardless, at a minimum, *Brock* makes “clear that the key to interpreting the anti-retaliation provision is the need to prevent employees’ ‘fear of economic

retaliation’ for voicing grievances about substandard conditions.” *Brock*, 812 F.2d at 124 (quoting *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960)).

Therefore, upon review of the Third Circuit’s decision in *Brock* and the majority of other circuits, I am similarly compelled to hold that informal complaints to employers can trigger application of § 215(a)(3). A contrary holding would defeat the Act’s broad purpose of preventing fear of retaliation against employees who assert their rights under the Act and would disadvantage employees who attempt to resolve disputes regarding overtime rights informally without instituting a formal proceeding or suit against their employer. Therefore, I conclude that informal complaints that assert in some form the rights secured by FLSA to an employer are protected from retaliation by that employer under § 215(a)(3).

B. Retaliatory Discharge under PWPCL and PMWA

In Counts II and III, Plaintiff asserts retaliatory discharge claims under PWPCL and PMWA, arguing that Defendant’s retaliatory discharge violates the public policy embodied in those state statutes. In his motion to dismiss, Defendant argues that these retaliatory discharge claims are not recognized under PWPCL and PMWA, and thus are more properly dubbed wrongful termination claims. As such, Defendant argues, these claims should be dismissed as well-settled Pennsylvania common law provides that a cause of action for wrongful discharge in violation of public policy cannot be maintained when there is a statutory remedy available.

First, I cannot find that there is a valid cause of action for retaliatory discharge in violation of PWPCL and PMWA as “it is beyond the authority of a federal court . . . to create entirely new causes of action.” *See Wolk v. Saks Fifth Ave., Inc.*, 728 F.2d 221, 223 (3d Cir. 1984) (citing *Becker v. Interstate Prop.*, 569 F.2d 1203, 1206 (3d Cir. 1977)). Second, although Plaintiff cites *Fialla-*

Bertani v. Pennysaver Publ'n of Pa., Inc., 45 Pa. D. & C. 4th 122 (2000) to argue that a valid cause of action for wrongful discharge exists where there has been “retaliation against an employee who files a lawsuit to collect wages under the [P]WPCL,” this Circuit has interpreted Pennsylvania law to hold that a commonlaw wrongful discharge claim must fail where there is a statutory remedy available. *Wolk*, 728 F.2d at 223 (holding that no wrongful termination claim where there are state or federal statutory remedies for wrong alleged); *Novosel v. Nationwide Ins. Co.*, 721 F.2d 894, 898 (3d Cir. 1983) (“[T]he ‘only Pennsylvania cases applying public policy exception have done so where no statutory remedies were available.’”); *see also Raykhman v. Digital Elevator Co.*, No. 93-1347, 1993 WL 370988, at *7, 1993 U.S. Dist. LEXIS 13112, at *21 (E.D. Pa. Aug. 30, 1993) (holding no commonlaw wrongful termination claim where specific statutory remedies are available under PWPCCL and PMWA); *Gusdonovich v. Bus. Information Co.*, 705 F. Supp. 262, 266 (W.D. Pa. 1985) (holding no wrongful termination claim where public policy of FLSA is alleged to have been violated as plaintiff’s sole remedy was under that statute).

Here, as discussed above, Plaintiff has properly alleged a retaliatory discharge claim under FLSA. As a result, Plaintiff has an available statutory remedy for the alleged wrong, and thus, cannot maintain a wrongful discharge claim under Pennsylvania common law. *See Jacques v. AKZO Int’l, Inc.*, 619 A.2d 748, 753 (Pa. Super. 1993) (holding that “[i]t is the existence of remedy, not the success of the statutory claim, which determines preemption” (citing *Keck v. Commercial Credit Union Ins. Co.*, 758 F. Supp. 1034 (M.D. Pa.1991))). Therefore, I hold that Plaintiff has failed to state a claim under Counts II and III.

V. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is granted in part and denied in part. As I conclude that informal complaints fall within § 215(a)(3)'s protection, Defendant's Motion to Dismiss Count I of Plaintiff's Complaint, alleging retaliatory discharge claim under FLSA, is denied. Defendant has demonstrated with dogged determination that Plaintiff has failed to state a claim in Counts II and III under Pennsylvania law, and thus Defendant's Motion to Dismiss is granted in this respect. Finally, as Plaintiff voluntarily withdrew his intentional infliction of emotional distress claim under Count V, I deny as moot Defendant's Motion to Dismiss Count V. An appropriate Order follows.

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Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
GERRY MADDEN, DR.,	:	
Individually and d/b/a MADDEN	:	
ANIMAL HOSPITAL,	:	No. 03-4433
Defendant.	:	

ORDER

AND NOW, this 17th day of **December, 2003**, upon consideration of Defendant Gerry Madden's Motion to Dismiss Counts I, II, III, and V of Plaintiff's Complaint, Plaintiff's reply thereto, and following oral argument thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant Gerry Madden's Motion to Dismiss (Document No. 3) is **GRANTED in part** and **DENIED in part** as follows:
 - a. Defendant's Motion to Dismiss Count I of Plaintiff's Complaint is **DENIED**.
 - b. Defendant's Motion to Dismiss Count II and III of Plaintiff's Complaint is **GRANTED**.
 - c. Due to Plaintiff's voluntary withdrawal of Count V of his Complaint, Defendant's Motion to Dismiss Count V is **DENIED as moot**.
2. By **January 5, 2004**, Defendant shall answer Plaintiff's Complaint.

BY THE COURT:

Berle M. Schiller, J.