

1999 WL 508403
United States District Court, E.D. Louisiana.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
v.
HBH, INC.

No. Civ.A. 98–2632. | July 19, 1999.

Opinion

ORDER AND REASONS

VANCE, J.

*1 There are two motions before the Court concerning the procedural requirements to be followed by the Equal Employment Opportunity Commission (“EEOC”) when it files a complaint against an employer under the Americans With Disabilities Act (“ADA”). First, defendant has filed a motion to dismiss and/or for partial summary judgment of the EEOC’s allegation that defendant has stored its employee medical records with its personnel files in violation of the ADA.¹ Defendant seeks dismissal of this claim on the grounds that it was not notified of the charge until the filing of the complaint, nor did the EEOC attempt to conciliate the claim as required by 42 U.S.C. § 2000e–5. For the reasons stated below, the Court orders this action stayed for 60 days to permit conciliation of these claims.

The second motion before the Court is plaintiff’s motion for reconsideration or clarification of this Court’s Order denying plaintiff’s motion to amend its complaint to add eight aggrieved individuals. *See* Order May 19, 1999, Doc. No. 29. In that motion, plaintiff asks in the alternative for a 60–day stay to allow for conciliation of the claims of these eight individuals. The Court grants the alternative relief requested and stays this action for 60 days to permit conciliation of these claims.

I. BACKGROUND

On September 4, 1998, plaintiff filed this law suit alleging that the defendant discriminated against Rhua Dale Williams and others in violation of the Americans With Disabilities Act. On October 29, 1998, this Court granted Williams’ motion to intervene.

On March 3, 1999, two months after the deadline for amending the complaint, plaintiff filed a motion to amend its original complaint to add the names of nine other aggrieved individuals and to add TransCoastal Marine Services Inc. as a defendant. HBH, Inc. opposed plaintiff’s motion to amend and moved to strike certain allegations in the original complaint on the grounds that they exceeded the bounds of the EEOC’s investigation. Specifically, defendant sought to strike allegations regarding a an aggrieved class of individuals with disabilities and the co-mingling of medical records with personnel files. On April 5, 1999, the Magistrate denied plaintiff’s motion to amend the complaint to add other aggrieved individuals on the grounds that the EEOC had not attempted to conciliate the claims. The Court granted plaintiff’s motion to add TransCoastal as unopposed and took the remaining issues under submission.

Plaintiff subsequently moved the Court to review and vacate the Magistrate’s April 5, 1999 Order on the grounds that it did attempt to conciliate the claims of the additional plaintiffs and that it had good reason for failing to timely amend its complaint to add these individuals. On May 19, 1999, this Court affirmed the Magistrate’s ruling denying the addition of eight of the nine aggrieved individuals, and reversed the Magistrate’s ruling as to the ninth, Jack Mann.

On May 7, 1999, the Magistrate denied defendant’s motion to strike the allegations regarding a class of individuals with disabilities and class allegations. *See* Order, May 7, 1999, Doc. No. 27. That Order has not been appealed.

II. ANALYSIS

A. Co-Mingling of Medical Records

*2 Conciliation is the final step in an EEOC proceeding, and a condition precedent to the Commission's power to sue. There is no exception under the statute. If the EEOC finds reasonable cause to sue it "shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. § 2000e-5(b). Courts have interpreted the statute to find that failure to conciliate is fatal to an action brought by the EEOC. *See Equal Employment Opportunity Comm'n v. Magnolia Elec. Power Ass'n*, 635 F.2d 375, 378 (5th Cir.1981) (EEOC's failure to follow procedures deprives district court of subject matter jurisdiction); *Equal Employment Opportunity Comm'n v. Sherwood Medical Indus., Inc.*, 452 F.Supp. 678, (M.D.Fl.1978).

In *Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 466 (5th Cir.1970), the Court held that the scope of the civil action is limited to "the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." Here, the allegation concerning the co-mingling of medical files with the employment application reasonably grew out of the EEOC's investigation of defendant's hiring process. Even though this claim falls within the scope of the Commission's investigation, however, the Commission EEOC must still attempt to conciliate this charge with defendant. *See Sherwood*, 452 F.Supp. at 683 (although the Commission is authorized to pursue its investigation beyond the bounds of the original charge of discrimination, it does not have the authority to choose the matters to be conciliated). The charges of discrimination, the letters of determination, and the correspondence between the parties do not mention the co-mingling of medical records charge, and thus, this claim has not been conciliated.

Plaintiff contends that the co-mingling claim is similar to other claims that were conciliated, and thus it is likely that EEOC's attempt to conciliate the medical records claim would have failed as well. In support of its argument, plaintiff relies on *Gamble v. Birmingham S. R.R. Co.*, 514 F.2d 678 (5th Cir.1975), in which a group of black railroad employees brought an action against their employer and a union alleging racial discrimination in promotional opportunities. The group of aggrieved black switchmen complained to the EEOC that black switchmen were not being promoted to conductor because of their race. *See id.* at 687. The EEOC investigated the claim and found reasonable cause to believe that the employer had violated Title VII. However, the switchmen did not specify in their complaint that they were not allowed to advance to supervisor, a position that was filled from the conductor roster. *See id.* In reversing the district court's ruling limiting the scope of the trial to the conductor question, the Fifth Circuit found that the conductor charge was similar and of the same type of discrimination as the supervisor charge. In other words, if blacks cannot be promoted to conductor, then they cannot be promoted to supervisor. *See id.* 688-89.

*3 Here, the medical records charge is not so similar to the failure to hire charge that defendant's failure to settle one claim renders the other claim similarly rejected. Unlike the supervisor charge which involved new allegations of discrimination within a distinct employment hierarchy, the medical records claim is a different type of disability discrimination. More importantly, when a private individual files an action, as in *Gamble*, conciliation by the EEOC is not a condition precedent, unlike here, when the EEOC files the action. *See id.* at 688. Accordingly, *Gamble* is distinguishable from the instant case.

As the Commission failed to conciliate the medical records claim, it should be dismissed. However, in the interest of judicial economy the Court will stay the action for sixty days to conciliate this claim pursuant to 42 U.S.C.2000e-5(f)(1).

III. CONCLUSION

For the reasons set forth above, plaintiff's motion for clarification is granted as to plaintiff's request for a 60-day stay of these proceedings in order to conciliate the claims of eight aggrieved individuals. Defendant's motion to dismiss is denied to allow plaintiff 60 days to conciliate the medical records claim.

Parallel Citations

10 A.D. Cases 136

Footnotes

¹ Although this motion was initially set for hearing before the Magistrate, it should be considered by the district court judge. Accordingly, this Court decides the motion. *See Order, July 1, 1999, Doc. No. 53.*

