

Clark v. Bradley

CV-94-592-L 05-01-95

**THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Michelle Clark

v.

#C-94-592-L

Allen Bradley, Inc., et al.

ORDER

Currently before the court is defendants' motion for summary judgment. Doc. 7. For the reasons set forth below, the motion is granted in part and denied in part.

BACKGROUND

On November 22, 1994, plaintiff, Michelle Clark, filed a seven count complaint against defendants, Allen-Bradley, Inc., Rockwell International, Electronics Corporation of America and Donald Mitchell. In general, plaintiff alleged that while she was employed by defendants (October, 1982 until February, 1992), she was denied equal pay and benefits as compared to similarly situated males, was subjected to sexual harassment, and was laid off in retaliation for complaining about her unequal pay and a religious statement made by her supervisor.

Defendants now move for summary judgment on two of plaintiff's seven counts. Defendants first contend that plaintiff's failure to timely file her charges of sexual

harassment warrants summary judgment, on Count I, as a matter of law. Alternatively, defendants contend they are entitled to summary judgment on Count I (employment discrimination) of plaintiff's complaint, to the extent the court asserts a claim for sexual harassment. Finally, defendants contend they are entitled to partial summary judgment on Count III (denial of equal pay) of plaintiff's complaint. With respect to the equal pay count, defendants allege the plaintiff's state and federal claim for recovery of damages based on unequal pay is barred by the limitations period.

DISCUSSION

Summary judgment under Fed. R. Civ. P. 56(c) is proper only if, viewing the record in the light most favorable to the non-moving party, the documents on file disclose no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Oliver v. Digital Equipment Corp., 846 F.2d 103, 105 (1st Cir. 1988). "Only disputes over facts that might affect the outcome of the suit" are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute over a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id.; Oliver, 846 F.2d at 105. The moving party initially must "demonstrate

the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once the moving party has made the required showing, the adverse party must "go beyond the pleadings" and designate specific facts to demonstrate the existence of a genuine issue for trial. Fed. R. Civ. P. 56(e); Oliver, 846 F.2d at 105.

With the above principles in mind, the court reviews the arguments presented in defendants' motion for summary judgment.

I. Statute of Limitations

The first issue presented by defendants, in support of their motion for summary judgment on Count I of plaintiff's complaint, is that plaintiff has failed to file a timely charge of sexual harassment. Specifically, defendants allege that pursuant to N.H. Rev. Stat. Ann. § 354-A:21(3), plaintiff was obligated to file her sexual harassment charge "within 180 days after the alleged act of discrimination." According to defendants, because plaintiff did not file a charge until November 23, 1992, over 290 days after her layoff, her sexual harassment charge is untimely and therefore summary judgment is appropriate as a matter of law.

Plaintiff counters defendants' position by maintaining that pursuant to the Civil Rights Act of 1964, 42 U.S.C § 2000e et seq. (Title VII), a plaintiff must file a charge with the Equal

Employment Opportunity Commission (EEOC) within the prescribed 300-day period. Plaintiff asserts that since she was terminated from her work on February 3, 1992 and filed her charge with the New Hampshire Commission for Human Rights (NHCHR) on November 24, 1992 and then with the EEOC on December 3, 1992, her action is not time barred.

As a threshold consideration, the court notes those provisions of Count I in plaintiff's complaint which put forth both state and federal causes of action based on sexual harassment. Specifically, Count I of plaintiff's complaint states, in pertinent part, that:

Acting through their agents, officers and employees, defendants terminated Ms. Clarke's employment because of her sex, in violation of Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, and of the New Hampshire law against discrimination. 42 U.S.C. § 2000e et. seq.; RSA 354-A:7, I (1992 Supp.).

Doc. 1. Emphasis added.

In construing the above-mentioned portion of plaintiff's complaint, it is clear to the court that plaintiff has pled both a state law action based on discrimination as well as a federal law action. Thus, with both a federal and state action, the issue for the court's determination is the limitations period to which the state and federal action shall be subject.

New Hampshire's law against discrimination, like Title VII,

prohibits discriminatory practices in places of public accommodation. Further, N.H. Rev. Stat. Ann. § 354-A creates an administrative scheme to handle complaints based on discrimination in employment. This scheme is administered by the New Hampshire Commission for Human Rights. "The Commission is thereafter charged with investigating the complaint, a process that is geared toward conciliation, resolution, and settlement of the dispute between the parties." Doukas v. Metropolitan Life Insurance Co., No. 94-478-SD, 1995 U.S. Dist. LEXIS 2080 (D.N.H. February 21, 1995). The statute requires that "[a]ny complaint filed pursuant to this section by an aggrieved person must be filed within 180 days after the alleged act of discrimination." N.H. Rev. Stat. Ann. § 354-A:21 (III) (emphasis added).

