

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

BEVERLY HYMAN SNEAD, et al.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	No. 98-2657
	:	
HYGRADE FOOD PRODUCTS	:	
ASSOCIATES, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

DECEMBER 28, 1998

Presently before the Court is Defendant Joseph Maloney's Motion to Dismiss Counts I-VII, XII, and XIII of Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs' brought this action alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951 et seq., the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68, 42 U.S.C. § 1981 ("section 1981"), and state law tort claims. For the reasons that follow, Maloney's Motion will be granted in part and denied in part.

Background

Plaintiffs were employed by Defendant Hygrade Food Products Associates ("Hygrade") where they prepared and packaged bacon. Their supervisor was Defendant Allen Washington. Maloney was Washington's direct supervisor. Plaintiffs allege that Washington sexually harassed them in the workplace and that

Defendants, including Maloney, ignored their complaints. As a result of the actions of Defendants, Plaintiffs claim that they suffered emotional distress and other injuries.

Maloney now seeks dismissal of Plaintiffs' claims against him for sex discrimination and retaliation under Title VII (Counts I and III, respectively), sex discrimination and retaliation under the PHRA (Counts II and IV), breach of contract (Count V), intentional infliction of emotional distress (Count VI), negligent supervision (Count VII), and RICO (Counts XII and XIII). Maloney does not at this time request dismissal of the section 1981 claims against him.

Standard

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party. See Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). Dismissal is appropriate only when it clearly appears that the plaintiff has alleged no set of facts which, if proved,

would entitle him or her to relief. Conley, 355 U.S. at 45-46; Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

Discussion

At the outset, the Plaintiffs do not oppose dismissal of Count V against Maloney. Further, there is little opposition regarding the Title VII claims against Maloney. It is well established in the Third Circuit that individual employees are not liable under Title VII. See Sheridan v. E.I. DuPont de Nemours and Co., 100 F.3d 1061, 1077-78 (3d Cir. 1996). Accordingly, Counts I, III, and V will be dismissed as to Maloney.

PHRA Claims

Maloney argues that the Plaintiffs' PHRA claims against him should be dismissed because Maloney was never named as a defendant in Plaintiffs' Pennsylvania Human Relations Commission ("PHRC") complaints. Generally, a Title VII action may not be maintained against a defendant who was not named as a defendant in the administrative complaint. McLaughlin v. Rose Tree Media Sch. Dist., 1 F. Supp. 2d 476, 481 (E.D. Pa. 1998). While the PHRA contains no analogous requirement, courts have held that the PHRA should be interpreted consistently with Title VII. Id. at 481-82. The Third Circuit has recognized an exception to the requirement that the defendant must be named in the administrative complaint where the unnamed party has received notice of the allegations and there is a commonality of interest

between the unnamed and named parties. Id. at 482; see also Schafer v. Board of Public Educ., 903 F.2d 243, 252 (3d Cir. 1990); Glus v. G.C. Murphy Co., 629 F.2d 248, 251 (3d Cir. 1980).

Plaintiffs did not attach copies of their PHRC complaints to the Complaint filed in this case. They did attach some (though not all) of the complaints to their response to the instant Motion to Dismiss. Maloney is not named in the PHRC complaints of Plaintiffs Whack and Johnson and the Plaintiffs have not provided copies of the complaints of Miller and Williams. Therefore, Whack, Johnson, Miller, and Williams have not shown that Maloney had notice of their claims, and their PHRA claims against him will be dismissed.

The PHRC complaints of the remaining Plaintiffs, Jones, Snead, Dennison, and Womack do refer to Maloney. Because this issue is being decided on a motion to dismiss, this Court must draw all reasonable inferences in favor of Plaintiffs. It would be reasonable for the Court to infer that the PHRC complaint gave notice of a discrimination charge to Maloney as well as the Defendants named in the charge. Timmons v. Lutheran Children and Family Serv. of Eastern Pa., No. 93-4201, 1993 WL 533399, *4 (E.D. Pa. Dec. 17, 1993). Therefore, the Court will not dismiss the PHRA claims of these Plaintiffs based upon their failure to name Maloney as a defendant in the PHRC complaints.

