

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY :  
COMMISSION, :  
 :  
Plaintiff, :  
 : CIVIL ACTION NO.  
v. : 1:05-CV-2519-CAP-CCH  
 :  
REGENCY HEALTH ASSOCIATES, :  
 :  
Defendant. :

**ORDER**

The above-captioned employment discrimination action is before the Court on Plaintiff's Motion to Compel Discovery Responses, Request for Sanctions, and Brief in Support Thereof [17] ("Motion to Compel"). Plaintiff has moved to compel discovery responses to Plaintiff's Interrogatories and Request for Production of Documents, and has moved for sanctions in response to Defendant's refusal to provide the requested documents. Plaintiff seeks production of "all business and/or financial records that would support Defendant's contention that Defendant is not an 'employer' under Title VII." Motion to Compel, at 9.

**I. BACKGROUND**

Plaintiff filed its Complaint on September 28, 2005, alleging that Defendant discriminated against Ms. Hani Mohamed

on the basis of her religion, in violation of Title VII, 42 U.S.C. § 2000e ("Title VII"). Defendant contends, in its eighteenth defense, that it is not an "employer" within the meaning of Title VII. Answer [5], at 5.

Discovery in this action continues, and is set to end on September 6, 2006. On March 20, 2006, Plaintiff served its First Interrogatories and Request for Production of Documents upon Defendant [11]. In turn, Defendant served its Discovery Responses [12] on May 11, 2006.

Following correspondence between Plaintiff's counsel and Defendant's counsel, in which Defendant's counsel again asserted that his client is not subject to suit because it does not constitute an "employer" under Title VII, Defendant produced documentation in support of this contention. Specifically, Defendant produced a motley assortment of documents, all under the title page "Regency Health Associates Employee Information," which Plaintiff has appended to its Motion to Compel [17] under "Exhibit 7." The five documents can be summarized as follows:

(1) a line graph titled "RHA Employee Numbers," purporting to show the number of Defendant's employees during each week of 2003, and depicting the numbers of employees never exceeding the line at 15;

(2) a running list titled "Weekly Time Report," appearing to list each individual employee employed with Defendant over 2003, broken down by the number of hours each employee worked during each of the 52 weeks of 2003, with a row at the beginning of each week stating "Title VII Maximum: 15";

(3) a running list titled "Weekly Time Report," appearing to list each individual employee employed with Defendant over 2004, broken down by the number of hours each employee worked during each of the 52 weeks of 2004, with a row at the beginning of each week stating "Title VII Maximum: 15";

(4) a running list of employee names, listing the number of hours each employee worked on each day of 2003, and

(5) a running list of employee names, listing the number of hours each employee worked on each day of 2004.

Plaintiff found that the documentation was insufficient to prove Defendant did not qualify as an "employer," and served Defendant with its Continuing Request for the Production of Documents ("Continuing Request") on June 9, 2006. Specifically, Plaintiff requested that Defendant produce the following:

1. All documents, including but not limited to correspondence, contracts, personnel records, payroll records, W-2 Forms, and pay

check stubs, that contain information pertaining to the number of employees employed by Regency Health Associates from January 1, 2003 through December 31, 2004.

2. All documents submitted to the Internal Revenue Service, including but not limited to Form 941 - Employer's Quarterly Federal Tax Return and/or Form 944 - Employer's Annual Federal Tax Return, that contain information pertaining to the number of employees employed by Regency Health Associates from January 1, 2003 through December 31, 2004.

3. Any and all other documents that contain information which supports the statement in your Answer that "some or all of Plaintiff's claims are barred because Defendant is not an 'employer' within the meaning of Title VII of the Civil Rights Act of 1964."

Continuing Request, at 3.

Defendant responded to Plaintiff's Continuing Request for Production, objecting as follows:

it is vague, ambiguous, overly broad, and subject to varying interpretations . . . . it calls for documents protected by the attorney-client privilege, accountant-client privilege, or the work product doctrine . . . . it subjects Defendant to undue burden and expense and is both harassing and duplicative . . . . Defendant states that it has already voluntarily produced to Plaintiff detailed payroll and time clock information showing that Defendant is not an 'employer' within the meaning of Title VII of the Civil Rights Act of 1964, because Defendant did not have the requisite minimum number 15 [sic] or more employees for each working day in each of 20 or more calendar

weeks in calendar years 2003 or 2004.  
Accordingly, Defendant is not subject to  
suit under Title VII . . .

Defendant's Objections and Responses to Plaintiff's Second  
Request for Production of Documents ("Defendant's Objections"),  
at 3-4.

Defendant objects to Plaintiff's Motion to Compel, stating,  
"Defendant is not subject to suit under Title VII, and  
therefore, not subject to discovery under the Federal Rules of  
Civil Procedure."<sup>1</sup> Defendant's Response in Opposition to  
Plaintiff's Motion to Compel, at 1.

After submitting its Motion for Summary Judgment [21],  
Defendant also filed a Substituted Response Brief in Opposition  
to Plaintiff's Motion to Compel [25] ("Substituted Objections").  
In its Substituted Objections, Defendant asserts objections to  
the requested discovery documents that are similar to those  
already raised in Defendant's Objections. Where Defendant has  
raised new objections in its Substituted Objections, they will  
be addressed in footnotes.

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<sup>1</sup>Defendant filed a Motion for Summary Judgment [21] on  
August 23, 2006, asserting that it is not subject to suit under  
Title VII because it did not have 15 or more employees during  
the relevant time period. This Court granted Plaintiff an  
extension to file its response to the Motion for Summary  
Judgment, while this Motion to Compel is pending [24].

