

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

JAMES E. O'NEIL,	:	CIVIL ACTION
	:	
	:	
Plaintiff	:	
	:	NO. 05-5169
v.	:	
	:	
MONTGOMERY COUNTY COMMUNITY COLLEGE,	:	
	:	
Defendant	:	

MEMORANDUM

Baylson, J.

December 13, 2006

I. Factual and Procedural Background

Plaintiff, James O'Neill, is a developmentally disabled and functionally illiterate adult, who was employed for many years as a custodian by Montgomery County Community College ("Defendant" or "the College"). The College initially fired O'Neill on October 20, 2000, but after O'Neill appealed his termination to an arbitrator pursuant to the terms of a collective bargaining agreement, he was returned to his position. Three years later, the College fired Plaintiff again, citing "continued chronic unexcused absences, failure to notify ... supervisor of ... absences, and failure to provide a medical note for absences after September 9, 2003." (Second Amended Compl. at ¶ 29).

On September 9, 2005, Plaintiff filed a complaint in this Court, seeking damages for

employment discrimination under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Pennsylvania Human Relations Act (“PHRA”), 43 P.S. § 951. Additionally, he asserted state law causes of action for wrongful discharge and intentional infliction of emotional distress (“IIED”). On April 25, 2006, Defendant filed a motion for summary judgment based on Plaintiff’s failure to exhaust his administrative remedies. (Doc. No. 10). The Court granted Defendant’s Motion as to the ADEA, ADA, and PHRA claims, and closed the case. (Doc. No. 15). Plaintiff then filed a Motion for Relief under Fed. R. Civ. P. 60(b), contending that the Court had overlooked Plaintiff’s claims under the Rehabilitation Act, and his state law causes of action for wrongful discharge and IIED. (Doc. No. 17). The Court granted Plaintiff’s Motion, and directed him to file an amended complaint, setting forth the factual basis for these claims. (Doc. No. 19). The first amended complaint was filed on August 28, 2006. (Doc. No. 20).

Shortly thereafter, Defendant moved to dismiss the wrongful discharge claim (Count II) of the Amended Complaint. (Doc. No. 21). Before a response to the Motion was filed, new counsel entered her appearance on behalf of Plaintiff, and the Court permitted Plaintiff to file a Second Amended Complaint. (Doc. No. 27). The Second Amended Complaint sets forth four claims: Count I - civil rights claims pursuant to 42 U.S.C. § 1983; Count II - unlawful discrimination under the Rehabilitation Act of 1973; Count III - Wrongful Discharge under state common law; and Count IV - Intentional Infliction of Emotional Distress. Now pending before the Court is Defendant’s Motion to Dismiss Counts I, III and IV of Plaintiff’s Second Amended Complaint. (Doc. No. 35).

II. Legal Standard

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

III. Discussion

A. Count I: § 1983

Count I of the Second Amended Complaint alleges various civil rights violations under 42 U.S.C. § 1983. Specifically, Plaintiff claims the Defendant discriminated against him in violation of the “due process and equal protection clauses of the Fifth and Fourteenth Amendments.” (Second Amended Compl. at ¶ 43). Additionally, Plaintiff alleges the Defendant violated the Comprehensive Employment and Training Act (CETA), 29 U.S.C. § 801. (Id. at ¶ 38). In its Motion to Dismiss, Defendant also construes Plaintiff’s complaint to contain a § 1983 claim for alleged violations of the ADA.

The only named defendant in this case is the College.¹ It is well-established that in order to state a § 1983 claim against a local governmental entity, a plaintiff must allege “either a formal

¹ For purposes of this motion, the Court will assume the College is an appropriate local governmental defendant in a § 1983 suit.

policy or an informal custom, which is of such long standing as to have the force of law, that ... causes an unconstitutional deprivation of civil rights by one of its employees.” DiGiovanni v. City of Philadelphia, 531 F.Supp. 141, 145 (E.D. Pa. 1982) (citing Monell v. Dept. of Social Services, 436 U.S. 658, 691-94 (1978)). In this case, Plaintiff does not claim the College has a policy or custom of discriminating against its employees on the basis of disability. Rather, Plaintiff has only alleged that Defendant “did not want [O’Neill] to continue working at the college” because of his mental retardation and illiteracy, and so “fabricate[d] a pretext upon which to terminate [his] employment.” (Second Amended Compl. at ¶¶ 41-42). Accordingly, Defendant’s Motion to Dismiss Count I is granted. See, e.g., McGowan v. Montgomery County Community College, Civ. A. No. 85-0631, 1986 WL 9895, at *4 (E.D. Pa. Sept. 10, 1986) (dismissing § 1983 claim against College because of failure to allege policy or custom of discrimination).

B. Count III: Wrongful Discharge

Count III of the Second Amended Complaint alleges wrongful discharge under Pennsylvania common law. Plaintiff claims his supervisor, Steven Choyce, terminated him because he was disabled and sought a reasonable accommodation of his handicap. (Second Amended Compl. at ¶¶ 73-74). Defendant contends that the PHRA “provides the exclusive state law remedy for a charge of discriminatory termination and, therefore, preempts any common law claim for wrongful termination.” (Br. in Support of Defendant’s Mot. to Dismiss Count II of Plaintiff’s Amended Compl. at 2).² The Court agrees with Defendant.

