

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

SANDRA KHALIL	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 05-cv-03396
v.	:	
	:	
ROHM AND HAAS COMPANY	:	
Defendants.	:	

**MEMORANDUM AND ORDER**

Presently before the Court is Defendant's Motion to Dismiss in Part, Plaintiff's Memorandum of Law in Opposition thereto, and Defendant's Reply. For the reasons stated below, Defendant's Motion is **GRANTED** in part and **DENIED** in part.

I. Background

Plaintiff alleges the following facts which are accepted as being true for purposes of considering a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

In July, 2002, Sandra Khalil ("Plaintiff") was working at Rohm and Haas Company's ("Defendant") Spring House, Pennsylvania facility. While the walls of Plaintiff's office were being painted, Plaintiff experienced breathing problems and informed her supervisor that the paint fumes were aggravating her asthma. As a result, her supervisor informed Plaintiff that she could no longer enter her office.

Following Plaintiff's initial report of breathing

difficulties in her office, Defendant commenced a safety investigation and issued an Incident Investigation Report ("Incident Report") on August 15, 2002. The Incident Report disclosed Plaintiff's asthmatic condition and was distributed to several of Plaintiff's co-workers. Plaintiff did not authorize the disclosure of her medical information.

On August 30, 2002, Plaintiff filed a discrimination claim with the Pennsylvania Human Relations Commission ("PHRC"), which was cross-filled with the Equal Employment Opportunity Commission ("EEOC") ("First Complaint"). On September 27, 2002, after Defendant had received Plaintiff's PHRC and EEOC complaints, Defendant terminated Plaintiff's employment allegedly due to poor work performance and irregularities in her expense reports. Plaintiff filed a second complaint with the PHRC and EEOC on December 9, 2002 alleging retaliatory discharge ("Second Complaint"). Plaintiff amended the First Complaint on April 4, 2003, and amended the Second Complaint on May 13, 2003. Plaintiff subsequently received Notices of a Right to Sue from the EEOC and the PHRC for her First and Second Complaints.

In July 2005, Plaintiff filed the instant lawsuit against Defendant alleging disability discrimination under Title I of the Americans with Disabilities Act ("ADA") (Count I); retaliation under the ADA (Count II); disclosure of confidential information under the ADA (Count III); invasion of privacy (Count IV); violation of Pennsylvania Human Relations Act ("PHRA") (Count V);

and wrongful discharge under Pennsylvania law (Count VI). In addition to other damages, Plaintiff specifically requested punitive damages in her claim under Count V.

Pursuant to Federal Rule Civil Procedure 12(b)(6), Defendant now moves the court to dismiss Counts III, IV, and VI and to strike Plaintiff's request for punitive damages in Count V. Plaintiff, in her Opposition to Defendant's Motion to Dismiss, does not contest Defendant's Motion to Dismiss Count IV and Count VI, and she does not contest Defendant's Motion to Strike her claim for punitive damages in Count V. Plaintiff does contest Defendant's Motion to Dismiss Count III of her complaint.

In its Motion to Dismiss Count III for disclosure of confidential medical information under the ADA, Defendant asserts that Plaintiff failed to exhaust her administrative remedies because she did not file a charge with the EEOC that included this allegation.

## II. Standards of Review

### A. *Standard for 12(b)(6) Motions to Dismiss*

Federal Rules of Civil Procedure 12(b)(6) provides for dismissal of a complaint for failure to state a claim. When considering motions to dismiss under 12(b)(6), the court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it

is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100,103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)).

Generally, a trial court has discretion to address certain types of evidence outside the complaint when ruling on a motion to dismiss. Kulwicki v. Dawson, 969 F.2d 1454, 1462 (3d Cir. 1992). The court may consider documents attached to or submitted with the complaint, as well as legal arguments presented in memorandums or briefs and arguments of counsel. Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 560 (3d Cir. 2002) (citing 62 Fed. Proc., L. Ed. § 62:508). Additionally, a document integral to or explicitly relied upon in the complaint may be considered without converting a motion to dismiss into one for summary judgment. In Re Burlington Coat Factory Securities Litigation, 114 F.3d 1410 (3d Cir. 1997).

#### *B. Standard for Exhaustion of Administrative Remedies*

Title I of the ADA incorporates the procedures of Title VII. See 42 U.S.C. § 12117(a). Thus, a plaintiff alleging a violation of Title I of the ADA must exhaust administrative remedies available through the EEOC before filing a court action. See 42 U.S.C. §§ 2000(e), (f)(1); see also Bracciale v. City of Philadelphia, No. CIV.A.97-2464, 1997 WL 672263, at \*7 (E.D. Pa. Oct. 29, 1997). The standard for determining if a plaintiff

properly exhausted the existing administrative remedies is whether the facts alleged in the subsequent lawsuit are fairly within the scope of the prior EEOC complaint or the investigation arising therefrom. See Antol v. Perry, 82 F.3d 1291, 1295 (3d Cir. 1996) (discussing the standard for exhausting administrative remedies with respect to Title VII claims). Furthermore, the Third Circuit has held that "the parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination, including new acts which occurred during the pendency of proceedings before the Commission." Ostapowicz v. Johnson Bronze Co., 541 F.2d 394, 398-99 (3d Cir. 1976). Plaintiffs should also not be barred from raising additional claims in district court simply because the EEOC investigation is too narrow. Robinson v. Dalton, 107 F.3d 1018, 1026 (3d Cir. 1997).

### III. Discussion

Plaintiff's complaint in the instant lawsuit explicitly relies upon her previously filed EEOC and PHRC complaints and amendments. Consequently, this court will include the EEOC and PHRC complaints and related documents in its consideration of the Defendant's Motion to Dismiss in Part pursuant to Federal Rule of Civil Procedure 12(b)(6) without converting the present motion to one for summary judgment.

In her complaints and subsequent amendments to the EEOC and PHRC, Plaintiff does not specifically allege violations of the ADA for disclosure of confidential medical information. However, Plaintiff's complaints to the EEOC and PHRC include a reference to the Incident Report which forms the basis of Plaintiff's claim under the ADA for disclosure of confidential medical information. More importantly, in a letter from Plaintiff to the PHRC received on October 22, 2002, Plaintiff specifically asserts that Defendant revealed her confidential medical information in the Incident Report which was not marked confidential and was distributed to her co-workers. Based on the reference to the Incident Report in her EEOC and PHRC complaints as well as her letter to the PHRC asserting that Defendant revealed her confidential medical information, the PHRC and EEOC had notice of Plaintiff's allegation that Defendant disclosed her confidential medical information, and a reasonable investigation by the PHRC and EEOC would have included investigation into this allegation. Accordingly, this Court finds that Plaintiff has exhausted her administrative remedies with respect to her ADA claim, and Defendant's Motion to Dismiss Count III will be DENIED.

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ROHM AND HAAS COMPANY	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 17th day of November, 2005, after consideration of Defendant's Motion to Dismiss in Part, Plaintiff's Memorandum of Law in Opposition thereto, and Defendant's Reply, it is hereby **ORDERED** that Defendant's Motion is **GRANTED** in part and **DENIED** in part.

**IT IS FURTHER ORDERED THAT** Defendant's unopposed Motion to Dismiss Count IV and VI is **GRANTED**. Defendant's unopposed Motion to Strike Plaintiff's request for punitive damages in Count V is **GRANTED**. Defendant's Motion to Dismiss Count III is **DENIED**.

BY THE COURT:

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Clifford Scott Green, J.