

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

MALISA ALEXANDER : CIVIL ACTION
: :
v. : :
: :
KEYSTONE MERCY HEALTH PLAN, :
MARY BLOCK, LISA MCCARRICK, :
and REGINA HEFFERANN : NO. 06-5599

MEMORANDUM AND ORDER

McLaughlin, J.

June 4, 2007

Malisa Alexander ("Alexander") has sued her former employer and three former colleagues for race discrimination and retaliation under both Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., and under the Pennsylvania Human Relations Act ("PHRA"), 43 Pa.S. § 951 et seq. The defendants have moved to dismiss the complaint for failure to state a claim. The Court will deny the motion.

I. BACKGROUND

The plaintiff began working at Keystone Mercy Health Plan ("Keystone") as a claims manager in 2001 and was subsequently promoted to the position of Accounts Payable Administrator.¹ Beginning in April of 2003, however, the plaintiff alleges that she began being treated differently from

¹ Both parties state that Alexander was hired on December 10, 2001, and promoted on May 30, 2001. The alleged date of promotion therefore precedes the alleged date of hire. The Court will ignore this apparent error because a determination of the exact dates of Alexander's hire and promotion are irrelevant to a determination of whether the plaintiff has stated a claim.

her white coworkers. At this time, the plaintiff alleges that one of her supervisors at Keystone, Shola Coker ("Coker"), began falsely accusing the plaintiff of arriving late for work and leaving early.

When the plaintiff disputed these accusations, Coker and Lisa McCarrick ("McCarrick"), another of the plaintiff's supervisors at Keystone, allegedly responded by (i) falsely accusing the plaintiff of taking long lunches, (ii) forbidding the plaintiff from visiting co-workers' desks regarding non-work-related matters, and (iii) reprimanding the plaintiff for bringing her daughter to work. According to the plaintiff, similarly situated white employees were not subjected to such treatment.

In September of 2003, the plaintiff, an asthmatic, began to suffer asthma attacks. These attacks ultimately forced the plaintiff to take a medical leave of absence from September 17, 2003, to October 13, 2003. When the plaintiff returned to Keystone in October of 2003, McCarrick and Mary Block ("Block"), another of the plaintiff's supervisors, allegedly began stripping the plaintiff of meaningful jobs. The plaintiff therefore had very little work to do when she returned to Keystone in October of 2003.

The plaintiff alleges that the various actions of Coker, McCarrick, and Block caused her to suffer severe work-

related stress. As a result of this stress, the plaintiff began to experience allergic reactions and swelling. Ultimately, this stress forced the plaintiff to take another medical leave of absence from May 27, 2004, to July 19, 2004.

On July 22, 2004, the plaintiff met with Regina Hefferann ("Hefferann"), Keystone's Assistant Human Resources Director, to complain about the allegedly race-based discrimination to which the plaintiff had been subjected. Hefferann assured the plaintiff that the complaints would be investigated. Despite this assurance, Keystone initially disregarded the plaintiff's complaints completely, and ultimately conducted only a cursory investigation into the allegations.

After the plaintiff spoke with Hefferann, Block and McCarrick allegedly retaliated against the plaintiff by continuing to strip her of meaningful jobs, which resulted in the plaintiff having no meaningful work to perform by August of 2004. Eventually, Block and McCarrick offered the defendant substitute work in the mail room. The defendants allegedly stated that the work in the mail room was not part of the plaintiff's job description and that the change in responsibility was, in effect, a demotion and diminution in job status. The plaintiff alleges that similarly situated white employees were not systematically stripped of all meaningful work.

As a result of these conditions, the plaintiff

experienced more job-related stress and suffered a severe asthma attack on August 6, 2004, which forced her to seek hospital treatment. On August 9, 2004, the plaintiff presented Hefferann with the paperwork required to process her medical leave for hospitalization. Hefferann responded the following day by informing the plaintiff that her health adversely affected her ability to do her job and offered the plaintiff a three-month severance package in return for her resignation. The plaintiff rejected this offer. Hefferann then offered the plaintiff a relocation package. The plaintiff rejected this proposal, as well.

The plaintiff alleges that Hefferann responded by placing the plaintiff on leave, ostensibly so that Keystone could investigate the plaintiff's complaints of race-based discrimination. According to the plaintiff, however, Keystone placed her on leave solely as retaliation for her complaints about discriminatory conduct at Keystone.

On October 13, 2004, Hefferann advised the plaintiff that the investigation did, in fact, reveal that the plaintiff had been treated unfairly but that the unfair treatment was not due to race-based discrimination. Hefferann then told the plaintiff that she could either sign a general release form or be terminated. Because the plaintiff refused to sign the general release, Keystone terminated the plaintiff's employment.

On December 22, 2006, the plaintiff filed the present complaint. Counts one, two, and three allege claims against Keystone for race discrimination and retaliation in violation Title VII; count four alleges a claim against Keystone for race discrimination in violation of the PHRA; and, count five alleges a claim against Keystone, Block, McCarrick, and Hefferann for retaliation in violation of the PHRA.