Contrastingly, the time period in which an action may be brought under Title VII is stated in 42 U.S.C. § 2000e-5(e)(1). Specifically,

A charge under this section shall be filed [with the EEOC] within one hundred and eighty days after the alleged unlawful employment practice occurred . . . , except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice . . . , such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred

42 U.S.C. § 2000e-5(e)(1) (1994) (emphasis added). See Kassaye v. Bryant College, 999 F.2d 603, 605 (1st Cir. 1993).

Given that plaintiff has pled causes of action under both Title VII and N.H. Rev. Stat. Ann. § 354-A, it follows that the limitations period applicable to each should also apply. See Burnett v. Grattan, 468 U.S. 42 (1984) (After detailing the numerous differences between a civil rights action brought in federal court and a state administrative proceeding, the Court held that it would be inappropriate to apply the administrative statute of limitations period to an action arising under federal law.) Therefore, with respect to plaintiff's action under Title VII, because plaintiff has initially instituted proceedings with a State agency, the applicable limitations period is 300 days after the alleged unlawful employment practice. As plaintiff filed her claim with the NHCHR on November 24, 1992 and with the EEOC on December 3, 1992, plaintiff's Title VII cause of action within her complaint is timely filed.

However, because plaintiff filed her state law grievance with the NHCHR beyond the 180 days prescribed by N.H. Rev. Stat. Ann. § 354-A, summary judgment with respect to her state law claim in Count I is appropriate. Accordingly, plaintiff is barred from asserting her Count I claim of harassment or discrimination to the extent she seeks relief under New Hampshire law.

II. Sufficiency of Plaintiff's Allegations of Sexual Harassment

Defendants' next contention, in support of their motion for summary judgment, is that the charges asserted by plaintiff fail to allege any form of sexual harassment. Rather, according to defendants, the charges merely alleges that plaintiff "was terminated because [she is] female, and because [she] complained about unequal pay and religion being used in [her] supervision." (Charge, ¶ 10). According to defendants, plaintiff's charge is completely devoid of any mention of her being sexually harassed in any way. Thus, she cannot be deemed to have filed a timely charge of sexual harassment. Doc. 7.

Under Title VII it is "an unlawful employment practice for an employer . . . to discharge any individual, or otherwise to discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex" 42 U.S.C. §2000e-2(a)(1). The EEOC interprets Title VII as proscribing sexual harassment. See 29 C.F.R. § 1604.11(a) (1983) (EEOC guidelines) ("Harassment on the basis of sex is a violation . . . of Title VII.")

"The EEOC guidelines articulate two types of sexual harassment." Chamberlin v. 101 Realty, Inc., 915 F.2d 777, 782 (1st Cir. 1990). "Unwelcome sexual advances, requests for sexual

favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment" [or] "submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual ['quid pro quo' harassment], or [(2)] "such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment ['hostile environment' harassment]." Id.; 29 C.F.R. §1604.11(a) (1983).

In order to pursue a Title VII violation "claimants [must] generally establish federal court jurisdiction by first exhausting their EEOC administrative remedies." Sosa v. Hiraoka, 920 F.2d 1451, 1456 (9th Cir. 1990). EEOC administrative guidelines, in part, require that particular incidents of discrimination be included in a claimant's EEOC charge. Id. Following the filing of the particular discrimination charge, a claimant may then pursue judicial remedies by receiving a right to sue letter from the EEOC. Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974).

In analyzing an EEOC charge, a court is empowered to construe the charge liberally. Sosa, 920 F.2d at 1456; Green v. Los Angeles County Superintendent of Schools, 883 F.2d 1472, 1476

(9th Cir. 1989). Although, "[i]ncidents of discrimination not included in an EEOC charge may not be considered by a federal court unless the new claims are `like or reasonably related to the allegations contained in the EEOC charge'", Green, 883 F.2d at 1475-76 (quoting Brown v. Puget Sound Elec. Apprenticeship & Training Trust, 732 F.2d 726, 729 (9th Cir. 1984), cert. denied, 469 U.S. 1108, 105 S.Ct. 784, 83 L.Ed.2d 778 (1985)), the "jurisdiction for . . . court action is not limited to the actual EEOC investigation, but can include the scope of an `EEOC investigation which can reasonably be expected to grow out of the charge of discrimination.'" Sosa, 920 F.2d at 1456; Green, 883 F.2d at 1476 (quoting Kaplan v. International Alliance of Theatrical and State Employees and Motion Picture Machine Operators, 525 F.2d 1354, 1359 n. 3 (9th Cir. 1975) (emphasis added)).

