

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Domeneque Perry v. Tiffany & Bosco PA

Perry · No. CV-26-00502-PHX-SMB · Decided February 20, 2026

OPINION

Perry

PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Domeneque Perry, No. CV-26-00502-PHX-SMB 10 Plaintiff, ORDER 11 v. 12 Tiffany &
Bosco PA, 13 Defendant. 14 15 Pending before the Court is Plaintiff Domeneque Perry's
Complaint (Doc. 1) and 16 Application for Leave to Proceed In Forma Pauperis (Doc. 2). After
screening Plaintiff's 17 Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court dismisses the
Complaint for 18 the reasons explained below.

19 I. LEGAL STANDARD

20 The Court must review the Complaint to determine whether the action: (i) is 21 frivolous or
malicious; (ii) fails to state a claim on which relief may be granted; or 22 (iii) seeks monetary
relief against a defendant who is immune from such relief. See 28 23 U.S.C. § 1915(e)(2)(B).
Additionally, Rule 8(a) of the Federal Rules of Civil Procedure 24 requires that: A pleading that
states a claim for relief must contain: (1) a short and plain 25 statement of the grounds for the
court's jurisdiction, unless the court already 26 has jurisdiction and the claim needs no new
jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is
entitled to relief; 27 and (3) a demand for the relief sought, which may include relief in the 28
alternative or different types of relief. 1 Although Rule 8 does not demand detailed factual
allegations, "it demands more 2 than an unadorned, the-defendant-unlawfully-harmed-me
accusation." *Ashcroft v. Iqbal*, 3 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of
a cause of action, 4 supported by mere conclusory statements, do not suffice." *Id.* A complaint
"must contain 5 sufficient factual matter, accepted as true, to state a claim to relief that is plausible
on its 6 face." *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim 7
is plausible "when the plaintiff pleads factual content that allows the court to draw the 8
reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing 9
Twombly, 550 U.S. at 556). A complaint that provides "labels and conclusions" or "a 10 formulaic
recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. 11 at 555. Nor will
a complaint suffice if it presents nothing more than "naked assertions" 12 without "further factual
enhancement." *Id.* at 557.

13 II. DISCUSSION

14 Plaintiff alleges that she worked for Defendant Tiffany & Bosco, P.A. from
15 September 2024 until she was terminated in September 2025. (Doc. 1 at 2.) Prior to her
16 termination, Plaintiff reported to management that she witnessed “repeated indoor vaping” 17
in the office. (Id. at 4.) She claims Defendant terminated her in retaliation for that report. 18 (Id. at
11.) Plaintiff asserts the following counts against Defendant: (1) retaliation in 19 violation of
Federal Law; (2) retaliation in violation of Title VII; (3) wrongful termination 20 in violation of
public policy; and (4) failure to prevent retaliation. (Id. at 11–13.) The 21 Court considers each
claim in turn. 22 A. Retaliation in Violation of Federal Law 23 Plaintiff alleges that Defendant’s
actions constituted unlawful retaliation in 24 violation of the Occupational Safety and Health Act
(“OSHA”) Plaintiff’s OSHA violation 25 claim fails because “OSHA does not provide a private
right of action.” See *Clark v. Wells* 26 *Fargo Bank*, 669 F. App’x 362, 363 (9th Cir. 2016); 29
U.S.C. § 653(b)(4) (“Nothing in 27 this chapter shall be construed to . . . enlarge or diminish or
affect in any other manner the 28 common law or statutory rights, duties, or liabilities of
employers and employees” 1 (emphasis added)). Therefore, OSHA does not provide Plaintiff
a basis for relief. 2 B. Retaliation in Violation of Title VII 3 The Court next turns to Plaintiff’s
Title VII Claim. “Title VII makes it an unlawful 4 employment practice for an employer to
discriminate against any individual with respect 5 to his compensation, terms, conditions, or
privileges of employment, because of such 6 individual’s race, color, religion, sex, or national
origin.” *Bond v. Wells Fargo Bank NA*, 7 782 F. Supp. 3d 743, 752 (D. Ariz. 2025) (citation
modified) (quoting *Meritor Sav. Bank, 8 FSB v. Vinson*, 477 U.S. 57, 63 (1986)). To state a Title
VII retaliation claim, “Plaintiff 9 must show that: (1) she engaged in protected activity, (2) she
suffered an adverse 10 employment action, and (3) the two are causally linked.” *Gage v. Mayo*
Clinic, 707 F.

