

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Bathsheba Nichole Adams v. Kiewit Infrastructure West Company, et al.

Adams v. Kiewit · No. CV-25-01823-PHX-DJH · Decided February 19, 2026

SUMMARY

The United States District Court for the District of Arizona rules on Kiewit Infrastructure West Company’s motion to dismiss Bathsheba Nichole Adams’s First Amended Complaint. The court declines to dismiss the intentional infliction of emotional distress and assault and battery claims under the Arizona Employment Protection Act, Arizona Civil Rights Act, exhaustion principles, or workers’ compensation exclusivity provisions, but dismisses the negligent supervision and training claim without prejudice. The court also denies as moot a motion to strike a response concerning a request for judicial notice.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Diane J. Humetewa
JURISDICTION	United States District Court for the District of Arizona
DECIDED	February 19, 2026
DOCKET	CV-25-01823-PHX-DJH
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Kiewit moved to dismiss Plaintiff's First Amended Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and separately moved to strike Plaintiff's response to Kiewit's request for judicial notice. The court granted the motion to dismiss in part, denied it in part, and denied the motion to strike as moot.
STANDARD OF REVIEW	A Rule 12(b)(1) motion challenges subject matter jurisdiction and may present a facial or factual attack. On a factual jurisdictional attack, the court may consider evidence beyond the complaint and need not presume the truth of the allegations. Under Rule 12(b)(6), the court accepts well-pleaded factual allegations as true, construes the pleadings in the nonmovant's favor, and dismisses when the complaint lacks a cognizable legal theory or sufficient facts to state a plausible claim.

PRECEDENTIAL VALUE	unpublished, nonprecedential district-court order
PARTIES	Bathsheba Nichole Adams v. Kiewit Infrastructure West Company, Robert Young, other defendants

TOPICS

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QUESTIONS PRESENTED

1. Whether Adams's intentional infliction of emotional distress, assault and battery, and negligent supervision and training claims were precluded by the Arizona Employment Protection Act or Arizona Civil Rights Act.
2. Whether Adams's failure to exhaust administrative remedies barred her common-law tort claims.
3. Whether Arizona's workers' compensation exclusive-remedy provisions barred the intentional infliction of emotional distress, assault and battery, and negligent supervision claims.
4. Whether Adams adequately pleaded Kiewit's vicarious liability for Young's conduct.
5. Whether Defendant's motion to strike Plaintiff's response to the request for judicial notice should be granted.

HOLDINGS

1. The Arizona Employment Protection Act and Arizona Civil Rights Act did not preclude Adams's intentional infliction of emotional distress, assault and battery, or negligent supervision claims because those claims were based on alleged tortious conduct and did not require proof of discrimination based on a protected status.
2. Adams's alleged failure to timely exhaust administrative remedies under the Arizona Civil Rights Act or Title VII did not bar her common-law tort claims because she did not assert an ACRA or Title VII claim and the cited exhaustion authorities concerned statutory discrimination or AEPA retaliation claims.
3. The Workers' Compensation Act did not bar Adams's intentional infliction of emotional distress or assault and battery claims at the pleading stage because the alleged intentional conduct plausibly invoked the willful-misconduct exception to the exclusive-remedy provisions.
4. The negligent supervision and training claim was barred by the workers' compensation exclusive-remedy provisions because Adams alleged only Kiewit's negligent failure to exercise ordinary care and did not allege willful misconduct by Kiewit itself.

5. Adams adequately pleaded Kiewit's vicarious liability for Young's conduct because she alleged that Young was Kiewit's foreman, acted during work hours and at the worksite, and engaged in conduct incidental to his duties or partly intended to serve Kiewit's business.

KEY QUOTATIONS

“The common law claim of tortious wrongful termination in violation of the ACRA has been abrogated by the AEPA, but no case has ruled that all common law tort claims are precluded by the statute.”

“For this stage of proceedings, Plaintiff has adequately alleged an intent to inflict injury as well as conduct that can be inferred was intended to cause injury.”

FACTUAL BACKGROUND

Bathsheba Nichole Adams worked for construction company Kiewit in Arizona and alleged that foreman Robert Young engaged in several incidents, including exposing her to an unidentified chemical, threatening her with a concrete chipping hammer, causing a portable toilet to be moved while she was inside, and leaving her stranded by the roadside while making threats. She alleged that the incidents caused severe emotional distress and led her to leave her employment. Her First Amended Complaint asserted common-law tort claims rather than claims under the Arizona Civil Rights Act or Title VII.

PROCEDURAL HISTORY

Plaintiff initially filed the action in Arizona state court, and Defendants removed it to the United States District Court for the District of Arizona on May 27, 2025. Plaintiff filed a First Amended Complaint asserting intentional infliction of emotional distress, assault and battery, negligent supervision and training, and punitive damages. Kiewit moved to dismiss; the court dismissed the negligent supervision and training claim without prejudice but allowed the other challenged tort claims to proceed.

DISPOSITION

other

CASES CITED

- Savage v. Glendale Union High School, 343 F.3d 1036, 1039-40 (9th Cir. 2003)
- Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004)
- White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000)
- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Manzarek v. St. Paul Fire & Marine Insurance Co., 519 F.3d 1025, 1031 (9th Cir. 2008)

- Valdez v. National Retail Transportation, Inc., 2016 WL 2992489, *1 n.1 (C.D. Cal. 2016)
- Moscona v. California Business Bureau, Inc., 2011 WL 5085522, *4 (S.D. Cal. 2011)
- Fallar v. Compuware Corp., 202 F. Supp. 2d 1067, 1076 (D. Ariz. 2002)
- Cronin v. Sheldon, 991 P.2d 231, 240-41 (Ariz. 1999)
- Taylor v. Graham County Chamber of Commerce, 33 P.3d 518, 521-22 (Ariz. Ct. App. 2001)
- Peterson v. City of Surprise, 418 P.3d 1020, 1024-25 (Ariz. Ct. App. 2018)
- De Silva v. Pima County Government, 2024 WL 4751574, *14 (D. Ariz. 2024)
- Stone v. Charles Schwab & Co., 2025 WL 2829563, *2 (D. Ariz. 2025)
- Madden-Tyler v. Maricopa County, 943 P.2d 822, 828 (Ariz. Ct. App. 1997)
- Bodett v. CoxCom, Inc., 366 F.3d 736, 746 (9th Cir. 2004)
- Stoecker v. Brush Wellman, Inc., 984 P.2d 534, 536 (Ariz. 1999)
- Mitchell v. Gamble, 86 P.3d 944, 947 (Ariz. Ct. App. 2004)
- Mosakowski v. PSS World Medical, Inc., 329 F. Supp. 2d 1112, 1129, 1131 (D. Ariz. 2003)
- Lewis v. Arizona, 2011 WL 3665367, *3 (D. Ariz. 2011)
- Rosen v. Community Education Centers, Inc., 2010 WL 3981200, *4 (D. Ariz. 2010)
- Kopp v. Physician Group of Arizona, Inc., 421 P.3d 149, 151 (Ariz. 2018)
- Engler v. Gulf Interstate Engineering, Inc., 258 P.3d 304, 309 (Ariz. Ct. App. 2011), aff'd, 280 P.3d 599 (Ariz. 2012)
- Sheppard v. David Evans & Associates, 694 F.3d 1045, 1051 (9th Cir. 2012)