

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

MARY H. VAUGHAN,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 99-0018
	:	
PATHMARK STORES, INC.,	:	
Defendant.	:	

MEMORANDUM

R.F. KELLY, J.

MAY , 1999

Mary H. Vaughan ("Plaintiff") has filed a complaint against her former employer Pathmark Stores, Inc. ("Pathmark"). alleging that she was discriminated against because of her race, African-American, and because of her disability, carpal tunnel syndrome, in violation of state and federal law (Counts I, II and III). Additionally, Plaintiff alleges breach of the "covenant of good faith and fair dealing" (Count IV), intentional infliction of emotional distress (Count V), and negligent infliction of emotional distress (Count VI). Presently before the Court is Pathmark's Motion to Dismiss Counts IV, V and VI and to Strike Vaughan's demand for punitive damages under the Pennsylvania Human Relations Act. For the reasons that follow, Pathmark's Motion is granted.

I. FACTS.

In 1978, Plaintiff began her employment with Pathmark as a "bagger," and eventually was promoted to the position of

"cashier." (Pl.'s Compl. at ¶ 12.) Plaintiff continued working as a "cashier" until 1988 when she developed "carpal tunnel syndrome and could no longer operate the machinery required of a cashier." (Pl.'s Compl. at ¶ 13.) Plaintiff then began working as a "customer service representative." (Pl.'s Compl. at ¶ 14.)

In June of 1994, Plaintiff was returned to "full duty" as a "cashier," despite her doctor's opinion that she still suffered from carpal tunnel syndrome. (Pl.'s Compl. at ¶ 15-17.) A white female replaced Plaintiff as a "customer service representative." (Pl.'s Compl. at ¶ 19.) On July 3, 1994, Plaintiff was unable to continue working as a "cashier" and left the employment of Pathmark. (Pl.'s Compl. at ¶ 18.)

II. STANDARD.

Under Rule 12(b)(6), the Court must determine whether the allegations contained in the complaint, construed in the light most favorable to Plaintiff, show a set of circumstances which, if true, would entitle Plaintiff to the relief she requests. Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997)(citing Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). A complaint will be dismissed only if Plaintiff could not prove any set of facts which would entitle him to relief. Nami, 82 F.3d at 65 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

III. DISCUSSION.

Pathmark moves to dismiss Count IV, "breach of the

covenant of good faith and fair dealing," on two alternative grounds. First, because under Pennsylvania law no such cause of action exists independent of a breach of contract claim. Second, because if such a claim existed, it would be pre-empted by section 301 of the Labor Management Relations Act. 29 U.S.C. § 185(a).

Plaintiff concedes that "there is no independent action for a breach of duty of good faith and fair dealing." (Pl.'s Mem. in Opp. to Def.'s Mot. To Dismiss and To Strike at 4 (quoting Burland v. Manor Care Health Servs., Inc., No. 98-4802, 1999 WL 58580, at *4 (E.D. Pa. Jan. 26, 1999)).) Yet, Plaintiff contends that her claim is viable because she enjoyed "some type of contractual relationship with Defendant," evidenced by the fact that "Defendant advised her almost two years after she left Defendant's facility that she was terminated." (Pl.'s Mem. in Opp. to Def.'s Mot. To Dismiss and To Strike at 4.)

Because Vaughan's claim is based on an implied employment contract, it fails as a matter of law. Feret v. First Union Corp., No. 97-6759, 1999 WL 80374, *14 (E.D. Pa. Jan. 25, 1999). Under Pennsylvania law, employment is presumed to be at-will. Carlson v. SEI Corp., No. 98-4326, 1999 WL 54526, *2 (E.D. Pa. Jan. 28, 1999), reconsideration in part on other grounds, 1999 WL 124410 (E.D. Pa. Mar. 5, 1999). At-will employees may be terminated for any reason or no reason at all,

unless there is a "statutory or contractual provision to the contrary." Carlson, 1999 WL 54526 at *2(citing Geary v. United States Steel Corp., 319 A.2d 174, 176 (Pa. 1974); Nix v. Temple Univ. of Commw. Sys. of Higher Educ., 596 A.2d 1132, 1135 (Pa. Super. 1991)). "Although contract terms can be implied, the employment contract itself cannot; either the employee works at-will or has an express employment contract." Feret, 1999 WL 80374 at *14 (citations omitted). Vaughan does not allege the existence of an express employment contract, thus, Count IV is dismissed.