Maloney further argues that the Plaintiffs' PHRA claims are pre-empted by section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. Under section 301, "if the

resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law . . . is pre-empted' and the claim must be submitted to the grievance and arbitration procedure provided for in the collective bargaining agreement." Equal Employment Opportunity Commission v. Pathmark, Inc., No. 97-3994, 1998 WL 57520 (E.D. Pa. Feb. 12, 1998)(quoting Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 405-06 (1988)). Because the parties in this case have not provided the Court with a copy of the collective bargaining agreement, the Court is unable to see how the Plaintiffs' PHRA claims would depend upon the agreement, or what grievance and arbitration procedure the agreement provides. Therefore, the motion to dismiss the PHRA claims against Maloney based upon pre-emption by the LMRA will be denied.

Intentional Infliction of Emotional Distress

Maloney contends that Plaintiffs' claims against him for intentional infliction of emotional distress should be dismissed. To state a cognizable claim for this tort, the conduct alleged "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)). It is extremely rare to find conduct in the employment context that rises to the level of outrageousness necessary for recovery.

Cox, 861 F.2d at 395. The only instances in which courts have found conduct sufficiently outrageous is where an employer engaged in both sexual harassment and other retaliatory behavior against an employee. Id.; see also Andrews v. City of Philadelphia, 895 F.2d 1469, 1487 (3d Cir. 1990) ("The extra factor that is generally required is retaliation for turning down sexual propositions").

While the Complaint in this case alleges claims for sexual harassment, it is not alleged that Maloney himself made any sexual propositions or otherwise actually engaged in harassing conduct. Rather, the claims against Maloney are based upon his failure as a supervisor to remedy harassment in the workplace. (See Compl. at ¶¶ 11, 59, 64(a), and 114(c).) Therefore, the Plaintiffs' intentional infliction of emotional distress claims against Maloney as an individual must be dismissed.

Negligent Supervision

Maloney contends that Plaintiffs' claims against him for negligent supervision should also be dismissed as they are barred by the Pennsylvania Workmen's Compensation Act ("WCA"), 77 P.S. § 481(a) and the PHRA, 43 P.S. § 962(b). Plaintiffs do not address this claim in their response to Maloney's Motion to Dismiss. It is clear that these claims are barred by the WCA and PHRA. See Murray v. Commercial Union Ins. Co., 782 F.2d 432, 437 (3d Cir. 1986); Coney v. Pepsi Cola Bottling Co., No. 97-2419, 1997 WL 299434 (E.D. Pa. May 29, 1997). Accordingly, Plaintiffs'

negligent supervision claims will be dismissed as to Maloney.

RICO Claims

Maloney argues that Plaintiffs' RICO claims against him should be dismissed because RICO requires "injury to business or property" and does not include personal injury. See Genty v. Resolution Trust Corp., 937 F.2d 899, 918-19 (3d Cir. 1991). Maloney has not provided any authority for the proposition that "injury to business or property" would not include the injuries claimed by the Plaintiffs in this case, which include termination of employment. Therefore, the Court will not dismiss the RICO counts on this basis.

Conclusion

In summary, Maloney's Motion to Dismiss will be granted as to Counts I, III, V, VI, and VII of the Complaint. His Motion will granted with regard to the PHRA claims in Counts II and IV of Plaintiffs Whack, Johnson, Miller, and Williams, and denied as to all other Plaintiffs. Further, Maloney's Motion will be denied as to the RICO claims in Counts XII and XIII.

An appropriate Order follows.

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HYGRADE FOOD PRODUCTS	:	
ASSOCIATES, et al.,	:	
	:	
Defendants.	:	

O R D E R

AND NOW, this 28th day of December, 1998, upon consideration of Defendant Joseph Maloney's Motion to Dismiss Counts I-VII, XII, and XIII of Plaintiffs' Complaint, it is hereby ORDERED that:

1. Maloney's Motion is GRANTED in part and DENIED in part;

2. Plaintiffs' claims against Maloney in Counts I, III, V, VI, and VII are dismissed;

3. the claims of Plaintiffs Whack, Johnson, Miller, and Williams against Maloney in Counts II and IV are dismissed; as to all other Plaintiffs, Maloney's Motion to Dismiss Counts II and IV is DENIED;

4. Maloney's Motion is DENIED as to Counts XII and XIII.

BY THE COURT:

Robert F. Kelly, J.