II. ANALYSIS²

The defendants have moved to dismiss the complaint on the grounds that (i) the plaintiff has failed to exhaust her administrative remedies with respect to her PHRA claims, (ii) the plaintiff cannot sue individual defendants for violating Title VII, (iii) the plaintiff has failed to state a claim for race discrimination under Title VII, and (iv) the plaintiff has failed to state a claim for retaliation under Title VII.

A. Failure to Exhaust PHRA Claims

The defendants argue that the plaintiff has failed to state a claim under the PHRA because she failed to exhaust her

² In considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court accepts as true all allegations in the complaint and all reasonable inferences that can be drawn from them, after viewing the allegations in the light most favorable to the non-moving party. Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 188 (3d Cir. 2005). A Rule 12(b)(6) motion should be granted if it appears to a certainty that no relief could be granted under any set of facts that could be proved. Id.

administrative remedies, as required by the statute. The plaintiff responds by arguing that she did exhaust her administrative remedies by filing charges of discrimination with the Equal Employment Opportunity Commission ("EEOC"). The Court will deny the defendants' motion on this ground.

To bring a claim under the PHRA, a plaintiff must first file an administrative complaint with the Pennsylvania Human Relations Commission ("PHRC") within 180 days of the alleged act of discrimination. 43 Pa. Cons. Stat. §§ 959, 962; Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997). A plaintiff may then file a civil action if, "within one year after the filing of a complaint with the [PHRC], the [PHRC] dismisses the complaint or has not yet entered into a conciliation agreement to which the complainant is a party." 43 Pa. Cons. Stat. § 962(c)(1). If a plaintiff fails to file a timely complaint with the PHRC, then he or she is precluded from judicial remedies under the PHRA. Woodson, 109 F.3d at 925.

Although a plaintiff must typically file an initial complaint with the PHRC, there are certain circumstances where a complaint initially filed with the EEOC will suffice for purposes of satisfying the PHRA's exhaustion requirement. See id. at 925-27 & n.12. For example, a plaintiff may exhaust his administrative remedies under the PHRA by instructing the EEOC to dual-file his charge with the PHRC. See id. at n.12. Pennsylvania courts have also concluded that a plaintiff will be

deemed to have exhausted his administrative remedies under the PHRA if the EEOC actually transmits the complaint to the PHRC, regardless of whether the plaintiff instructed the Commission to do so. See id.; see also Vincent v. Fuller Co., 616 A.2d 969, 971 (Pa. 1992); see also Lukus v. Westinghouse Elec. Corp., 419 A.2d 431, 452-53 (Pa. Super. 1980).

In the present case, the plaintiff has alleged that she exhausted her administrative remedies under the PHRA by filing charges of race discrimination with a district office of the EEOC.³ It is therefore possible that the EEOC transmitted these complaints to the PHRC in a timely manner. Because the Court must construe all allegations in the light most favorable to the plaintiff at this stage of the litigation, the Court will deny the defendants' motion to dismiss on this ground. This ruling in no way affects the defendants' ability to raise this argument in

³ The defendants argue that this allegation is insufficient to state a claim because the plaintiff did not instruct the EEOC to dual-file her charge with the PHRC. The defendants substantiate this argument by relying on a document entitled, "Notice of Charge of Discrimination," which the defendants attached to their motion to dismiss as Exhibit 2. Although courts typically consider only the allegations contained in the complaint and the exhibits attached thereto when deciding a motion to dismiss, a court may also consider matters of public record. See Pension Benefit Guar. Ass'n v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993). The Notice of Charge of Discrimination appears to be a letter sent either by, or on behalf of, the EEOC to the parties in the litigation. Even assuming that such a document is a matter of public record, the Court finds that this document is insufficient to show that the plaintiff failed to exhaust her administrative remedies. Indeed, the document does not reference the PHRC at all, let alone state that the plaintiff chose not to dual-file the charge with the PHRC and the EEOC. The document simply states that the plaintiff's complaint was received by the Philadelphia Commission on Human Rights and sent to the EEOC.

a later motion for summary judgment.

B. Individual Liability Under Title VII

Defendants Block, McCarrick, and Hefferann argue that the plaintiff has failed to state a claim against them under Title VII because individual employees cannot be held liable under the statute. The plaintiff responds by arguing that she has not alleged any Title VII claims against these individual defendants. The Court will therefore deny the individual defendants' motion to dismiss on this ground as moot.

C. Title VII Claims for Race Discrimination

Defendant Keystone argues that the Court should dismiss the plaintiff's claim for race discrimination under Title VII because the plaintiff has failed to allege a prima facie case for such a cause of action. The Court is not persuaded by Keystone's argument.

To state a claim for race discrimination under Title VII, the plaintiff must allege (i) that she is a member of a protected class, (ii) that she was subject to an adverse employment action, and (iii) that similarly situated members of other racial classes were treated more favorably or that other circumstances exist that give rise to an inference of unlawful discrimination. Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410-12 (3d Cir. 1999). An adverse employment action is one that is "serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment."

