IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARIA GARCIA DIXON, **Plaintiff,** **v.** **AMERIHEALTH ADMINISTRATORS,** **Defendant.**	**CIVIL ACTION** **NO. 17-1520**

DuBois, J. **July 26, 2017**

M E M O R A N D U M

In this employment discrimination case, plaintiff Maria Garcia Dixon alleges that she was discriminated against and that her employment was terminated by defendant, Amerihealth Adminstrators ("Amerihealth") because of her "race and color." Dixon, an African-American woman, was terminated following a series of complaints to Amerihealth's Human Resources Director concerning discriminatory treatment and discipline by her supervisor. Dixon asserts claims of race discrimination, harassment, and retaliation under 42 U.S.C. § 1981 and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. §§ 951, *et seq.* Presently before the Court is Amerihealth's Motion to Dismiss. For the reasons that follow, Amerihealth's Motion is granted in part and denied in part.

I. BACKGROUND

The facts as alleged in the Amended Complaint are as follows. Dixon was hired as a Claims Service Representative by Amerihealth in April of 2008. Am. Compl. ¶ 4. In November of 2010, Vicky Meager, who is Caucasian, became Dixon's immediate supervisor. Am. Compl. ¶ 6. Meager provided "Caucasian workers with training and assistance that was denied to similarly situated African-American employees," Am. Compl. ¶ 8, and "denied [Dixon] and her African-American coworkers assistance and guidance regarding their work duties and responsibilities," Am. Compl. ¶ 9. Dixon was subjected to "unfair and unwarranted discipline" by Meager in July and September

of 2013. Am. Compl. ¶ 11. In September of 2013, Dixon complained to Amerihealth's Human Resources Director, Susan Weed, about Meager's discriminatory treatment. Am. Compl. ¶ 12. Meager was placed on corrective action by Amerihealth, but her discriminatory treatment of Dixon continued. Am. Compl. ¶ 14.

Approximately five months later, in February of 2014, Dixon "filed a charge of discrimination alleging race discrimination." Am. Compl. ¶ 15. On June 15, 2014, Dixon was terminated, allegedly for performance deficiencies. Am. Compl. ¶ 17. Dixon additionally alleges that, in the year prior to her termination, Meager was responsible for the discharge of four other African-American employees who held the same positions as Dixon. Am. Compl. ¶ 19.

Dixon filed her initial Complaint on March 31, 2017. On June 12, 2017, Amerihealth filed a Motion to Dismiss. Dixon thereafter filed an Amended Complaint on June 26, 2017. Amerihealth filed a Motion to Dismiss Dixon's Amended Complaint on June 30, 2017.

II. APPLICABLE LAW

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a party to respond to a pleading by filing a motion to dismiss for "failure to state a claim upon which relief can be granted." To survive a motion to dismiss, the complaint must allege facts that "'raise a right to relief above the speculative level.'" *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A district court first identifies those factual allegations that constitute nothing more than "legal conclusions" or "naked assertions." *Twombly*, 550 U.S. at 555, 557. Such allegations are "not entitled to the assumption of truth" and must be disregarded. *Iqbal*, 556 U.S. at 679. The court then assesses the

remaining "'nub' of the plaintiff['s] complaint—the well-pleaded, nonconclusory factual allegation[s]"—to determine whether the complaint states a plausible claim for relief. *Id.*

III. DISCUSSION

Dixon asserts disparate treatment discrimination, harassment, and retaliation claims under § 1981 and the PHRA. Amerihealth moves to dismiss all claims. The Court first addresses Amerihealth's argument that Dixon did not exhaust her administrative remedies under the PHRA and then considers each claim in turn.

A. PHRA Exhaustion

Amerihealth first argues that Dixon's PHRA claims should be dismissed because (1) she failed to allege that she exhausted her administrative remedies and (2) her allegations of discriminatory treatment are insufficient to support a claim for discrimination and retaliation under the PHRA.[1]

"To bring suit under the PHRA, an administrative complaint must be filed with the [Pennsylvania Human Relations Commission] within 180 days of the alleged act of discrimination." *Mandel v. M & Q Packaging Corp.*, 706 F.3d 157, 164 (3d Cir. 2013) (citing 43 Pa. Stat. § 959(h)). Plaintiffs can satisfy the administrative complaint requirement of the PHRA by "check[ing] the box on the [Equal Employment Opportunity Commission] charge form indicating that the charge should be filed with both agencies," thereby dual-filing a charge of discrimination. *Woodson v. Scott Paper Co.*, 109 F.3d 913, 925 (3d Cir. 1997); *see also Rhoades v. Young Women's Christian Ass'n of Greater Pittsburgh*, No. 09-1548, 2010 WL 4668469, at *5 (W.D. Pa. Nov. 9, 2010) ("Courts in this Circuit interpreting the worksharing arrangement have held that where a plaintiff timely files a

