

Mordecai v. Liberty Mutual

CV-94-497-B 07/11/95

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

Ann Mordecai

v.

Civil No. 94-497-B

Liberty Mutual Insurance Co., et al.

**O R D E R**

I am persuaded by the clear majority of circuit court decisions recognizing that employees cannot be held individually liable for violations of Title VII or other federal statutes based on Title VII. See EEOC v. AIC Sec. Investigations, Ltd., Nos. 93-3839, 94-1018, and 94-3089, 1995 U.S. App. LEXIS 12139, at \*12 (7th Cir. May 22, 1995) (ADEA); Cross v. Alabama Dept. of Mental Health & Mental Retardation, 49 F.3d 1490, 1504 (11th Cir. 1995) (Title VII); Smith v. Lomax, 45 F.3d 402, 403 n.4 (11th Cir. 1995) (ADEA and Title VII); Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510-511 (4th Cir.) (ADEA), cert. denied, 115 S.Ct. 666 (1994); Grant v. Lone Star Corp., 21 F.3d 649, 652 (5th Cir. 1994) (Title VII); Smith v. St. Bernards Regional Medical Ctr., 19 F.3d 1254, 1255 (8th Cir. 1994) (co-employee, Title VII); Sauers v. Salt Lake County, 1 F.3d 1122, 1125 (10th Cir.

1993) (Title VII); Miller v. Maxwell's Int'l, 991 F.2d 583, 587-88 (9th Cir. 1993), cert. denied, 114 S. Ct. 1049 (1994); Harvey v. Blake, 913 F.2d 226, 227-28 (5th Cir. 1990) (Title VII). But see Paroline v. Unisys Corp., 879 F.2d 100, 104 (4th Cir. 1989) (individual employee liability, Title VII), vacated and remanded on other grounds, 900 F.2d 27 (4th Cir. 1990) (per curiam). Accordingly, I dismiss plaintiff's Title VII claim against Gero in his individual capacity.

Although I have dismissed the only federal claims that plaintiff brought against Gero, plaintiff has a viable federal claim against Liberty Mutual Insurance Co. that arises from the same facts as her state law claims against Gero. Under these circumstances, I reject Gero's request to exercise any discretion I may have to dismiss plaintiff's state law claims for lack of supplemental jurisdiction.

In summary, plaintiff's Title VII claim against Gero in his individual capacity is dismissed. Gero's motion to dismiss (document no. 10) is otherwise denied.

SO ORDERED.

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Paul Barbadoro  
United States District Judge

July 11, 1995

cc: Emily Rice, Esq.  
Janet Adachi, Esq.  
Joan Ackerson, Esq.  
Linda Johnson, Esq.