EEOC v. Sidley Austin Brown.
Doc. 96 Att. 1

EXHIBIT 1

Dockets.Justia.com

GRIPPO & ELDEN LLC
111 South Wacker Drive
Chicago, Illinois 60606
(312) 704-7700
FAX: (312) 558-1195
(312) 263-7356

To Call Writer Direct
(312) 704-7766
lmurray@grippoelden.com

July 21, 2006

Via Electronic Mail

Laurie S. Elkin
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street, Suite 2800
Chicago, Illinois 60661

Re: EEOC v. Sidley Austin LLP

Dear Laurie:

Attached, pursuant to the EEOC's request, is a chart with Sidley's unit values for the years 2000-2005. This information is highly confidential and is marked as such.

Very truly yours,

Lynn H. Murray

LHM:kls

Enclosure

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
SEP 15 2004
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	
Plaintiff,	
RENAEÉ N. HENRY,	Case No. 03 C 6576
Plaintiff-Intervenor,	Judge Milton I. Shadur
v.	
PEPSIAMERICAS, INC., and PEPSI-COLA GENERAL BOTTLERS, INC.,	
Defendants.	

DOCKETED
SEP 20 2004

NOTICE OF MOTION

To: See attached Service List

PLEASE TAKE NOTICE that on Friday, September 17, 2004, at 9:15 a.m., or as soon thereafter as I may be heard, I shall appear before Judge Milton I. Shadur in the courtroom usually occupied by him in the United States Courthouse, 219 S. Dearborn, Chicago, Illinois, and then and there present **Plaintiff EEOC's and Plaintiff-Intervenor Henry's Join Motion for Protective Order Regarding Post-Termination Employment Records**, a copy of which is hereby served upon you.

Respectfully submitted,

Alenna K Bolin

One of the attorneys for Plaintiff-Intervenor
Renaeé Henry

Fern N. Trevino
Alenna K. Bolin
Law Offices of Fern Trevino
120 North LaSalle Street, Suite 1050
Chicago, Illinois 60602
Tel: (312) 630-4491
Fax: (312) 630-9281

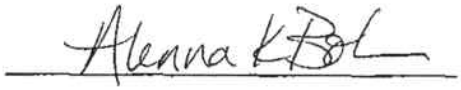
28

CERTIFICATE OF SERVICE

I certify that on September 15, 2004, a copy of the foregoing was served on the following persons by facsimile transmission and U.S. Mail:

June Wallace Calhoun
John W. Hendrickson
Gregory M. Gochanour
Equal Employment Opportunity Commission
500 W. Madison Street, Suite 2800
Chicago, IL 60661

Regina W. Calabro
Jeffrey S. Torosian
Laura Liss
Michael Best & Friedrich LLC
401 North Michigan Ave., Suite 1900
Chicago, IL 60611



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHEASTERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

RENAEÉ N. HENRY,

Plaintiff-Intervenor,

v.

PEPSIAMERICAS, INC., and PEPSI-COLA GENERAL BOTTLERS, INC.,

Defendants.

FILED
SEP 15 2004
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Case No. 03 C 6576

Judge Milton I. Shadur

DOCKETED
SEP 20 2004

PLAINTIFF EEOC'S AND PLAINTIFF-INTERVENOR HENRY'S JOINT MOTION FOR PROTECTIVE ORDER REGARDING POST-TERMINATION EMPLOYMENT RECORDS

Plaintiff Equal Employment Opportunity Commission and Plaintiff-Intervenor Renaeé Henry respectfully move for an order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure prohibiting defendants from issuing a subpoena to Ms. Henry's current employer.

Defendants intend to subpoena all personnel and employment records pertaining to Renaeé Henry from her current employer, the Chicago Tribune. Plaintiffs have good cause for the imposition of a protective order barring discovery. The records of Ms. Henry's current employer are not relevant to any claim or defense, especially because she fully mitigated her back pay by accepting this position. Moreover, Ms. Henry has a legitimate concern that a subpoena would cause difficulties for her in her new job, and to the extent there is any relevance, less intrusive and harassing means of discovery exist.

The parties have conferred and are unable to resolve this matter without the Court's

28

intervention.[1]

Factual and Procedural Background

This is a sexual harassment and FMLA case. Plaintiff Renaeé Henry was employed by Pepsi from September 1999 to August 2002. As she testified at her deposition, she was subjected to ongoing sexual harassment by male employees throughout her employment. She reported the harassment to her supervisors, who shrugged off her repeated complaints. She took a medical leave of absence due to stress in August 2002. On her first day back from leave, Pepsi informed her that it was removing half of her duties. Three days later, Pepsi informed her that it was eliminating her position and terminated her employment.

