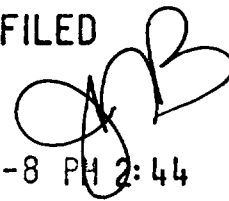


UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED



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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

CASE NO: 8:99-cv-2218-T-26MSS

OUTBACK STEAKHOUSE, INC.,

Defendant.

_____ /

ORDER

This cause comes before the Court on Plaintiff's Motion for Partial Summary Judgment (Dkt. 36) and Defendant's Response thereto (Dkt. 42). Plaintiff seeks summary judgment on Defendant's second, third, and fifth affirmative defenses.

Plaintiff sues Defendant for violations of Title VII and the Equal Pay Act. Specifically, Plaintiff maintains that Defendant: (1) paid female employee Dena Zechella ("Zechella") lower wages than those paid to male employees performing the same or substantially equal work; (2) transferred and subsequently discharged Zechella because of her sex; (3) attempted to coerce Zechella into signing an unlawful release of her rights; and (4) retaliated against Zechella for her refusal to sign the release. Defendant asserts that Plaintiff is not entitled to recover damages under the Equal Pay Act (second

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affirmative defense) or Title VII (third affirmative defense) for any period on which the statute of limitations set therein has run. Defendant also argues that Plaintiff failed to satisfy all conditions precedent to this suit (fifth affirmative defense). After careful consideration, the Court finds that the Motion for Partial Summary Judgment should be denied.

Zechella filed her charge of discrimination on June 9, 1998. The 300-day limitations period for Zechella's claims extends back to August 13, 1997. 42 U.S.C. § 2003-5. Several of Plaintiff's allegations pertain to acts that occurred prior to August 13, 1997. In some instances, courts have permitted recovery for acts that occurred prior to the 300-day period under the theory that the earlier acts were part of a continuing violation. However, Plaintiff must first establish a prima facie case of sex discrimination. It appears at this time that a reasonable fact-finder could conclude that there was no pay discrimination within the 300-day period preceding Zechella's charge. Such a finding would eliminate any basis for application of the continuing violation doctrine. In addition, Plaintiff failed to establish a sufficient basis for the application of the equitable tolling doctrine inasmuch as Zechella stated in her deposition that she knew soon after Steve Wilson was hired that he was being paid more than her.

The Equal Pay Act is governed by a two-year statute of limitations that extends backward from the date on which suit is filed, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action

accrued. 29 U.S.C. § 255. At this juncture, it appears that a reasonable fact-finder could conclude that the decision to pay Wilson more than Zechella did not constitute a willful violation of the Equal Pay Act. Such a finding could eliminate Equal Pay Act liability altogether and would undoubtedly limit Zechella's damages to those that accrued after September 29, 1997. Finally, to the extent that Plaintiff seeks relief on a theory that Zechella was retaliated against for complaining about discriminatory pay, Plaintiff has not sufficiently demonstrated that it satisfied all conditions precedent to bringing such a claim. In particular, Plaintiff has not shown that it investigated Zechella's allegations, issued a cause finding on the allegations, or gave Defendant an opportunity to conciliate the allegations.

ACCORDINGLY, it is ORDERED:

That Plaintiff's Motion for Partial Summary Judgment (Dkt. 42) is **denied**.

DONE AND ORDERED at Tampa, Florida, on May 7, 2001.



RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record