11 Supp. 3d 870, 883 (D. Ariz. 2023).

12 Plaintiff alleges that she engaged in protected activity by: (1) “submitting internal 13 written
reports concerning health and safety conditions, including indoor vaping within an 14 enclosed
office environment”; (2) reporting those conditions to municipal, state, and 15 federal agencies;
and (3) by filing a Charge with the Equal Employment Opportunity 16 Commission (“EEOC”).
(Doc. 1 at 11–12.) Plaintiff alleges Defendant terminated her 17 because of the foregoing activity.
(Id.). 18 To start, many of the mentioned activities took place after Plaintiff’s termination. 19
(Doc. 1 at 5.) Plaintiff does not identify any report made to municipal, state, or federal 20 agencies
made before her termination. Additionally, Plaintiff does not establish that she 21 filed her EEOC
charge prior to her termination. Thus, Plaintiff cannot establish the 22 requisite causal connection
between her termination and these activities. 23 This leaves Plaintiff’s internal reports which were
made prior to her termination. 24 Plaintiff alleges that she was terminated in response to a
September 9, 2024 “written 25 internal report to management regarding repeated indoor vaping
observed in the 26 Homewood office.” (Doc. 1 at 4.) However, Plaintiff fails to plausibly allege

that 27 reporting indoor vaping is a “protected activity.” “An individual engages in protected 28 activity under Title VII when the individual has a reasonable belief that the employment 1 practice being opposed is prohibited under Title VII.” *Gardner v. Braithwaite*, 607 F. 2 Supp. 3d 1106, 1120 (S.D. Cal. 2022) (citation modified). Plaintiff fails to establish that 3 reporting indoor vaping, by itself, implicates a cognizable Title VII issue. 4 Additionally, Plaintiff does not plausibly allege that her report was the “but-for” 5 cause of her termination. See *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360, 6 (2013) (“Title VII retaliation claims must be proved according to traditional principles of 7 but-for causation This requires proof that the unlawful retaliation would not have 8 occurred in the absence of the alleged wrongful action or actions of the employer.”). 9 Plaintiff alleges that shortly before her vaping report, in August 2025, she received an 10 “email outlining job responsibilities and expectations” which provided that “failure to 11 perform assigned tasks . . . could result in disciplinary action, including termination.” 12 (Doc. 1 at 3.) Additionally, prior to Plaintiff’s vaping report, she “was informed that [the 13 August email] constituted a warning and that her job was in jeopardy.” (Id. at 4.) Thus, 14 Plaintiff’s own allegations establish that Defendant were considering her termination prior 15 to her vaping report. 16 Accordingly, Plaintiff fails to state a claim under Title VII. 17 C. Wrongful Termination in Violation of Public Policy 18 Plaintiff also alleges that Defendant wrongfully terminated her in violation of public 19 policy. (Id. at 12.) Again, Plaintiff claims she was terminated in retaliation for reporting 20 indoor vaping that violated “workplace safety rules and applicable no-vaping policies.” 21 (Id. at 5.) Plaintiff does not specify the legal basis for this claim. To the extent that Plaintiff 22 brings a retaliatory discharge claim under the Arizona Employment Protection Act 23 (“AEPA”), she fails to state a claim. 24 Arizona “wrongful termination . . . claims are governed exclusively by the AEPA.” 25 *Worldwide Jet Charter, Inc. v. Christian*, 527 P.3d 352, 356 (Ariz. Ct. App. 2023). The 26 AEPA “sets out the limited circumstances in which an employee can bring a wrongful 27 termination action in Arizona.” *Harper v. State*, 388 P.3d 552, 554 (Ariz. Ct. App. 2016). 28 “To establish a prima facie case of retaliation under the AEPA, an employee must show: 1 (1) the employee engaged in a protected activity; (2) the employee was terminated; and 2 (3) that there is a causal link between the protected activity and the termination.” *Murar 3 v. AutoNation Inc.*, No. CV-19-05793-PHX-MTL, 2021 WL 3912849, at *5 (D. Ariz. Sep. 4 1, 2021). The AEPA provides that an “employee has a claim against an employer for 5 termination of employment” only under certain enumerated circumstances. See A.R.S. 6 § 23-1501(A)(3). The only protected activity remotely implicated here is outlined in 7 § 23-1501(A)(3)(c)(ii). That provision provides a cause of action for employees that are 8 retaliated against for disclosing a reasonable belief that the employer has violated Arizona 9 law. Plaintiff does not allege what law Defendant violated, and it is unclear whether 10 Plaintiff’s internal report constitutes a disclosure for purposes of the statute. Therefore, 11 Plaintiff fails to state a claim for wrongful discharge in violation of public policy. 12 D. Failure to Prevent Retaliation 13 Finally, Plaintiff alleges that “Defendant failed to take reasonable steps