Alternatively, Pathmark argues that if Vaughan were employed under the terms of an express employment contract, that contract would be the collective bargaining agreement between Pathmark and the Retail, Wholesale & Department Store Union, Local 1034, AFL-CIO ("Union"), and her state law breach of contract claim would be pre-empted by section 301 of the Labor Management Relations Act. 29 U.S.C. § 185(a). In response, Vaughan claims that because she stopped working in July of 1994, but was not notified of her termination until March of 1996, her status with the Union is unclear. (Pl.'s Mem. in Opp. to Def.'s Mot. To Dismiss and To Strike at 4.)

Vaughan admits that she was a member of the Union at least until July of 1994. (Pl.'s Mem. in Opp. to Def.'s Mot. To Dismiss and To Strike at 4.) Any claims arising prior to that

time are pre-empted. After July of 1994, Vaughan was either a union member or an at-will employee. Vaughan's claim for breach of the covenant of good faith and fair dealing is either pre-empted, or, as stated above, must fail as a matter of law. For this alternative reason, Count IV of Vaughan's Complaint is dismissed.

As to Vaughan's claims for intentional and negligent infliction of emotional distress, Pathmark seeks to dismiss these claims because they: (1) are barred by the Workers' Compensation Act; (2) are barred by the statute of limitations; (3) fail to state a claim; and (4) fail to allege physical injury. (Def.'s Mot. to Dismiss and to Strike at 9-17.) To the contrary, Vaughan asserts that these claims are viable.

The Pennsylvania Workers' Compensation Act ("WCA"), provides the exclusive remedy for employees who are injured in the course of employment. Lagana v. Kmart Corp., No. 97-5911, 1998 WL 372347, *5 (E.D. Pa. June 19, 1998). Under the WCA, Vaughan's claim against Pathmark for negligent infliction of emotional distress is pre-empted. Williams v. Claims Overload Syss. Inc., No. 97-6851, 1998 WL 104476, *3 (E.D. Pa. Feb. 25, 1998)(citing 77 Pa.C.S.A. § 481(a)). Vaughan's claim against Pathmark for intentional infliction of emotional distress, however, may fall into the exception to the WCA's exclusivity for injury caused by a third party acting out of reasons that are

personal, rather than those concerning employment. Lagana, 1998 WL 374327, at *5 (citing 77 Pa.C.S.A. § 411(1)). It is unclear whether Vaughan's claim for intentional infliction of emotional distress falls within the personal animus exception to the WCA. Because Vaughan's claim for intentional infliction of emotional distress fails on other grounds, however, I need not decide this issue.

Under Pennsylvania law, to state a claim for the tort of intentional infliction of emotional distress, a plaintiff must allege conduct "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). Additionally, a plaintiff must allege "physical injury, harm, or illness caused by the alleged outrageous conduct." Corbett v. Morgenstern, 934 F. Supp. 680, 684 (E.D. Pa. 1996). Consequently, "it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress." Cox, 861 F.2d at 395. Vaughan's allegations do not rise to the requisite level of atrocity, nor does she allege a physical injury, thus, she has failed to state a claim for intentional infliction of emotional distress.

Under Pennsylvania law, the statute of limitations for both negligent and intentional infliction of emotional distress is two years from the date of accrual. 42 Pa.C.S.A. § 5524(2)(7); e.g., Boarts v. McCord, 511 A.2d 204 (Pa. Super. 1986)(applying two year statute of limitations to a claim of negligent infliction of emotional distress); Bougher v. Univ. of Pittsburgh, 882 F.2d 74 (3d Cir. 1989)(applying two year statute of limitations to a claim for intentional infliction of emotional distress). Vaughan stopped working at Pathmark in July of 1994, thus, that is the latest date on which her infliction claims could have accrued. This suit was filed on January 4, 1999, over four years later. Contrary to Vaughan's assertions, filing administrative charges with the Equal Employment Opportunity Commission does not toll the statute of limitations. Pyne v. Procacci Bros. Sales Corp., No. 96-7314, 1998 WL 355518, at *2 (E.D. Pa. June 26, 1998). Consequently, Vaughan's claims for negligent and intentional infliction of emotional distress are barred by the statute of limitations.

Plaintiff does not contest dismissal of her demand for punitive damages under the Pennsylvania Human Relations Act conceding that such damages are unavailable. Hoy v. Angelone, 720 A.2d 745, 749 (Pa. 1998). Thus, that portion of Count III is dismissed.

An Order follows.

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	:	
PATHMARK STORES, INC.,	:	
Defendant.	:	

ORDER

AND NOW, this day of May, 1999, upon consideration of Defendant's Motion to Dismiss and to Strike and Plaintiff's Response thereto, it is hereby ORDERED that said Motion is GRANTED.

BY THE COURT:

Robert F. Kelly, J.