² By Order dated September 28, 2006, the Court permitted Defendant to incorporate by reference any arguments contained in his first Motion to Dismiss. (Doc. No. 27).

Under Pennsylvania law, an employee is allowed to bring a claim for wrongful discharge if “the termination implicates a clear mandate of public policy in [the] Commonwealth.” McLaughlin v. Gastrointestinal Specialists, Inc., 750 A.2d 283, 287 (Pa. 2000). The “public policy” exception to the at-will employment doctrine is a narrow one, and has only been recognized by courts in the “most limited of circumstances.” Id. However, if the employee fails to pursue an “exclusive statutory remedy” for workplace discrimination, he is precluded from bringing a wrongful discharge claim, regardless of public policy implications. Clay v. Advanced Computer Applications, Inc., 559 A.2d 917 (Pa. 1989). As the Pennsylvania Supreme Court recognized in Clay, the “PHRA provides a statutory remedy that precludes assertion of a common law tort action for wrongful discharge based upon discrimination.” Id. at 918. See also Bruffett v. Warner Communications, 692 F.2d 910 (3d Cir. 1982) (predicting that Pennsylvania would not recognize a common law action for wrongful discharge based on handicap or disability discrimination because of the availability of statutory remedies under the PHRA). Thus, the PHRA forecloses Plaintiff from pursuing a wrongful discharge claim based on disability discrimination,³ and Defendant’s Motion to Dismiss Count III is granted.

³ Although neither party raises this point, the Court notes that Plaintiff is also precluded from bringing a claim of wrongful discharge because he was not an at-will employee of the College. At two points in his Response to Defendant’s Motion to Dismiss, Plaintiff states that O’Neill was a union employee. (Plaintiff’s Mem. of Law in Response to Defendant’s Mot. to Dismiss Counts I, III, and IV of the Second Amended Compl. at 7, 12). The Superior Court of Pennsylvania has held that “an action for the tort of wrongful discharge is available only when the employment relationship is at will.” Phillips v. Babcock & Wilcox, 503 A.2d 36, 38 (Pa.Super. 1986). Because the Pennsylvania Supreme Court has not explicitly resolved this issue, the Court looks to Phillips for guidance. See Commonwealth of Pa. v. Brown, 373 F.3d 771, 777 (3d Cir. 1967) (“An intermediate state court in declaring and applying the state law is acting as an organ of the State and its determination, in the absence of more convincing evidence of what the state law is, should be followed by a federal court in deciding a state question.”).

C. Count IV: Intentional Infliction of Emotional Distress

Count IV of the Second Amended Complaint sets forth a claim of intentional infliction of emotional distress (“IIED”). Defendant argues that the Court should dismiss the claim because the conduct Plaintiff complains of is not “extreme” or “clearly outrageous” as required under Pennsylvania law.

In order to state a claim for IIED in Pennsylvania, a plaintiff must establish four elements: (1) defendant’s conduct was intentional or reckless; (2) the conduct was extreme and outrageous; (3) the conduct caused emotional distress; and (4) the distress was severe. Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265, 1273 (3d Cir. 1979). For a Plaintiff to recover for IIED, “the conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.” Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988) (quoting Buczek v. First Nat’l Bank of Mifflintown, 531 A.2d 1122, 1125 (Pa.Super. 1987).

In his Second Amended Complaint, Plaintiff alleges that his supervisor, although fully aware of his illiteracy, distributed O’Neill’s cleaning instructions in writing and refused to verbally explain them to Plaintiff. (Second Amended Compl. at ¶¶ 51-52, 78-80). The supervisor would then verbally abuse and berate Plaintiff in front of his co-workers for not being able to understand the written instructions. His co-workers in turn ridiculed and teased him on a daily basis. (Id. at ¶¶ 17-19, 81-82). Plaintiff further contends he was “required to handle and utilize toxic cleaning chemicals” without proper instructions or warnings. (Id. at ¶ 25). Most seriously, Plaintiff alleges his supervisor “purposefully spread toxic chemicals around Plaintiff’s cleaning area so that he would have to inhale [them] and aggravate his lung condition.” (Id. at ¶ 68). As a

result, Plaintiff claims he has suffered extreme stress, anxiety and physical illness. (Id. at ¶¶ 81, 84-85).

In view of the liberal pleading standard of Rule 8, the Court will not dismiss Plaintiff's IIED claim at this stage. Although the Court is aware of the heavy burden Plaintiff bears in establishing an IIED claim, we cannot say that no set of facts consistent with the allegations of the complaint would give rise to relief. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001).

Accordingly, Defendant's Motion to Dismiss Count IV is denied.

IV. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss under 12(b)(6) is denied in part and granted in part. An appropriate order follows.

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MONTGOMERY COUNTY COMMUNITY COLLEGE,	:	
	:	
	:	
Defendant	:	

ORDER

AND NOW, this 13th day of December, 2006, upon consideration of the pleadings and briefs and based on the foregoing Memorandum, it is hereby ORDERED that Defendant's Rule 12(b)(6) Motion to Dismiss (Doc. No. 35) is disposed of as follows:

1. As to Counts I and III, Defendant's Motion to Dismiss is GRANTED.
2. As to Count IV, Defendant's Motion to dismiss is DENIED.

BY THE COURT:

/s/ **Michel M. Baylson** _____

Michael M. Baylson, U.S.D.J.