

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Donnie Lee Rakestraw, Jr. v. The Hershey Company, et al.

Rakestraw · No. 25-2682-JWB · Decided April 24, 2026

SUMMARY

The United States District Court for the District of Kansas granted defendants’ motion to dismiss an employment action brought by Donnie Lee Rakestraw, Jr. The court dismissed the ADA claims with prejudice for failure to exhaust administrative remedies, dismissed the FLSA and OSHA retaliation claims for failure to state a claim or lack of a private right of action, and dismissed the remaining state-law claims without prejudice after declining supplemental jurisdiction. The court also denied plaintiff’s motions for equitable tolling and leave to file a surreply.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	John W. Broomes
JURISDICTION	United States District Court for the District of Kansas
DECIDED	April 24, 2026
DOCKET	25-2682-JWB
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved to dismiss the second amended complaint under Federal Rule of Civil Procedure 12(b)(6). Plaintiff separately moved for equitable tolling of the ADA administrative-charge deadline and for leave to file a surreply. The court denied Plaintiff's motions, granted Defendants' motion to dismiss, dismissed the federal claims, and dismissed the remaining state-law claims without prejudice after declining supplemental jurisdiction.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the complaint must contain sufficient factual allegations to state a claim that is plausible on its face. The court accepts well-pleaded facts and reasonable inferences as true, but disregards conclusory allegations. Failure to exhaust an ADA claim may be resolved on a motion to dismiss when the defense appears on the face of the complaint. Pro se filings are liberally construed, but the court may not supply missing factual allegations or construct a legal theory for the litigant.

PRECEDENTIAL VALUE	nonprecedential district-court memorandum and order
PARTIES	Donnie Lee Rakestraw, Jr. v. The Hershey Company, Lee Timmons, Karen Powell, Bill Maloy

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QUESTIONS PRESENTED

1. Whether Plaintiff established extraordinary circumstances warranting equitable tolling of the ADA EEOC charge-filing deadline.
2. Whether Plaintiff's ADA claims should be dismissed for failure to exhaust administrative remedies.
3. Whether Plaintiff adequately pleaded an FLSA overtime claim based on unpaid time spent putting on and removing protective gear.
4. Whether OSHA section 11(c), 29 U.S.C. § 660(c), creates a private right of action for retaliatory discharge.
5. Whether the court should exercise supplemental jurisdiction over the remaining state-law claims after dismissing all federal claims.
6. Whether Plaintiff showed good cause for leave to file a surreply.

HOLDINGS

1. Plaintiff failed to establish the extraordinary circumstances required for equitable tolling. Disagreement with or incorrect advice from counsel, lack of legal knowledge, pro se status, and unsupported allegations of employer concealment did not justify tolling.
2. Plaintiff's ADA claims for failure to accommodate, disability discrimination, retaliation, and hostile work environment were dismissed with prejudice because Plaintiff admitted that he had not filed an EEOC charge or obtained a right-to-sue letter, and the filing period could not be equitably tolled.
3. Plaintiff failed to state an FLSA overtime claim because he did not allege that he worked more than 40 hours in any particular workweek without receiving overtime compensation.
4. OSHA section 11(c), 29 U.S.C. § 660(c), does not create a private right of action for retaliatory discharge.
5. After dismissing all federal claims, the court declined to exercise supplemental jurisdiction over Plaintiff's remaining state-law claims and dismissed them without prejudice.
6. Plaintiff was not entitled to file a surreply because he failed to show the rare circumstances and good cause required by District of Kansas Rule 7.1.

KEY QUOTATIONS

“Equitable tolling effectively extends an otherwise discrete limitations period set by Congress.”

“The FLSA requires overtime pay of one and a half times an employee’s hourly wage for every hour worked over 40 hours in a single week.”

“Plaintiff fails to state a claim for which relief can be granted, and his FLSA claim is dismissed.”

“Therefore, as there is no private right of action for an OSHA retaliation claim and any amendment would be futile, Plaintiff’s OSHA retaliation claim is dismissed.”

FACTUAL BACKGROUND

Plaintiff worked for The Hershey Company at its Edgerton, Kansas, facility from 2023 until his termination in 2024. He alleged that neuropathy made prolonged standing on concrete painful and that Hershey failed to provide a requested rubber mat as a workplace accommodation, after which he developed a foot ulcer and was terminated. He also alleged that he was not paid for approximately 10 to 15 minutes per shift spent putting on and removing protective gear. Plaintiff acknowledged that he had not timely filed an EEOC charge and had not obtained a right-to-sue letter.

PROCEDURAL HISTORY

Plaintiff filed this action on November 20, 2025, and later filed a second amended complaint asserting ADA, FLSA, OSHA, and state-law claims. Defendants moved to dismiss. The court concluded that Plaintiff had not exhausted his ADA claims, failed to plead an FLSA overtime claim, and could not maintain a private OSHA retaliation action. After dismissing the federal claims, the court declined supplemental jurisdiction over the state-law claims.

