IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

SANDRA J. DAVIS, VELINA B. DUNCAN, ROSE BROWN and ANNETTE AMICK, *

Plaintiffs, *

v. *

VALLEY HOSPITALITY SERVICES, LLC, *

Defendant *

CASE NO. 4:04-CV-20-2(CDL)

O R D E R

Plaintiffs in the above captioned lawsuit assert individual claims against Defendant, Valley Hospitality Services, LLC ("Valley Hospitality"), pursuant to Title VII and the Age Discrimination in Employment Act ("ADEA"). Plaintiffs have also asserted, through an amendment to their Complaint, a putative class claim under Title VII and a putative collective action under the ADEA. Defendant seeks dismissal of Plaintiffs' class-wide claims, contending that Plaintiffs failed to include such claims in their charges of discrimination filed with the Equal Employment Opportunity Commission ("EEOC"). Defendant also seeks dismissal of any age discrimination claims alleged individually by Plaintiffs Davis or Duncan. For the following reasons, the Court grants Defendant's motion as to Plaintiffs' putative Title VII class action claims and as to Plaintiff Duncan's purported individual and collective action claims under the ADEA. The Court denies Defendant's motion to dismiss Plaintiff Davis's individual and collective action claims under the ADEA and denies

Defendant's motion to dismiss Plaintiff Brown's collective action claim.

BACKGROUND

Defendant purchased the hotel at which Plaintiffs were employed. Subsequent to that change in ownership, Defendant terminated Plaintiffs' employment. Davis and Duncan were fired on November 4, 2002. Brown was fired on December 4, 2002, and Amick was fired on June 24, 2003.

Davis and Duncan both filed charges of discrimination with the EEOC on November 19, 2002, claiming Defendant discriminated against them because of their race. Brown filed her EEOC charge on December 31, 2002, alleging race and age discrimination. Amick filed her EEOC charge on September 12, 2003, based upon alleged age discrimination.[1] None of these EEOC charges alleged that Defendant's discrimination was class-wide; nor did they seek to assert claims on behalf of employees other than themselves as part of their EEOC charges.

On January 27, 2003, before Amick had filed her EEOC charges but after Davis, Duncan, and Brown had filed their charges, Plaintiffs' attorney wrote a letter to the EEOC giving a "preliminary statement" of Davis's, Duncan's, and Brown's charges. In that letter, the attorney described for the first time allegations that Defendant engaged in class-wide discrimination as to race and age. Plaintiffs' attorney in this letter sought "to amend [Davis's, Duncan's, and

[1]Plaintiff Amick's EEOC charge does not allege any facts supporting a collective action under the ADEA.

Brown's] EEOC charges to add age and gender discrimination to the filed racial discrimination charges for themselves and all other similarly situated employees who have been discriminated against by Valley Hospitality."[2] Neither Plaintiffs nor their attorney took any further action to amend their EEOC charges.

The EEOC mailed Davis, Duncan, and Brown their right to sue letters on July 21, 2003.[3] Amick's right to sue letter was sent subsequently on October 30, 2003. Davis, Duncan, and Brown filed this lawsuit on August 18, 2003. Amick was added as a plaintiff by amendment on February 10, 2004.

Defendant contends that Plaintiffs' class-wide discrimination claims must be dismissed because Plaintiffs never filed a valid charge of class-wide discrimination with the EEOC prior to filing suit. Defendant also argues that Plaintiff Davis's individual ADEA claim must be dismissed because she did not properly assert those claims to the EEOC. Defendant further maintains that Plaintiff Duncan's ADEA claims should be dismissed because she was under forty years of age at the time her employment was terminated. Plaintiff Duncan now states that she never intended to assert a claim under the ADEA. To avoid confusion, the Court therefore dismisses that claim.

---

[2]A factual dispute exists as to when a copy of this letter was provided to Defendant and/or its attorney. The resolution of this dispute is unnecessary for the determination of the present motion.