Cardenas v. Massey, 269 F.3d 251, 263 (3d Cir. 2001). An employment decision need not result in a change in compensation or job title to constitute an adverse employment action. Torre v. Casio, Inc., 42 F.3d 825, 831 n.7 (3d Cir. 1994).

In the present case, the plaintiff has alleged facts that are sufficient to make out a prima facie case for race discrimination under Title VII. First, the plaintiff has alleged that she is a Black female, which satisfies the "member of a protected class" element of such a claim. Goosby v. Johnson & Johnson Med., Inc., 228 F.3d 313, 319 (3d Cir. 2000). Second, the plaintiff has alleged that she was systematically stripped of all meaningful responsibilities, which satisfies the "adverse employment action" element. See Cardenas, 269 F.3d at 263. And finally, the plaintiff has alleged that similarly situated white employees were not subjected to this stripping of responsibility. The Court will accordingly deny Keystone's motion to dismiss on this ground.

D. Title VII Claim for Retaliation

Defendant Keystone argues that the plaintiff has failed to state a claim for retaliation under Title VII because the plaintiff has not alleged a causal link between her complaints about discrimination and the adverse employment actions she sustained. The Court is not persuaded by this argument.

To state a claim for retaliation under Title VII, the plaintiff must allege (i) that she engaged in a protected

activity, (ii) that she subsequently suffered an adverse employment action, and (iii) that there was a causal connection between her engaging in the protected activity and the adverse employment action.⁴ Moore v. City of Philadelphia, 461 F.3d 331, 340-41 (3d Cir. 2006).

The United States Court of Appeals for the Third Circuit has noted that when examining the issue of causation, courts have tended to focus on two factors: (i) the temporal proximity between the protected activity and the alleged discrimination, and (ii) the existence of a pattern of antagonism in the intervening period. See Jensen v. Potter, 435 F.3d 444, 450 (3d Cir. 2006).

Timing alone raises the requisite inference of causation when it is "unusually suggestive" of retaliatory motive. Id. To be "unusually suggestive" of retaliatory motive, however, the temporal proximity must be immediate. Compare Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989) (finding the requisite causal link when the adverse employment action occurred two days after the protected activity) with Williams v. Philadelphia Hous. Auth. Police Dep't, 380 F.3d 751, 760-61 (3d Cir. 2004) (finding a two-month lapse between the protected activity and the adverse employment action to be insufficient).

⁴ It is undisputed that the plaintiff's complaints to Hefferann constituted a protected activity. See Barber v. CSX Distrib. Serv., 68 F.3d 694, 702 (3d Cir. 1995). It is also undisputed that the plaintiff's being stripped of all meaningful responsibilities and terminated constituted adverse employment actions. See Cardenas, 269 F.3d at 263; see also Caver v. City of Trenton, 420 F.3d 243, 256 n.10 (3d Cir. 2005).

When temporal proximity is lacking, courts often look to the intervening period for a pattern of antagonism or other evidence of retaliatory animus. Jensen, 435 F.3d at 450. For example, in Robinson v. Southeastern Pennsylvania Transportation Authority, 982 F.2d 892 (3d Cir. 1993), the court found the requisite pattern of antagonism to demonstrate causation where the plaintiff was subjected to a "constant barrage of written and verbal warnings, inaccurate point totalings, and disciplinary action, all of which occurred soon after plaintiff's initial complaints and continued until his discharge." Id. at 895.

Even if both temporal proximity and a pattern of antagonism are lacking, a plaintiff may nevertheless be able to demonstrate causation if the allegations, looked at as a whole, raise an inference of causation. Jensen, 435 F.3d at 450. For example, in Kachmar v. Sungard Data Systems, Inc., 109 F.3d 173 (3d Cir. 1997), the court explained that when there may be valid reasons why the adverse employment action was not taken immediately, the absence of immediacy between the cause and effect does not disprove causation. Id. at 178.

In the present case, the plaintiff has alleged that she was stripped of all meaningful jobs within two weeks of her complaining to Hefferann about discrimination at Keystone. Viewed in the light most favorable to the plaintiff, this allegation of close temporal proximity between the protected activity and the adverse employment action is sufficient to satisfy the "causal connection" element of a Title VII

retaliation claim. Furthermore, although the plaintiff was not terminated until almost three months had passed since she had engaged in the protected activity, the plaintiff alleges that she was placed on leave for all but approximately two weeks of that time. The lack of immediacy between the plaintiff's engaging in a protected activity and her termination by Keystone therefore does not disprove causation. See Kachmar, 109 at 178. The Court will accordingly deny Keystone's motion to dismiss on this ground.

An appropriate Order follows.

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ORDER

AND NOW, this 4th day of June, 2007, upon consideration of the defendants' motion to dismiss (Doc. No. 4) and the plaintiff's response thereto (Doc. No. 5), IT IS HEREBY ORDERED that the motion is DENIED for the reasons stated in the memorandum of today's date.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.