DISPOSITION

dismissed

CASES CITED

- Robbins v. Oklahoma, 519 F.3d 1242, 1247 (10th Cir. 2008)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Archuleta v. Wagner, 523 F.3d 1278, 1283 (10th Cir. 2008)
- Shero v. City of Grove, Okla., 510 F.3d 1196, 1200 (10th Cir. 2007)
- United States v. Pinson, 584 F.3d 972, 975 (10th Cir. 2009)
- Whitney v. New Mexico, 113 F.3d 1170, 1173-74 (10th Cir. 1997)
- Van Deelen v. City of Eudora, Kan., 53 F. Supp. 2d 1223, 1227 (D. Kan. 1999)
- Sallaj v. Feiner, 2024 WL 112303, at *2 (D. Kan. Jan. 10, 2024)
- James v. Boyd Gaming Corp., 522 F. Supp. 3d 892, 902-03 (D. Kan. Mar. 2, 2021)
- Blackmon v. U.S.D. 259 School District, 769 F. Supp. 2d 1267, 1275 (D. Kan. 2011)

- In re Kirkland, 86 F.3d 172, 174 (10th Cir. 1996)
- Ogden v. Figgins, 32 F.3d 452, 455 (10th Cir. 1994)
- Lincoln v. BNSF Railway Co., 900 F.3d 1166, 1181 (10th Cir. 2018)
- Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982)
- Arellano v. McDonough, 598 U.S. 1, 6 (2023)
- Clark v. Oklahoma, 468 F.3d 711, 714 (10th Cir. 2006)
- Thompson v. Wilkie, 2018 WL 5281609, at *3 (D. Kan. Oct. 24, 2018)
- Biester v. Midwest Health Services, Inc., 77 F.3d 1264, 1267 (10th Cir. 1996)
- Laber v. United States Department of Defense, 2020 WL 5573061, at *6 (D. Kan. Sept. 17, 2020)
- Lawrence v. Florida, 549 U.S. 327, 336 (2007)
- Horton v. Achievement Services for Northeast Kansas, 1996 WL 442029, at *3 (D. Kan. July 26, 1996)
- Sosa v. Howes, 2025 WL 3720408, at *2 (D. Kan. Dec. 23, 2025)
- Valenzuela v. Silversmith, 699 F.3d 1199, 1207 (10th Cir. 2012)
- United States v. Harrell, 642 F.3d 907, 918 (10th Cir. 2011)
- Gad v. Kan. State Univ., 787 F.3d 1032, 1042 (10th Cir. 2015)
- Montes v. Vail Clinic, Inc., 497 F.3d 1160, 1163 (10th Cir. 2007)
- Cirocco v. McMahon, 768 F. App'x 854, 858 (10th Cir. 2019)
- Bryant v. United States Postal Service, 2019 WL 2473787, at *3 (D. Kan. 2019)
- Perkins v. Kansas Department of Corrections, 165 F.3d 803, 806 (10th Cir. 1999)
- Lister v. City of Wichita, Kansas, 666 F. App'x 709, 712 (10th Cir. 2016)
- Pendergraft v. Board of Regents of Oklahoma Colleges, 2019 WL 3806639, at *3-4 (W.D. Okla. Aug. 13, 2019)
- ElHelbawy v. Pritzker, 663 F. App'x 658, 663 (10th Cir. 2016)
- Landers v. Quality Communications, Inc., 771 F.3d 638, 644-45 (9th Cir. 2014)
- Middlesex County Sewerage Authority v. National Sea Clammers Association, 453 U.S. 1, 14-15 (1981)
- Crane v. Conoco, Inc., 41 F.3d 547, 553 (9th Cir. 1994)
- Scarborough v. Aegis Communications Group, Inc., 217 F.3d 840 (4th Cir. 2000) (unpublished)
- Jelenic v. Campbell Plastics, 159 F.3d 1347 (2d Cir. 1998) (unpublished)
- Elliott v. S.D. Warren Co., 134 F.3d 1, 4-5 (1st Cir. 1998)
- George v. Aztec Rental Center, Inc., 763 F.2d 184, 186 (5th Cir. 1985)
- Taylor v. Brighton Corp., 616 F.2d 256, 258 (6th Cir. 1980)
- Anderson v. Textron Aviation, Inc., 2023 WL 2868130, at *2 (D. Kan. Apr. 10, 2023)
- Koch v. City of Del City, 660 F.3d 1228, 1248 (10th Cir. 2011)
- Smith v. City of Enid ex rel. Enid City Commission, 149 F.3d 1151, 1156 (10th Cir. 1998)