

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

CASSANDRA MARSHALL : CIVIL ACTION
 :
 v. :
 :
 HAHNEMANN UNIVERSITY, et al. : NO. 97-3191

MEMORANDUM AND ORDER

HUTTON, J.

June 25, 1998

Presently before the Court is the plaintiff's Motion for Leave to File an Amended Complaint (Docket No. 17), and the defendants' response thereto. For the reasons stated below, the plaintiff's motion is **GRANTED**.

I. BACKGROUND

The plaintiff, Cassandra Marshall, originally filed her complaint in the instant action on May 2, 1997. In her complaint, the plaintiff names the following parties as defendants: (1) Hahnemann University; (2) Hahnemann Anesthesia Associates, Ltd; (3) Medical College of Pennsylvania Hahnemann University; and (4) Allegheny Health Education & Research Foundation.¹ The plaintiff alleges that the defendants utilized unlawful employment practices that discriminated against the plaintiff on the basis of her sex and race. Pl.'s Mot. ¶ 1; Pl.'s Compl. ¶¶ 62-63. Accordingly, the

1. On September 3, 1997, the parties stipulated that the caption would be amended to replace defendant Medical College of Pennsylvania Hahnemann University with defendant Allegheny University of the Health Sciences.

plaintiff asserts a claim against the defendants under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"). Pl.'s Compl. ¶¶ 64-69.

On November 26, 1997, this Court entered a Scheduling Order, instructing the plaintiff and the defendants to file their pretrial memorandums by March 19, 1998 and March 30, 1998, respectively. Moreover, the Court informed the parties that the instant case would be placed in the trial pool on April 6, 1998. The parties complied with the Scheduling Order by timely filing their pretrial memorandums.

In her pretrial memorandum, the plaintiff included a proposed point for charge concerning the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. §§ 951-63 (1991). See Pl.'s Pretrial Mem. Chg. 2. In response, the defendants correctly pointed out in their pretrial memorandum that the plaintiff failed to assert a claim under the PHRA, and, accordingly, the defendants argued the plaintiff's requested charged should be denied. Defs.' Pretrial Mem. at 1 n.1. On April 6, 1998, this case was placed in the trial pool. On June 5, 1998, the plaintiff filed the instant motion, seeking to amend her complaint to include a PHRA claim.

II. DISCUSSION

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Because the plaintiff seeks to amend her complaint long after the defendants served their responsive pleading, the plaintiff "may amend [her complaint] only by leave of court." Fed. R. Civ. P. 15(a). Rule 15(a) clearly states that, "leave shall be freely given when justice so requires." "Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility." In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997) (citations omitted); see Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)).

The Third Circuit has found that "prejudice to the non-moving party is the touchstone for denial of an amendment." Lorenz, 1 F.3d at 1414. Several courts have found that prejudice exists where a plaintiff seeks to amend the complaint several years after the start of litigation and within a few weeks of trial. See, e.g., Lorenz, 1 F.3d at 1414 (denying motion brought three years after start of litigation); Hewlett-Packard Co. v. Arch Assocs. Corp., 172 F.R.D. 151, 153 (E.D. Pa. 1997) (denying motion brought fifteen months after original pleading was dismissed); Johnston v. City of Philadelphia, 158 F.R.D. 352, 353 (E.D. Pa.

1994) (denying motion to add new theory of liability after close of discovery and on eve of trial); Kuhn v. Philadelphia Elec. Co., 85 F.R.D. 86, 87 (E.D. Pa. 1979) (denying motion after discovery was completed). However, courts have concluded that a defendant cannot demonstrate prejudice when a plaintiff amends the complaint merely to include a PHRA claim which is essentially identical to the plaintiff's existing Title VII claim. See, e.g., Schofield v. Trustees of Univ. of Pa., 894 F. Supp. 194, 197 (E.D. Pa. 1995) (allowing plaintiff to amend more than nine months after originally filing complaint, one month after close of discovery, and one month prior to trial); Phillips-Burke v. Neshaminy Constructors, Inc., No. CIV.A.89-8497, 1992 WL 80803, at * 5-6 (E.D. Pa. Apr. 13, 1992) (allowing plaintiff to amend her complaint more than two years after initial filing).

In the instant matter, the defendants assert that they will suffer prejudice if the Court grants the plaintiff's motion. More specifically, the defendants argue that:

permitting plaintiff to assert a PHRA claim on the eve of trial because she forgot to do so earlier flies in the face of the federal rules. Defendants are obviously prejudiced by allowing plaintiff to amend her Complaint on the eve of trial for the sole purpose of gaining the potential to recover increased damages. Defendants respectfully submit that plaintiff should not be rewarded for her failure to timely allege a PHRA claim.

Defs.' Opp'n at 4-5. Accordingly, the defendants contend that the plaintiff's motion should be denied.

The defendants fail to explain how they would be prejudiced by the plaintiff's proposed amendments. The plaintiff does not offer new factual assertions or different legal theories in her proposed amendments. Instead, the plaintiff merely seeks to include the PHRA count in six new paragraphs. Based on the proposed amendment, this Court cannot find that the defendant would be prejudiced by the plaintiff's request. As United States District Judge J. Curtis Joyner stated in Schofield:

A discrimination claim brought under the PHRA is governed by the same burden of proof structure as a Title VII claim. Brennan v. National Tel. Directory Corp., 881 F. Supp. 986, 994 n. 5 (E.D. Pa. 1995). Thus, since the evidence relevant to the Title VII claim would also apply to a PHRA claim, it would appear that the [defendant] would not be prejudiced unduly if it were compelled to defend a PHRA claim at trial.

894 F. Supp. at 197. Accordingly, this Court grants the plaintiff's motion and allows the plaintiff leave to file her amended complaint.

An appropriate Order follows.

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O R D E R

AND NOW, this 25th day of June, 1998, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint (Docket No. 17), IT IS HEREBY ORDERED that the plaintiff's Motion is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff **SHALL** file her Amended Complaint within five (5) days of the date of this Order.

BY THE COURT:

HERBERT J. HUTTON, J.