

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

MARY JANE STELL	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 04-5739
PMC TECHNOLOGIES, INC.	:	

MEMORANDUM

Baylson, J.

August 24, 2005

I. Introduction

Plaintiff, Mary Jane Stell is a former Program Director for PMC Technologies. On December 10, 2004, Plaintiff filed a Complaint (Doc. No. 1) under Title VII of the Civil Rights Act of 1964 and 29 U.S.C. §612 against her former employer, alleging gender and age discrimination in the form of wrongful termination and disparity in compensation, as well as a negligent supervision claim. Presently before the court is the Defendant's Motion to Dismiss Plaintiff's sexual discrimination claim, to the extent it alleges pay disparity, as well as Plaintiff's negligent supervision claim.

II. Facts and Procedural History

For purposes of this 12b(6) motion, this Court accepts the facts contained in the Complaint as true. On September 12, 2003, after having worked for PMC Technologies, Inc. for

a little over 10 years, Plaintiff's employment was terminated for what the company called financial reasons. On January 23, 2004, Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). The "Sex" and "Age" discrimination boxes were checked, and in the "particulars" section of the charge, the Plaintiff outlined her employment history, detailing her termination and referencing the "several meetings occur[ing] over a period of months prior to termination during which the Defendant discussed "how to terminate [the Plaintiff]." (Plaintiff's Exhibit A) The charge also includes examples of younger, allegedly less qualified males whose positions were not terminated.

Additionally, on November 21, 2003, the Plaintiff completed and submitted to the EEOC a "charge information questionnaire," an "allegations of Employment discrimination" form, a "witness questionnaire" and a "Remedy Information" form. (Plaintiff's Exhibit A). In these documents, Plaintiff sets forth the bases of her complaints and the specific instances of alleged discrimination. On page 4 of this document, in the last paragraph, Plaintiff discusses her allegation that she did not receive a bonus commensurate with bonuses given to other individuals.

On October 1, 2004, Plaintiff received a "Notice of Right to Sue" from the EEOC. On December 10, 2004, Plaintiff filed a Complaint in this Court, alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e and 2000-e-2; and age discrimination in violation of 29 U.S.C. Section 612. Further, the Plaintiff filed a third count of negligence against the Defendant for failing to investigate the alleged instances of discrimination, correct these problems, train their employees, enforce the rules and regulations governing discrimination on the basis of sex, etc.

The Defendant filed a two-part Motion to Dismiss, requesting 1) the partial dismissal of Count I to the extent it seeks relief for any alleged disparate treatment in pay practices because such claims were not exhausted before the EEOC and 2) the dismissal of the claim of negligence because (a) Pennsylvania “does not recognize a negligence claim arising from the termination of employment at-will,” and (b) Plaintiff’s negligence claim is preempted by the Pennsylvania Human Relations Act (“PHRA”) 43 Pa. Cons. Stat. Ann. 951 et seq. (Purdon 1964 & Supp. 1989) and the Pennsylvania Worker’s Compensation Act (“PWCA”). 77 P.S. 1 et seq. (2005).

III. Discussion

A. Exhaustion of Administrative Remedy Requirement

The Defendant, PMC, asserts that the Plaintiff’s claim of disparate payment practices should be dismissed because the Plaintiff failed to aver this claim in her EEOC charge, thereby failing to exhaust her administrative remedies as required for any Title VII claim. 42 U.S.C. §2000e-5. The primary authority governing this issue is Antol v. Perry, 82 F.3d 1291 (3rd Cir. 1996), holding that a plaintiff’s claims must fall “fairly within the scope of the prior EEOC complaint, or the investigation arising therefrom.” Id. at 1295.

The Defendant cites several cases decided in this district where a claim was dismissed because the plaintiff failed to include it in his EEOC charge. See, e.g. Sharpless v. Summers, Civ. A. No. 00-3260, 2001 U.S. Dist. LEXIS 1219 (E.D. Pa. Feb. 9, 2001) (dismissing a hostile work environment claim where the EEOC charge only asserted discriminatory non-promotion); Wright v. Philadelphia Gas Works, Civ. A. No. 01-2655, 2001 U.S. Dist. LEXIS 15852 (E.D. Pa. Oct. 2, 2001) (dismissing hostile work environment and retaliation claims where the EEOC

charge only claimed a racially motivated discharge); and Ryan v. General Machine Products, 277 F. Supp. 2d 585 (E.D. Pa. 2003) (Baylson, J.) (dismissing a failure to train claim where the EEOC charge only asserted inappropriate handling of the claim, unequal pay and non-promotion).

The Court finds that the Plaintiff's claim should survive because Plaintiff's allegation about unequal payment of bonuses in the EEOC questionnaire satisfies the exhaustion requirements under Third Circuit case law.

B. Plaintiff's Claim of Negligence

Defendant asserts that Plaintiff's negligence claim should be dismissed because Pennsylvania does not recognize such a claim arising from the termination of an at-will employee. Defendant relies on precedent that, under Pennsylvania law, a common law action for employment discrimination cannot be maintained and the employee's sole remedy is the Pennsylvania Human Relations Act.

The Court finds that the claim which Plaintiff is making is a discrimination claim, and therefore, it must be brought under the PHRA. See McGovern v. Jack D's, 2004 U.S. Dist. LEXIS 1985 (E.D.Pa. 2004) (finding that the "weight of authority cuts in favor of [PHRA] preemption with regard to negligent supervision claims"). Plaintiff characterizes her negligence claim as based on a theory of negligent supervision. Plaintiff fails to show that any Pennsylvania court, or the Third Circuit, has adopted such a theory when the underlying claim is discrimination arising in an employment context. Moreover, Plaintiff has failed to offer an independent set of facts to support a common law negligence claim that would not be preempted by the PHRA. See Keck v. Commercial Union Insurance Co., 738 F. Supp.1034, 1039 (M.D. Pa. 1991) (noting the

general rule that a common law claim is preempted by the PHRA unless factually independent of a discrimination claim).

Therefore, the Court will dismiss Count III based on negligence. Court IV charging violation of Pennsylvania Human Relations Act will continue.

An appropriate Order follows.

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ORDER

AND NOW, this 24th day of August, 2005, it is hereby ORDERED that Defendant's Motion to Dismiss (Doc. No. 3) is GRANTED in part as to Count III, and is otherwise DENIED.

BY THE COURT:

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