## **II. DISCUSSION**

As a threshold matter, the official documents the Plaintiff is requesting are highly relevant. Discovery permits the disclosure of all non-privileged evidence that is "relevant to the claim or defense of any party," Fed. R. Civ. P. 26(b)(1), and Defendant has stated it intends to assert the defense that it had fewer than 15 employees during the relevant time period. Therefore, Plaintiff must be entitled to discover official documents recording the number of Defendant's employees during the relevant two-year time period.

Defendant objects to Plaintiff's document request on five basic grounds. Each objection will be discussed in turn.

### **A. First Objection**

Defendant argues that Plaintiff's request for all documents pertaining to the number of employees employed by Defendant is "vague, ambiguous, overly broad, and subject to varying interpretations." Defendant's Objections, at 3. While a request for "all documents" pertaining to this issue could cover every piece of paper in Defendant's possession, Plaintiff gave very specific examples of documents it seeks, such as personnel records, payroll records, and W-2 forms. Moreover, the second

paragraph of Plaintiff's Continuing Request was even more targeted, and was limited to documents submitted to the Internal Revenue Service pertaining to its employees.<sup>2</sup> The Court finds that Plaintiff's request, narrowed to these identified documents, is sufficiently specific, and Defendant is **ORDERED** to produce these documents.

**B. Second Objection**

Defendant asserts that Plaintiff's request "calls for documents protected by the attorney-client privilege, accountant-client privilege, or the work product doctrine." Defendant's Objections, at 3. Although Defendant asserts that Plaintiff has requested documents protected by various privileges, Defendant has asserted no grounds for this contention. The documents Plaintiff requests, such as W-2 forms for example, are not normally protected by attorney-client privilege.<sup>3</sup> Therefore, this objection is not substantiated.

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<sup>2</sup>It is the Court's experience that W-2 forms are generally transmitted to the Internal Revenue Service under cover of a W-3 form which, in part, identifies the number of W-2's submitted by (and thus, persons employed by) the employer. This form should be produced as well as all other employment-related forms submitted to the Internal Revenue Service covering 2003 and 2004.

<sup>3</sup>Defendant also argues that the requested tax returns contain confidential financial information. Substituted Objections, at 4. If this is the case, it can be remedied by

**C. Third Objection**

Defendant also asserts that Plaintiff's request is harassing, and that it subjects Defendant to an undue burden. Defendant's Objections, at 3. Again, Defendant does not substantiate its argument. As the Court has narrowed its request, Plaintiff has requested specific documents spanning a period of two years - a reasonably limited period of time. Further, the documents Plaintiff requests pertain to time periods over which Defendant contends it had fewer than 15 employees. Therefore, this discovery request should be neither extensive nor unduly time consuming.

**D. Fourth Objection**

Additionally, Defendant contends that Plaintiff's request is duplicative, because Defendant has already provided documents depicting the relevant information. Defendant's Objections, at 3. Defendant is correct that it has produced documents to Plaintiff that contain information about its employees over the relevant time period. However, as discussed *supra*, the documents Defendant has provided appear as though they might

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redacting the confidential portions of documents that do not relate to the number of Defendant's employees, or by entering into a court-ordered protective order.



have been generated in anticipation of litigation.<sup>4</sup> The documents already produced summarize information that should be officially reported in the financial documents Plaintiff is specifically requesting.

**E. Fifth Objection**

Defendant also argues that Plaintiff's Motion to Compel should be denied because Plaintiff has not conferred with Defendant "in good faith" regarding its discovery request, as required by the Federal Rules of Civil Procedure and the local rules of this District. Substituted Objections, at 4; Fed. R. Civ. P. 37(a)(2)(A); LR37.1(A)(1), NDGa. In fact, the record discloses a volume of communications between the parties regarding the discovery request at issue here. See Motion to Compel [17], Ex. 2, 5, 6, 11.

While the parties are required to attempt to resolve discovery disputes among themselves before involving the court, it is evident from the parties' motions and prior communications

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<sup>4</sup>Defendant asserts that the documents already provided "conclusively demonstrate that RHA never had the statutorily required minimum of 15 employees" during the relevant time period. Substituted Objections, at 3. However, because it is unclear from the documents themselves how they were generated, or whether they were kept in the Defendant's normal course of business, they do not necessarily establish the number of Defendant's employees "conclusively."

that the parties have continued to argue with each other regarding this discovery request, and will likely continue to do so unless the Court becomes involved.

**III. CONCLUSION**

For the reasons discussed above, Plaintiff's Motion to Compel Discovery Responses [17] is **GRANTED**. Accordingly, Defendant is instructed to respond to Plaintiff's Continuing Request, as narrowed by this Order, within **fifteen (15) days** from the date of this Order. Plaintiff's request for sanctions is **DENIED**; however, failure to comply with this Order may result in the imposition of sanctions. See LR16.5, NDGa; Fed. R. Civ. P. 37(a), 41(b).

In addition, the Court hereby extends the discovery period in this action through **October 31, 2006**. This will permit Plaintiff time to review the records to be disclosed pursuant to this Order and to depose Defendant with respect to those documents, and, if not previously done, Ms. Alexander's affidavit and the documents upon which she reached her conclusions as to the number of Defendant's employees in 2003 and 2004.

Finally, Plaintiff shall have until **November 21, 2006**<sup>5</sup> to respond to Defendant's Motion for Summary Judgment.

IT IS SO ORDERED this 6th day of September, 2006.



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C. CHRISTOPHER HAGY  
UNITED STATES MAGISTRATE JUDGE

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<sup>5</sup>The deadlines set forth in this Order supersede the extensions granted in this Court's August 25, 2006 Order [24] responding to Plaintiff's Motion to Stay [23].