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United States District Court,
S.D. Ohio,
Eastern Division.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff,

v.

HONDA OF AMERICA MFG., INC., Defendant.

No. 2:06-cv-0233. | Oct. 12, 2006.

Attorneys and Law Firms

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Opinion

ORDER

TERENCE P. KAMP, Magistrate Judge.

*1 This employment case is before the Court to consider a motion to quash filed by non-party the Director of the Ohio Department of Jobs and Family Services (ODJFS). Defendant Honda, the issuer of the subpoena, has opposed the motion. ODJFS has not filed a reply, and neither the EEOC nor the intervening plaintiff, Monica Ways, has taken a position on the motion. For the following reasons, the motion to quash will be denied.

The subpoena, a copy of which is attached to the motion to quash, requested the ODJFS to produce a complete copy of the unemployment compensation file for Monica Ways. ODJFS based its motion to quash on the non-disclosure provisions of O.R.C. § 4141.21, which prohibits the disclosure or use of information supplied to

the ODJFS in connection with a claim for unemployment benefits in connection with any other proceeding, including court proceedings. In response, Honda argues that such a state prohibition against disclosure is not enforceable in an action filed in a federal court and based upon federal law. This case is based upon federal law because the EEOC's claim is that Honda violated Title VII by discharging Ms. Ways on account of her race. Consequently, Honda asserts that there is no basis for the motion to quash.

As Honda correctly notes, this Court has dealt directly with this issue in the past and has decided the issue adversely to the position taken by the ODJFS. In *Freed v. Grand Court Lifestyles*, 100 F.Supp.2d 610 (S.D. Ohio 1998) (Rice, J.), the court noted that evidentiary and discovery privileges in cases filed in a federal court and based on federal law are governed not by state law but by Fed.R.Evid. 501, which states that "the privilege of a ... State ... shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." Thus, the question posed when a litigant or non-party asserts a state law privilege in response to an otherwise appropriate discovery request is not whether the privilege is enforceable in the state courts, but whether there is a federal common law privilege that would exempt the requested information from disclosure. In *Freed*, the court did not simply reject the claim of privilege because it rested on state law, but it engaged in a balancing of the interests served by the state prohibition against disclosure against the requesting party's interest in obtaining the information. There, dealing with the same type of information that is requested here and with the same statute, the court concluded that the result of the balancing of interests favored disclosure. At least one other Judge of this Court has reached a similar result in a case involving O.R.C. § 4141.21, see *Klaus v. Kilb, Rogel & Hamilton Co.*, 437 F.Supp.2d 706 (S.D. Ohio 2006) (Sargus, J.), and the undersigned has also adopted the method of analysis set forth in *Freed*. See *Hawkins v. Anheuser-Busch*, Case No. 2:05-cv-688 (S.D. Ohio June 19, 2006) (analyzing claim of privilege based on exemptions found in the Ohio Public Records Act, O.R.C. § 149.43).

*2 Here, the asserted relevance of Ms. Ways' unemployment compensation file is that she may have made statements about the reasons for the termination of her employment in connection with her claim for benefits, and the reasons for the termination of her employment

have been placed at issue by the EEOC's assertion that Honda acted with a discriminatory motive when it discharged Ms. Ways. Although the State of Ohio does have an interest in encouraging participants in the unemployment compensation system to make truthful statements about their employment situation without fear that those statements will be used against them in some other setting, a defendant in a federal discrimination lawsuit also has an interest in determining if the person alleging discrimination has made statements to a state agency that are inconsistent with the claim of discrimination being asserted in the federal lawsuit. The Court does not believe that persons applying for unemployment benefits will be generally dissuaded from making truthful statements about the reasons for the termination of their employment if they know that such statements might later be used in a discrimination claim brought against their employer. Further, there does not appear to be any particular privacy interest surrounding these statements, especially since the only information Honda appears to be requesting relates to Ms. Ways' claim for benefits arising out of her employment with Honda. She has not asserted any such interests and has not filed a memorandum in support of the motion to quash. Consequently, after performing the balancing required by *Freed*, which decision the Court finds persuasive, the Court concludes that no privilege for unemployment records should be recognized here.

For the foregoing reasons, the motion of non-party the Director of the Ohio Department of Jobs and Family services to quash subpoena (# 26) is denied. The requested documents concerning Monica Ways' unemployment compensation claim relating to her employment with defendant Honda of America shall be produced within fifteen days of the date of this order.

Any party may, within ten (10) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. § 636(b)(1)(A), Rule 72(a), Fed.R.Civ.P.; Eastern Division Order No. 91-3, pt. I, F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due ten days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.