[3]The only checked box on Plaintiff Davis's and Duncan's right to sue letters was the entry for Title VII claims. However, a right to sue letter is not a necessary prerequisite for suit under the ADEA. *See Grayson v. K Mart Corp.*, 79 F.3d 1086, 1100 (11th Cir. 1996).

Regarding Plaintiffs' class-wide discrimination claims and Plaintiff Davis's individual ADEA claim, Plaintiffs contend that their attorney's January 27 letter to the EEOC constitutes a valid charge and/or amendment under the applicable EEOC regulations. Therefore, Plaintiffs argue that the class-wide claims and Davis's individual ADEA claim, which are included in that letter, should not be dismissed.

DISCUSSION

Plaintiffs' Title VII Class-wide Discrimination Claims

A plaintiff must file a charge of discrimination with the EEOC prior to filing a lawsuit seeking relief under Title VII. 42 U.S.C. § 2000e-5(e). Furthermore, the EEOC charge must comply with the requirements of Title VII and the EEOC regulations promulgated thereunder, including the requirement that any charge must be verified or made under oath and be in writing. *See* 42 U.S.C. § 2000e-5(b); 29 C.F.R. §§ 1601.9, 1601.3(a). This requirement cannot be waived. *See Vason v. City of Montgomery, Ala.*, 240 F.3d 905 (11th Cir. 2001).

It is undisputed that none of the Plaintiffs included allegations of class-wide discrimination in their verified EEOC charges. Therefore, the issue presented by Defendant's motion is whether the January 27 letter from Plaintiffs' attorney to the EEOC, which does allege class-wide discrimination, constitutes a valid "charge of discrimination" or is a valid amendment to the previously filed charges.

The Court finds that the attorney letter is not a valid EEOC charge of class-wide discrimination under Title VII. Any charge with

the EEOC alleging discrimination under Title VII must be made under oath or affirmation. *See Vason*, 240 F.3d at 907. The letter was not verified, and no attempt has been made to "amend" it to include a verification. Consequently, the January 27 attorney letter was not a valid EEOC charge of discrimination.

The Court also finds that the letter was not a valid amendment of the previously filed charges. "A charge may be amended to cure technical defects or omissions, including the failure to verify the charge, or to clarify and amplify allegations made therein." 29 C.F.R. § 1601.12(b). Because no allegations of class-wide discrimination were included in Plaintiffs' original charges, the January 27 letter does not "clarify or amplify" any of the original charges' allegations. *See, e.g., Cheek v. W. and S. Life Ins. Co.*, 31 F.3d 497, 503 (7th Cir. 1994) ("Pursuant to 29 C.F.R. § 1601.12(b), . . . additional allegations cannot expand the scope of the allegations in [the plaintiff's] original charge; they only may "clarify or amplify" the allegations [already] in the charge."). The January 27 letter clearly seeks to add new separate charges of class-wide discrimination. It does not seek to clarify or amplify the previous allegations. Consequently, the letter does not constitute a valid amendment.

The Court also finds that Plaintiffs' original charges were insufficient to place the Defendant or the EEOC on reasonable notice that class-wide discrimination would be relevant to any of Plaintiffs' individual claims. Therefore, any investigation by the EEOC of the original charges would not have reasonably extended to encompass the

class-wide discrimination claims. *See Grayson v. K Mart Corp.*, 79 F.3d 1086, 1107 (11th Cir. 1996); *Cf. Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 465-66 (5th Cir. 1970) (allowing the scope of the plaintiff's action to exceed the technical claims in her EEOC charge because a reasonable investigation by the EEOC based upon the plaintiff's charge would have discovered a sufficient basis for the plaintiff's additional claims).

In summary, the January 27 letter did not comply with Title VII's charge and amendment requirements. Since no valid EEOC charge of class-wide discrimination prohibited by Title VII has been filed, those claims must be dismissed.