to prevent 14 retaliation against Plaintiff [and] permitted or ratified adverse employment action 15 following protected activity.” (Doc. 1 at 13.) Plaintiff does not state the legal basis for 16 this claim. To the extent such a claim exists, Plaintiff provides no reason as to why it 17 should be treated differently from the foregoing Title VII or APEA claims. 18 Therefore, Plaintiff fails to state a claim for failure to prevent retaliation.

19 III. LEAVE TO AMEND

20 “[A] district court should grant leave to amend even if no request to amend the 21 pleading was made, unless it determines that the pleading could not possibly be cured by 22 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation 23 modified). The Court grants Plaintiff leave to amend her ECPA claim. Plaintiff’s amended 24 complaint must address the deficiencies identified above and should follow the form 25 detailed in Rule 7.1 of the Local Rules of Civil Procedure. Within thirty (30) days from 26 the date of entry of this Order, Plaintiff may submit a First Amended Complaint. Plaintiff 27 must clearly designate on the face of the document that it is the “First Amended 28 Complaint.” The First Amended Complaint must be retyped or rewritten in its entirety and 1 || may not incorporate any part of the original Complaint by reference. 2 The Court draws attention to the District of Arizona’s Federal Court Advice Only || Clinic, Federal Court Advice Only Clinic - Phoenix | District of Arizona | United States District Court (uscourts.gov). The Court also notes the E-Pro Se program which assists || litigants with creating a Complaint form, Welcome - eProSe (uscourts.gov). Lastly, the 6|| Court advises Plaintiff that certain resources for self-represented parties, including a 7|| handbook and the Local Rules, are available on the ourt’s website, 8 || www.azd.uscourts.gov, by following the link “Self-Represented Litigants.”

IV. CONCLUSION

10 Accordingly, 11 IT IS ORDERED granting Plaintiff's Application for Leave to Proceed In Forma 12 || Pauperis (Doc. 2). 13 IT IS FURTHER ORDERED dismissing Plaintiffs Complaint (Doc. 1) with 14|| leave to file a First Amended Complaint within thirty (30) days of the date of this Order. 15 IT IS FURTHER ORDERED that if Plaintiff does not file a First Amended Complaint within thirty (30) days of the date of this Order, the Clerk of Court shall dismiss this action without further order from the Court. 18 IT IS FURTHER ORDERED that if Plaintiff elects to file a First Amended □□ Complaint, it may not be served unless and until the Court issues an Order screening the 20 || First Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2). 21 Dated this 20th day of February, 2026. 22 — . RP 23 SO 24 Gnvted States District ude. 25 26 27 28 -6-