[1] The Court's analysis concerning Dixon's claims for discrimination, harassment, and retaliation under the PHRA is the same as its analysis for Dixon's claims under § 1981. *See Anderson v. The Boeing Company*, 2017 WL 2629050, at *1 n.4 (3d Cir. 2017) ("Claims brought under Title VII, the PDA, § 1981, and the PHRA are analyzed coextensively."). Thus, the Court considers Amerihealth's arguments concerning the sufficiency of Dixon's allegations for the § 1981 and PHRA claims together. *See infra* Sections III.B, III.C

complaint with one agency, either the EEOC or the PHRC, coupled with a request for dual filing, then the complaint is deemed filed with both agencies as of that date.").

In this case, Dixon alleges that she "filed a charge of discrimination alleging race discrimination in the workplace." Am. Compl. ¶ 15. As an attachment to her response to the Motion to Dismiss, Dixon submits a signed and stamped form titled "Information for Complainants & Election Option to Dual File with the Pennsylvania Human Relations Commission." Resp. to Mot. to Dismiss, Ex. B.[2] Based on the submission of that form, the Court concludes that Dixon dual filed her charge with the EEOC and the PHRC. Accordingly, it will not dismiss Dixon's PHRA claim for failure to exhaust administrative remedies.

B. Disparate Treatment Discrimination and Harassment Claims under § 1981 and the PHRA

In its Motion, Amerihealth argues that Dixon's disparate treatment discrimination and harassment claims under § 1981 and the PHRA should be dismissed because (1) she does not provide sufficient detail about the alleged discriminatory treatment and (2) any "pattern and practice" allegations do not support her claims because those allegations should be limited to use in the class action context.[3] The Court considers each claim in turn.[4]

1. Disparate Treatment Claims

Discrimination claims under § 1981 and the PHRA involving disparate treatment are evaluated using the *McDonnell Douglas* burden-shifting framework. *Stewart v. Rutgers, The State University*, 120 F.3d 426, 432 (3d Cir. 1997); *see also Castleberry v. STI Group*, No. 16-3131, 2017

[2] "In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." Mayer v. Belichick, 605 F.3d 223, 230 (3d Cir. 2010).
[3] The Court does not rely on any "pattern or practice" allegations in reaching its conclusion.
[4] With the exception of citing cases concerning the standard for a motion to dismiss and a single case, without explanation, after the statement that "[p]laintiff sufficiently pleads claims of race discrimination, harassment, hostile work environment and retaliation under Section 1981," Dixon does not cite cases in support of her arguments in her Response.

WL 2990160, at *2 (3d Cir. July 14, 2017). "To establish a discrimination claim under § 1981, a plaintiff must show (1) that he belongs to a racial minority; (2) an intent to discriminate on the basis of race by the defendant; and (3) discrimination concerning one or more of the activities enumerated in § 1981 [including private employment]." *Castleberry*, 2017 WL 2990160 at *5. Amerihealth does not argue that Dixon is not a member of a racial minority.

Dixon alleges that Meager, her supervisor, subjected plaintiff to "unfair scrutiny," Am. Compl. ¶ 7, "showed favoritism and deference to [p]laintiff's similarly situated Caucasian coworkers," *id.* at ¶ 8, provided "Caucasian workers with training and assistance that was denied to similarly situated African-American employees," *id.*, "denied [p]laintiff and her African-American coworkers assistance and guidance regarding their work duties and responsibilities," *id.* at ¶ 9, and "administered unfair and unwarranted discipline to [p]laintiff," *id.* at ¶ 11. Dixon further alleges that she complained to Amerihealth's Human Resources Director Susan Weed and that Meager continued to discriminate against Dixon despite being placed on corrective action. *Id.* at ¶¶ 12-14. At this early stage of the case, the Court concludes that Dixon has sufficiently pled claims of discrimination based on disparate treatment under § 1981 and the PHRA.

2. Harassment Claims

To succeed on a harassment claim, "a plaintiff must show that (1) the employee suffered intentional discrimination because of his/her race, (2) the discrimination was severe or pervasive, (3) the discrimination detrimentally affected the plaintiff, (4) the discrimination would detrimentally affect a reasonable person in like circumstances, and (5) the existence of *respondeat superior* liability meaning the employer is responsible." *Castleberry*, 2017 WL 2990160, at *2.

Dixon alleges that she was denied training and assistance that was provided to Caucasian employees and that she was subjected to unwarranted discipline by her supervisor. Dixon's allegations fail to support a claim for harassment because they do not satisfy the requirement that

the discrimination be severe or pervasive.[5] Because Dixon's Amended Complaint does not contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," *Iqbal*, 556 U.S. at 678, the Court dismisses Dixon's harassment claims under § 1981 and the PHRA without prejudice to her right to file and serve a second amended complaint in support of her harassment claims under § 1981 and the PHRA within twenty days if warranted by the facts and the applicable law set forth in this Memorandum.