In light of the liberal construction afforded an EEOC complaint and resulting investigation, the court opines plaintiff's charges sufficiently allege a sexual harassment claim. Apposite to this conclusion, on the Charge of Discrimination filed with the New Hampshire Commission for Human Rights, and later with the EEOC, plaintiff indicated that the cause of discrimination was based on her sex. Additionally, at paragraph 1 of the charge, she indicated her belief that she had

been discriminated against because of her sex. Finally, at paragraph 6 of the charge, she stated that: "Shortly before I was terminated, I complained to personnel about my supervisor writing me a letter and giving me religious verses to look up"

Although plaintiff's allegations presented to the EEOC may not be the epitome of a perfect charge for sexual harassment, her allegations nonetheless are sufficient to place at issue, both for a preliminary review by the EEOC and for a potential subsequent judicial pleading, a claim or charge based on sexual harassment. See Powers v. Grinnell Corp., 915 F.2d 34, 38 (1st Cir. 1990); EEOC v. Huttig Sash & Door Co., 511 f.2d 453, 455 (5th Cir. 1975) ("The charge is not to be treated as a common-law pleading that strictly cabins the investigation that results therefrom, or the reasonable cause determination that may be rested on that investigation. The charge merely provides the EEOC with `a jurisdictional springboard to investigate whether the employer is engaged in any discriminatory practices.'"). See also Graniteville Co. (Sibley Div.) v. EEOC, 438 F.2d 32, 38 (4th Cir. 1971) (purpose of charge is to initiate EEOC investigation, "not to state sufficient facts to make out a prima facie case"); Sanchez v. Standard Brands, Inc., 431 F.2d 455, 465 (5th Cir. 1970) ("[T]he purpose of a charge of discrimination is to trigger the investigatory and conciliatory procedures of the EEOC.");

Tipler v. E.I. Du Pont de Nemours & Co., 443 F.2d 125, 131 (6th Cir. 1971) ("the exact wording of the charge of discrimination need not `presage with literary exactitude the judicial pleadings which may follow.'")

To recapitulate, without commenting on the merits of her claims, plaintiff has pled minimal but sufficient facts to support a cause of action for sexual harassment. It is not beyond peradventure that plaintiff may be able to establish that she was the recipient of "[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" Chamberlin, 915 F.2d at 782.

Accordingly, defendants' request for summary judgment on Count I of the complaint, based on plaintiff's failure to properly allege sexual harassment under Title VII, is denied.

III. Plaintiff's Causes of Action Based on Unequal Pay

As a third basis for support of their motion for summary judgment, defendants assert that under the Equal Pay Act an action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation of the Act may be commenced within three years after the cause of action accrued. Defendants maintain plaintiff is entitled to recover under the Equal Pay

Act, only if she can establish a willful violation. Absent such a showing, defendants contend, summary judgment is appropriate for Count III of plaintiff's complaint.

Interestingly, plaintiff does allege, albeit in her opposition to defendants' current motion, that she brought her suit based on defendants' willful violation of the Equal Pay Act.

Although defendants may be correct in that a willful violation of the Equal Pay Act must be brought within three years of the accrual, defendants have offered no facts to support a finding that plaintiff is in violation of the limitations period.

Therefore, due to defendants' failure to assert any facts which support their motion for summary judgment, the defendants' request for summary judgment on the Equal Pay Act claim is denied. As to the particular period for which the Equal Pay Act may apply, due to the young nature of this case, the issue is more appropriately left for a later determination.

As a final consideration for this court, defendants request summary judgment in regards to Count III of plaintiff's complaint, to the extent the count is based on the equal pay provisions of the New Hampshire protective legislation. In support of this request, defendants offer that pursuant to RSA 275:41, "Any action to recover unpaid wages and liquidated damages based on violation of RSA 275:37, must be commenced

within one year of accrual thereof and not afterwards."

Briefly stated, because plaintiff was laid off from her employment with defendants in February, 1992 and did not bring her N.H. Rev. Stat. Ann. § 275:36-41 action until November 22, 1994, her action (Count III), to the extent it asserts a violation of New Hampshire equal pay provisions, is time barred. Accordingly, defendants' request for summary judgment on plaintiff's claim under RSA 275:36 et seq. is granted as a matter of law.

CONCLUSION

Viewing the record in a light most favorable to the non-moving party (plaintiff), defendants' request for summary judgment with plaintiff's Title VII action within Count I is denied. Plaintiff has filed a timely charge under Title VII, complete with sufficient allegations, of sexual harassment. However, due to the fact that plaintiff has failed to file her state sexual harassment claim within the 180 days prescribed by N.H. Rev. Stat. Ann. § 354-A:21 (III), defendants' request for summary judgment as to plaintiff's state law action for sex discrimination is granted.

Additionally, due to plaintiff's failure to file her state law claim for equal pay within the one year limitations period as

required by N.H. Rev. Stat. Ann. § 275:41, defendants' request for summary judgment on this claim is granted. Contrarily, as plaintiff has asserted a willful violation by defendants of the Federal Equal Pay Act and has brought her action on this claim within three years from the date of her termination, defendants' request for summary judgment on this claim is denied.

May 1, 1995

Martin F. Loughlin
Senior Judge

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