

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JAMES MCDAY,

Plaintiff,

v.

LAKE PONDERAY SCHOOL
DISTRICT, CENTER PARTNERS INC.,
IDAHO LABOR DEPARTMENT,

Defendants.

Case No. 2:15-CV-030-BLW

**MEMORANDUM DECISION
AND ORDER**

INTRODUCTION

The Court has before it plaintiff McDay’s application to proceed without payment of fees. For the reasons explained below, the Court will grant the application but will dismiss some of the claims with prejudice and dismiss other claims without prejudice and with the right to file an amended complaint.

ANALYSIS

The Court is required to screen complaints brought by litigants who seek in forma pauperis status. *See* 28 U.S.C. § 1915(e)(2). The Court is authorized to dismiss “at any time” a complaint that, among other things, “fails to state a claim on which relief may be granted” or “seeks monetary relief from a defendant who is immune from such relief.” *See* 28 U.S.C. § 1915(e)(2)(B)(ii) & (iii).

During this initial review, courts generally construe pro se pleadings liberally, giving pro se plaintiffs the benefit of any doubt. *See Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). Additionally, if amending the complaint would remedy the deficiencies, plaintiffs should be notified and provided an opportunity to amend. *See Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

In this case, Chief Magistrate Judge Bush wrote a detailed decision finding that McDay satisfied the conditions for IFP status, but recommending that many of McDay's claims be dismissed. *See Order (Dkt. No. 8)*. For some of those claims, Chief Judge Bush recommended that they be dismissed with leave to amend; for others, he recommended dismissal without leave to amend. *Id.* Because he was recommending dismissal, Chief Judge Bush transferred the case to this Court for final review.

The Court finds Chief Judge Bush's analysis persuasive, and will adopt it in full as the analysis of this Court. The Court will not repeat that decision in full here but will simply incorporate it by reference. By way of summary, the defendant Department of Labor is immune from suit under the Eleventh Amendment and must be dismissed with prejudice. *See* 28 U.S.C. § 1915(e)(2)(B)(iii). With regard to the claims brought under the Equal Pay Act, Age Discrimination in Employment Act, and Genetic Information Nondiscrimination Act, the allegations in the complaint fail to state a cause of action and cannot be cured with any amendment. These claims must be dismissed with prejudice and without leave to amend. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

The remaining claims are brought pursuant to (1) Title VII; (2) procedural due process; and (3) “state administrative notice rules, and complaint rules and process.” These claims are deficient for the reasons stated by Chief Judge Bush, but their deficiencies might be cured by amendment, and so the Court will give McDay an opportunity to file an amended complaint within thirty days or face dismissal of those claims.

ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, the application for leave to proceed in forma pauperis (docket no. 3) is GRANTED.

IT IS FURTHER ORDERED, that the defendant Idaho Department of Labor be dismissed with prejudice.

IT IS FURTHER ORDERED, that the following claims be dismissed without prejudice and with leave to amend: (1) Title VII discrimination claim; (2) Title VII retaliation claim; (3) procedural due process claim; (4) claim under “state administrative notice rules, and complaint rules and process.” The plaintiff may file an amended complaint seeking to cure the deficiencies in these claims identified above. Any amended complaint must be filed within thirty (30) days from the date of this decision. If no amended complaint is filed in a timely manner, the Court will dismiss the entire case without further notice.

IT IS FURTHER ORDERED, that the following claims be dismissed with prejudice and without leave to amend: (1) Equal Pay Act claim; (2) Age Discrimination in Employment Act claim; (3) Genetic Information Nondiscrimination Act claim.



DATED: November 18, 2015

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill

Chief Judge

United States District Court