

2000 WL 1162009 (S.D.Ill.)
United States District Court, S.D. Illinois.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff

v.

WAL-MART STORES, INC., Defendant

No. 99-106-DRH. | Mar. 10, 2000.

Attorneys and Law Firms

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Opinion

DAVID HERNDON, District Judge

*1 Pending before the Court are nine motions *in limine* filed by the EEOC. The motions are as follows in ascending docket numbers: (a) to prohibit mention or evidence of previous legal or administrative proceeding involving Tammy Williams (Docket Entry No. 27); (b) to prohibit mention or evidence of Tammy Williams' absences during her employment with Defendant (Docket Entry No. 28); (c) to bar mention or evidence of Tammy Williams' marriages and divorces (Docket Entry No. 29); (d) to prohibit mention or evidence of Tammy Williams' medical complaints, conditions, injuries, treatments, or surgeries (Docket Entry No. 30); (e) to prohibit mention or evidence of workers' compensation or unemployment compensation received by Tammy Williams (Docket Entry No. 31); (f) to prohibit mention or evidence of Tammy Williams' performance with or termination by prior or subsequent employers (Docket Entry No. 32); (g) to prohibit mention or evidence of Tammy Williams' termination by a prior employer, Edwardsville Care Center, or Ms. Williams' use of the phrase, "Layed [sic] Off" instead of "Terminated" on her Wal-Mart application (Docket Entry No. 33); (h) to bar mention or evidence of Tammy Williams' sexual relationships (Docket Entry No. 39); and (i) to exclude mention or evidence of Tammy Williams' sexual joking or conversations in Defendant's workplace (Docket Entry No. 40). As of this date, Wal-Mart has only responded to six of the motions *in limine* (Docket Entry No. 41).¹ The motions Wal-Mart responded to are Docket Entry Nos. 27, 29, 30, 31, 32 and 33.

This Court has the power to exclude evidence *in limine* only when evidence is clearly inadmissible on all potential grounds. *Luce v. United States*, 469 U.S. 38, 41 n. 4 (1984) (federal district courts have authority to make *in limine* rulings pursuant to their authority to manage trials). Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context. Denial of a motion *in limine* does not necessarily mean that all evidence contemplated by the motion will be admitted at trial. Denial merely means that without the context of trial, the Court is unable to determine whether the evidence in question should be excluded. The Court will entertain objections on individual proffers as they arise at trial, even though the proffer falls within the scope of a denied motion *in limine*. See *United States v. Connelly*, 874 F.2d 412, 416 (7th Cir. 1989) (citing *Luce*, 469 U.S. at 41) ("Indeed, even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous *in limine* ruling.").

It is highly desirable that the trial judge rule on motions *in limine* well before trial so that the parties can shape their trial preparations in light of his rulings without having to make elaborate contingency plans. *Pena v. Leombruni*, 200 F.3d 1031, 1035-1036 (7th Cir. 1999) (citing *Wilson v. Williams*, 182 F.3d 562, 566 (7th Cir. 1999) (en banc); *United States v. Mobley*, 193 F.3d 492, 494 (7th Cir. 1999); 3 Moore's Federal Practice §§16.74 [3], 16.77[4][d][i], [ii] (3d ed. 1997)). In some cases the failure to rule promptly on motions *in limine*, unless the failure were rectified by the grant of a continuance, might conceivably be, or more precisely precipitate, a reversible error (the denial of the continuance). *Pena*, 200 F.3d at 1035-1036.

The Court notes that is unfortunate Wal-Mart chose to take lightly the Court's duties in this regard. The parties are reminded

that side bar requests will likely be denied. In addition, the Court is very concerned with the amount of time the jury is required to wait in the jury room while the Court and the parties discuss legal issues which appear will arise due to Wal-Mart's failure to properly address them in response to these motions. Keeping these principles in mind, the Court will now address the motions *in limine*.

A. EEOC'S MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF TAMMY WILLIAMS PREVIOUS LEGAL OR ADMINISTRATIVE PROCEEDINGS (DOCKET ENTRY NO. 27)

The EEOC moves to exclude evidence of legal proceedings involving Williams, particularly a wrongful discharge action she filed against her previous employer in Illinois state court. The EEOC argues that Wal-Mart may use this evidence to try to demonstrate that Williams is litigiousness which is irrelevant and highly prejudicial under FEDERAL RULES OF EVIDENCE 402, 403 and 404. Wal-Mart responds that an *in limine* ruling at this time would be premature because the Court does not have the context of the trial evidence.

