

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

THOMAS Z. GREENWALD : CIVIL ACTION
 :
 v. :
 :
 PHILLIPS-VAN HEUSEN CORPORATION : NO. 97-1992

MEMORANDUM AND ORDER

Fullam, Sr. J.

July , 1998

The pertinent facts of this case are set forth in my Memorandum and Order dated February 24, 1998, dismissing plaintiff's first amended complaint with leave to amend. The plaintiff has filed a second amended complaint, and the defendant has filed a motion for dismissal or summary judgment.

Plaintiff's employment by the defendant was an employment-at-will. He became disabled, and was given the benefits of a six-month "salary continuation" plan. He was told that he could reclaim his job within six months. He did not recover sufficiently for full-time employment, did not request reinstatement within the six-month period, and was placed on a long-term disability plan. He is still receiving long-term disability benefits.

His argument seems to be that, as a recipient of long-term disability benefits, he is still considered to be an employee of the defendant ("active employee on disability status"); since all active employees are entitled to work and to

receive full salary and benefits, he should be restored to full salary and benefits. Plaintiff's arguments are confusing, to say the least.

Plaintiff does not dispute that his employment was at-will. This means that he could be fired at any time. Since he could be fired, he could also be denied reinstatement. Moreover, since his employment was at-will, the employer could modify the terms and conditions of his employment at any time. Therefore, even if plaintiff's characterization of his rights as an employee were correct, the defendant would not be liable for having changed those arrangements unilaterally.

It is also noteworthy that, so far as the record discloses, plaintiff has never asserted that he is fully recovered and is available for full-time employment; indeed, his continued receipt of disability benefits suggests otherwise.

As noted in my February 24, 1998 Memorandum, ERISA is not applicable in this situation. Plaintiff has never asserted any claims under the Americans With Disabilities Act or the Family and Medical Leave Act; on the present record, it seems highly unlikely that any violation of either statute can be shown; and, in any event, plaintiff has not exhausted administrative remedies.

For all of the foregoing reasons, this action will be dismissed with prejudice.

An Order follows.

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ORDER

AND NOW, this day of July, 1998, IT IS ORDERED:

1. Defendant's Motion to Dismiss and Alternative Motion for Summary Judgment is GRANTED.
2. Judgment is entered in favor of the defendant and against the plaintiff.
3. This action is DISMISSED WITH PREJUDICE.

John P. Fullam, Sr. J.