C. Retaliation Claims under § 1981 and the PHRA

Amerihealth contends that Dixon's retaliation claims should be dismissed because (1) Dixon does not plead sufficient facts concerning her charge of discrimination, (2) Amerihealth did not receive notice of the charge of discrimination until after Dixon's termination, and (3) the nine month lapse between Dixon's internal complaint and termination is not sufficient to establish causation.

"To establish a retaliation claim in violation of § 1981, a plaintiff must establish the following *prima facie* case: (1) he engaged in protected activity . . . ; (2) the employer took an adverse employment action against him; and (3) there was a causal connection between his participation in the protected activity and the adverse employment action." *Castleberry*, 2017 WL 2990160, at *5. A plaintiff also "must demonstrate that there had been an underlying section 1981 violation." *Id.*

As to the requirement that Dixon "engaged in protected activity," Amerihealth argues that Dixon did not plead sufficient facts concerning the charge of discrimination that she filed and that

[5] The Court notes that Dixon's argument concerning her harassment claim is limited to repeating the allegations included in the Amended Complaint, stating that "when the supervisor engages in this conduct on a consistent and regular basis, her conduct rises to the level of harassment," and "[m]ultiply these actions against four other African-American employees and you have pervasive harassment that rises to the level of a hostile work environment." Resp. 5. Dixon provides no case law or other argument to support her conclusory assertions.

Amerihealth did not receive notification of Dixon's charge of discrimination until after her termination. Mot. 8. Both arguments are unavailing.

At this early stage of the case, Dixon's statement that she filed a charge of discrimination is sufficient to plead that she engaged in protected activity. *See Carvalho-Grevious v. Delaware State Univ.*, 851 F.3d 249, 256 (3d Cir. 2017) ("Title VII prohibits an employer from discriminating based on an employee's race . . . and from retaliating against an employee for complaining about, or reporting, discrimination or retaliation. The substantive elements of a [racial] discrimination claim under § 1981 are generally identical to the elements of an employment discrimination claim under Title VII."); *see also Gilbert v. Phila. Media Holdings LLC*, 564 F. Supp. 2d 429, 439 (E.D. Pa. 2008) ("Protected activity includes formal charges of discrimination as well as informal protests of discriminatory employment practices, including making complaints to management.").

As to Amerihealth's argument that it was notified of Dixon's charge of discrimination, which was dual-filed with the EEOC and the PHRC, after her termination, there are no allegations in the Amended Complaint relating to when Amerihealth was first notified of that charge. Thus, the Court cannot consider Amerihealth's argument that it was first notified of the charge after Dixon's termination.[6] The Court concludes that Dixon has sufficiently pled that she engaged in protected activity.

Amerihealth also argues that Dixon fails to plausibly allege a causal connection between her complaint to Amerihealth's Human Resources Director in September of 2013 and her termination in June of 2014 because nine months elapsed between the two events. Mot. 8. "[T]iming of the alleged retaliatory action must be "unusually suggestive" of retaliatory motive before a causal link will be inferred." *Krouse v. American Sterilizer Co.*, 126 F.3d 494, 503 (3d Cir. 1997). "When

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[6] In addition to making a charge of discrimination, Dixon also complained to Amerihealth's Human Resources Director in September of 2013 about "unfair and discriminatory treatment." Am. Compl. ¶ 12.

temporal proximity between protected activity and allegedly retaliatory conduct is missing, courts may look to the intervening period for other evidence of retaliatory animus." *Id.* at 503-04.

Dixon avers that her supervisor, Meager, "continued to discriminate against [p]laintiff because of her race," following Meager's placement on corrective action after Dixon's internal complaint. Am. Compl. ¶¶ 13-14. Dixon filed her charge of discrimination in February of 2014, after Meager's continuing harassment and discrimination. Am. Compl. ¶ 15. At this early stage of the case, Dixon has sufficiently pled allegations establishing causation between her complaints of race discrimination and her subsequent termination. Accordingly, the Court concludes that Dixon has adequately pled claims of retaliation under § 1981 and the PHRA.

IV. CONCLUSION

The Court denies Amerihealth's Motion to Dismiss as to Dixon's claims of disparate treatment discrimination and retaliation under § 1981 and the PHRA. The Court grants Amerihealth's Motion to Dismiss as to Dixon's claims of harassment under § 1981 and the PHRA without prejudice to her right to file and serve a second amended complaint in support of her harassment claims under § 1981 and the PHRA within twenty days if warranted by the facts and the applicable law set forth in this Memorandum.

An appropriate order follows.