Under Rule 404, evidence of prior acts is admissible if it meets a four-part test:

*2 "1. The evidence must be directed toward establishing something at issue other than a party's propensity to commit the act charged; 2. The other act must be similar enough and close enough in time to be relevant to the matter at issue; 3. The evidence must be such that the jury could find the act occurred and the party in question committed it; and 4. The prejudicial effect of the evidence must not substantially outweigh its probative value."

Gastineau v. Fleet Mortgage Corp., 137 F.3d 490, 494-495 [79 FEP Cases 485] (7th Cir. 1998) (citing *Harris v. Davis*, 874 F.2d 461, 464 (7th Cir. 1989). "The evidence must tend to show something other than a plaintiff's tendency to sue. . ." *Gastineau*, 137 F.3d at 496. Here, Wal-Mart has proffered no other reason at all for the relevance of Williams' prior wrongful discharge claim against her former employer. The Court finds little (if indeed any) probative value of the disputed evidence to place into the scales against the countervailing and clear danger of unfair prejudice before a jury. Accordingly, the Court **GRANTS** the EEOC's motion *in limine* to prohibit mention or evidence of previous legal or administrative proceedings involving Tammy Williams (Docket Entry No. 27).

B. EEOC'S MOTION TO PROHIBIT MENTION OR EVIDENCE OF TAMMY WILLIAMS' ABSENCES DURING HER EMPLOYMENT WITH DEFENDANT (DOCKET ENTRY NO. 28)

The EEOC moves to bar Wal-Mart from introducing evidence about Williams' absences during her employment with Wal-Mart. The EEOC believes that Wal-Mart may try to use this evidence to attack her performance as an employee. As the Court noted earlier, Wal- Mart has not filed a response to this motion. Accordingly, the Court **GRANTS in part** and **DENIES in part** the EEOC's motion *in limine* to prohibit mention or evidence of Tammy Williams' absences during her employment with Defendant (Docket Entry No. 28) The Court **GRANTS** the motion as to Williams' injuries received at Wal-Mart. The Court **DENIES** the motion as to Williams' injuries sustained with a prior employer, subject to a showing by the EEOC outside the presence of the jury that the medical treatment (due to the injury sustained with the prior employer) had ceased prior to Williams' termination.

C. EEOC'S MOTION *IN LIMINE* TO BAR MENTION OR EVIDENCE OF TAMMY WILLIAMS' MARRIAGES AND DIVORCES (DOCKET ENTRY NO. 29)

The EEOC moves to bar evidence of Williams' previous marriages and divorces. The EEOC believes that Wal-Mart may use this evidence to show other bases for Williams' emotional distress and/or to portray her as an emotionally over-sensitive person. Wal-Mart responds that an *in limine* ruling at this time would be premature and that the Court is better equipped to determine the admissibility of this evidence during trial. The Court **GRANTS** the motion *in limine* to bar mention or evidence

of Tammy Williams' marriages and divorces (Docket Entry No. 29). However, this ruling is subject to a showing by Defendant outside presence of the jury that a causal connection exists between introducing Williams' previous marriages and divorces and the complaints made by the EEOC in connection with this claim.

D. EEOC'S MOTION *IN LIMINE* TO PROHIBIT MENTION OR EVIDENCE OF TAMMY WILLIAMS' MEDICAL COMPLAINTS, CONDITIONS, INJURIES, TREATMENTS, OR SURGERIES (DOCKET ENTRY NO. 30)

The EEOC moves to bar Wal-Mart from introducing evidence of Williams' medical complaints, conditions, injuries and treatments (Docket Entry No. 30). The EEOC argues that none of this treatment is relevant to the emotional distress Williams experienced during her employment with Wal-Mart as a result of her retaliatory discharge. Wal-Mart responds that an *in limine* ruling at this time would be premature and that the Court is better equipped to determine the admissibility of this evidence during trial. The Court **GRANTS** the motion *in limine* to bar mention or evidence of Tammy Williams' medical complaints, conditions, injuries and treatments (Docket Entry No. 30). However, this ruling is subject to a showing by Defendant outside presence of the jury that a causal connection exists between introducing Williams' medical complaints, conditions, injuries and treatments and the arguments made by the EEOC in connection with this claim.