Plaintiffs' ADEA Individual and Collective Action Claims

It would appear that the foregoing analysis should also apply to Plaintiffs' ADEA claims. However, although the charge requirements under Title VII and the ADEA are similar, a significant difference exists that ultimately requires a different outcome. *See, e.g., Hipp v. Liberty Nat. Life Ins. Co.*, 252 F.3d 1208, 1221 n.10 (11th Cir. 2001). Unlike the Title VII regulations, neither the ADEA nor the EEOC regulations promulgated thereunder require a verification of the written charge of discrimination by the claimant. *See Wilkerson v. Grinnell Corp.*, 270 F.3d 1314, 1321 n.3 (11th Cir. 2001); *see also* 29 C.F.R. §§ 1626.1 *et seq.* Consequently, the lack of verification of the January 27 attorney letter is not fatal to Plaintiffs' ADEA claims

as it was to Plaintiffs' Title VII class claims.[4] The Court must therefore determine whether the letter otherwise complies with the ADEA and EEOC charge requirements.

EEOC regulations define the term "charge" as a "statement filed with the Commission by or on behalf of an aggrieved person which alleges that the named prospective defendant has engaged in or is about to engage in actions in violation of the Act." 29 C.F.R. § 1626.3. This charge should include pertinent information about the person making the charge and the person against whom the charge is made, as well as a concise statement of the facts and other information about the proceeding and the employer. *See* 29 C.F.R. § 1626.8(a). However, if the charge is reduced to writing, names the prospective respondent, and generally alleges the complained of discriminatory conduct, the charge should be deemed sufficient. *See* 29 C.F.R. § 1626.8(b); 29 C.F.R. § 1626.6.

The attorney letter of January 27 is in writing, names the prospective respondent, and details the class-wide age-based discrimination that Plaintiffs allege occurred. The letter was also timely sent to the EEOC. Therefore, the letter constitutes a valid charge under the ADEA and EEOC regulations.

Defendants argue that even if the letter contained all of the elements of a valid charge, Plaintiffs' claims asserted for the first time in the letter should still be dismissed because it did not

---

[4]The Court can conceive of no legitimate reason for this difference in the charge requirements for ADEA and Title VII claimants. However, this Court is obliged to apply the law even if it is contrary to the Court's personal notions of common sense.

receive pre-litigation notice of the attorney letter. Although one of the purposes underlying the charge requirements is to provide employers with prompt notice of an employee's allegations of unlawful conduct, the Court finds that under the circumstances of the case at bar Plaintiffs should not be penalized for the EEOC's failure to process and to notify the employer of Plaintiffs' charges included in the attorney letter. *See, e.g, Forehand v. Fla. State Hosp. at Chattahoochee*, 89 F.3d 1562, 1570 (11th Cir. 1996) ("Title VII does not condition an individual's right to sue upon the EEOC's performance of its administrative duties."); *see also Albano v. Schering-Plogh Corp.*, 912 F.2d 384, 388 (9th Cir. 1990) ("It is the EEOC, not the claimant, who is responsible for notifying the employer of the claims alleged in the EEOC charge . . . . Thus, the claimant should not now be penalized because of the EEOC's own errors."); *Steffen v. Meridian Life Ins. Co.*, 859 F.2d 534, 544 (7th Cir. 1988) (ADEA action should proceed regardless of EEOC's failure to act because plaintiff's intake questionnaire contained all necessary information and plaintiff made clear to the EEOC officer that he intended to activate the ADEA's machinery.).

The Court finds that the January 27 attorney letter constitutes a valid charge of discrimination under the ADEA. Therefore, Defendant's motion to dismiss Plaintiff Davis and Brown's putative ADEA collective action and Davis's individual ADEA claim is denied.

CONCLUSION

Defendant's motion to dismiss Plaintiffs' claims of class-wide Title VII discrimination is granted. Defendant's motion to dismiss Plaintiff Duncan's individual claim of age discrimination is granted. Defendant's motion to dismiss Plaintiffs' collective action ADEA claims is denied. Defendant's motion to dismiss Plaintiff Davis's individual ADEA claim is denied.

IT IS SO ORDERED, this 10th day of June, 2004.

CLAY D. LAND
UNITED STATES DISTRICT JUDGE