

STATE OF WISCONSIN

PERSONNEL COMMISSION

IRENE SUTCLIFFE,
Complainant,

v.

**Chancellor, UNIVERSITY OF
WISCONSIN-MADISON,**
Respondent.

RULING
ON
MOTION
TO DISMISS

Case No. 99-0160-PC-ER

This matter is before the Commission on the respondent's motion to dismiss complainant's claim under the Family Medical Leave Act as untimely filed. The parties have filed arguments and the following findings appear to be undisputed. The Commission makes these findings solely for the purpose of ruling on the respondent's motion.

FINDINGS OF FACT

1. At all times relevant to this matter, complainant has been employed as a Payroll and Benefits Specialist 3 at respondent's Physical Sciences Laboratory, Synchrotron Radiation Center.
2. Complainant's supervisor is Clayton Vinje, Personnel Manager at the Synchrotron Radiation Center.
3. On October 7, 1999, complainant filed a complaint alleging disability discrimination, Fair Employment Act retaliation and violation of the Family Medical Leave Act (FMLA).
4. The complaint described conduct occurring between the dates of June 8, 1998, and August 20, 1999, relating to leave requested by complainant during that time period and to respondent's requests for information from complainant regarding the reasons for her leave requests.

5. The complaint included numerous attachments, most of which were e-mail messages exchanged by complainant and Mr. Vinje.

6. In a February 26, 1999, e-mail message to Nancy Malz, a disability consultant employed by respondent, complainant asked whether Mr. Vinje can "question me about FMLA leave request slips that I submit."

7. Complainant alleges that an e-mail exchange on June 9, 1999, (Attachments 10 and 11) with Mr. Vinje arose because of her medical condition and that it was retaliation "because I have invoked a portion of my rights under FMLA." With respect to another e-mail exchange on July 16, 1999, complainant suggests she has been "'singled out' and am being harassed" by Mr. Vinge's continual questions about the nature of the medical condition underlying her FMLA leave requests.

8. In her original complaint, the latest action referenced by complainant was Mr. Vinje's response to complainant's request on August 20, 1999 to sign an absence report slip for August 24th. According to complainant, Mr. Vinje's response indicating he would delay signing the slip until complainant returned from her leave was not consistent with respondent's practice or policy.

9. On October 20, 1999, respondent filed a motion to dismiss complainant's FMLA claim. A briefing schedule was established and in her response, filed on October 22, 1999, complainant alleged "two more violations." One (Attachment 37) was an e-mail message from Mr. Vinje on September 17th in which he asked complainant to "get something from your physician clearing you for bending." The other (Attachment 38) was another e-mail from Mr. Vinje on September 27th directing complainant not to perform certain responsibilities until she obtained an "updated physician's recommendation"

OPINION

Respondent argues that complainant should not be permitted to amend her complaint to "add an entirely new allegation of incidents that occurred prior to the filing of the original complaint."

The Commission's rule relating to amending complaints is found in §PC 2.02(3), Wis. Adm. Code:

A complaint may be amended by the complainant, subject to approval by the commission, to cure technical defects or omissions, or to clarify or amplify allegations made in the complaint or to set forth additional facts or allegations related to the subject matter of the original charge, and those amendments shall relate back to the original filing date.


The additional allegations set forth in complainant's October 22nd submission are clearly related to the subject matter of her initial filing. She has identified two additional actions allegedly taken by Mr. Vinje that are quite similar to the alleged actions listed in her original filing on October 7th. Complainant has not waited two or three years to seek to amend her complaint and she has not waited until an initial determination has been issued. *Compare, Payne v. DOC*, 95-0095-PC-ER, 7/31/97; *Ziegler v. LIRC*, 93-0031-PC-ER, 5/2/96. Respondent has made no allegation of potential prejudice. *Butzlaff v. DHSS*, 90-0162-PC-ER, 11/13/92. Because her additional allegations relate to the original charge, the Commission will consider complainant to have amended her charge with her October 22nd submission. That amendment relates back to the original filing date of October 7th.

The time limit for filing FMLA claims is "30 days after the violation occurs or the employe should reasonably have known that the violation occurred, whichever is later." Section 103.10(12)(b), Stats. Complainant's new allegations, regarding Mr. Vinje's September 17th and September 27th e-mail messages, fall within the 30-day period. In light of the timing of the events referenced in the complainant's amendment, respondent's motion to dismiss complainant's entire FMLA claim must be denied. The parties have not offered arguments regarding the timeliness of specific allegations within the amended FMLA claim so the Commission declines to address those topics at this time.

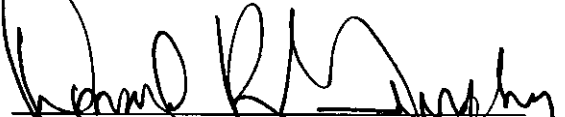
ORDER

The Commission approves complainant's October 22nd amendment to her October 7th complaint. In light of the amendment, respondent's motion to dismiss complainant's entire FMLA claim as untimely filed is denied.

Dated: November 19, 1999 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

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DONALD R. MURPHY, Commissioner