E. EEOC'S MOTION *IN LIMINE* TO PROHIBIT MENTION OR EVIDENCE OF WORKERS' COMPENSATION OR UNEMPLOYMENT COMPENSATION RECEIVED BY TAMMY WILLIAMS (DOCKET ENTRY NO. 31)

The EEOC moves to bar Wal-Mart from introducing evidence that Williams' may have received workers' compensation or unemployment compensation during or after her employment with Wal-Mart. The Court **GRANTS** motion *in limine* to prohibit mention or evidence of workers' compensation or unemployment compensation received by Tammy Williams (Docket Entry No. 31)

F. EEOC'S MOTION *IN LIMINE* TO PROHIBIT MENTION OR EVIDENCE OF TAMMY WILLIAMS' PERFORMANCE WITH OR TERMINATION BY PRIOR OR SUBSEQUENT EMPLOYERS (DOCKET ENTRY NO. 32)

The EEOC moves to bar Wal-Mart from introducing evidence about Tammy Williams' performance with and/or termination by prior or subsequent employers. The EEOC argues that this evidence is irrelevant and unfairly prejudicial. The Court **GRANTS** the EEOC's motion *in limine* to prohibit mention or evidence of Tammy Williams' performance with or termination by prior or subsequent employers (Docket Entry No. 32) However, the ruling is subject to Wal-Mart demonstrating relevance outside the presence of the jury.

G. EEOC'S MOTION *IN LIMINE* TO PROHIBIT MENTION OR EVIDENCE OF TAMMY WILLIAMS' TERMINATION BY A PRIOR EMPLOYER, EDWARDSVILLE CARE CENTER, OR MS. WILLIAMS' USE OF THE PHRASED, "LAYED [SIC] OFF" INSTEAD OF TERMINATED ON HER WAL-MART APPLICATION (DOCKET ENTRY NO. 33)

The EEOC moves to bar evidence of Tammy Williams' termination by a prior employer, Edwardsville Care Center. The EEOC argues that Wal-Mart may seek to introduce this type of evidence as after-acquired defense, to introduce that Williams made a misrepresentation on her Wal-Mart application by writing that she was "laid [sic] off" instead of terminated by her previous employer and that Wal-Mart may use this in order to impeach her credibility. The Court **DENIES as moot** and **GRANTS in part** the EEOC's motion *in limine* to prohibit mention or evidence of Tammy Williams' termination by a prior employer, Edwardsville Care Center, or Ms. Williams' use of the phrased, "Layed [sic] Off" instead of terminated on her Wal-Mart application (Docket Entry No. 33). The Court **DENIES as moot** the after-acquired evidence defense issue. The

Court **GRANTS** the motion as to impeachment issue. However the ruling is subject to a showing by Wal-Mart makes a showing outside the presence of the jury that the probative value of this evidence outweighs the prejudice.

H. EEOC'S MOTION *IN LIMINE* TO BAR MENTION OR EVIDENCE OF TAMMY WILLIAMS' SEXUAL RELATIONSHIPS (DOCKET ENTRY NO. 39)

The EEOC moves to prevent Wal-Mart from introducing evidence of Williams' prior and subsequent sexual relationships. The EEOC argues that through this evidence Wal-Mart may attack Williams' character or reputation and/or to prove "the sexual behavior or sexual predisposition of Williams."

Federal Rule of Evidence 412(c) provides:

*4 (1) A party intending to offer evidence under subdivision (b) must-- (a) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

Here, Wal-Mart neither filed a motion under Rule 412(c) nor responded to the motion. Further, there is no other showing of materiality or relevance. Accordingly, the Court **GRANTS** EEOC's motion *in limine* to bar mention or evidence of Tammy Williams' sexual relationships (Docket Entry No. 39).

I. EEOC'S MOTION *IN LIMINE* TO EXCLUDE MENTION OR EVIDENCE OF TAMMY WILLIAMS' SEXUAL JOKING OR CONVERSATIONS IN DEFENDANT'S WORKPLACE (DOCKET ENTRY NO. 40)

The EEOC moves to prevent Wal-Mart from introducing evidence about sexual joking or conversations that Williams may have had with Wal-Mart co- workers. EEOC argues that such evidence should be barred under Federal Rule of Evidence 412(b) and (c). Here, Wal-Mart neither filed a motion under Rule 412(c) nor responded to the motion. Further, there is no other showing of materiality or relevance. Accordingly, the Court **GRANTS** EEOC's motion *in limine* to bar mention or evidence of Tammy Williams' sexual joking or conversations in Defendant's workplace (Docket Entry No. 40).

IT IS SO ORDERED.

Parallel Citations

83 Fair Empl.Prac.Cas. (BNA) 829

Footnotes

¹ A party opposing such a motion shall have ten (10) days after service of the motion to file a written response. Failure to file a timely response to the motion may, in the Court's discretion, be considered an admission of the merits of the motion. LOCAL RULE 7.1(e).