Ms. Henry, who was pregnant when Pepsi terminated her, diligently searched for employment. About a year and a half after her termination from Pepsi, she finally obtained full-time comparable employment, with the Chicago Tribune.

Defendants now intend to subpoena all documents relating to Renaeé Henry from the Tribune.[2] Specifically, defendants intend to demand production of the following things:

> The complete personnel file(s), medical file(s), payroll records, and any and all other documents or records which refer or relate to the employment of Renaeé Henry … including but not limited to: work performance evaluations, time and attendance records, work logs or diaries, disciplinary materials and records, grievances, letters or memos of commendation or criticism, and/or any and all charges or complaints of discrimination or harassment. (Exhibit 2: 9/10/04 Calabro email; Exhibit 3: Defendants' subpoena to Chicago Hilton).

---

[1] Defendants notified plaintiff on Friday, September 10, that they intend to serve the subpoena on September 17. Plaintiff's counsel, Alenna Bolin, telephoned defendants' counsel, Gina Calabro, on September 14, and left a message asking to confer about this matter. Ms. Calabro was unavailable, and plaintiff's counsel conferred with defendant's counsel Laura Liss at 3:10 p.m. on September 15 by telephone.

[2] At Ms. Henry's deposition, plaintiff Henry agreed to identify her current employer and defendants agreed to notify plaintiff in advance if they intend to subpoena her employment records from the Chicago Tribune. (Exhibit 1: 9/10/04 Calabro letter). Plaintiffs note that Ms. Henry obtained three lower-paying positions before obtaining her current position. Defendants subpoenaed her records from those three subsequent employers; plaintiffs did not object to those subpoenas.

Argument

1. Rule 26 standard.

The scope of discovery under Rule 26 and Rule 45 is broad but not unlimited. The 2000 amendments to Rule 26 narrowed the scope of discovery to "any matter, not privileged, that is relevant to the claim or defense of any party ...." Rule 26(b)(1).

Further, under Rule 26(b)(2), the district court "must weigh the burden or expense of proposed discovery and its likely benefit by taking into account 'the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues,'" as well as whether the discovery sought "is obtainable from some other source that is ... less burdensome." *Graham v. Casey's General Stores, Inc.*, 206 F.R.D. 251, 254 (S.D.Ind. 2002) (granting motion to quash subpoenas to current employer); Rule 26(b)(2).

2. Defendants seek employment records of Ms. Henry's current employer that are not relevant to any claim or defense in this case.

Payroll records and time and attendance records: Ms. Henry's earnings from the Chicago Tribune are not at issue. As she stated in her answers to interrogatories several months ago, she does not seek back pay from the date she began her employment with Chicago Tribune. (Exhibit 4: Plaintiff Henry's Answers to Interrogatories, No. 8 at page 7). Therefore, her payroll records from the Tribune are not relevant.

Similarly, her time and attendance at her current employment is irrelevant because she has mitigated her back pay damages. Moreover, she was not terminated from Pepsi because of her time and attendance. To extent that there might be some marginal relevance, there are less intrusive means to obtain this information. For example, defendant had an opportunity at her deposition to ask about her "time and attendance" at the Tribune but failed to do so.

Performance evaluations, disciplinary records, and criticism: Defendants' demand for performance and disciplinary records from the Tribune is completely unwarranted. Ms. Henry's performance at Pepsi is not even at issue. Pepsi has admitted that it did not remove her payroll duties or terminate her employment because of her performance. (Exhibit 5: Defendants' responses to Requests for Admissions, Nos. 3 & 5).

Moreover, defendants questioned Ms. Henry about her employment with the Tribune at her deposition. Ms. Henry testified about her responsibilities, that she has received no discipline, and that she received two awards for doing a good job at the Tribune.

Work logs, diaries, and other employment-related documents: Again, defendants apparently intend to seek details about Ms. Henry's current employment that do not have any possible relevance to the issues in this case. Defendants assert that her employment application is relevant to determine when Ms. Henry applied to the Tribune and what job she applied for. These are minor details with no relevance to defendants' mitigation defense, given that Ms. Henry was in fact hired and is not seeking back pay from the date of this employment.

An open-ended search for evidence of the details of a plaintiff's employment with a subsequent employer, with no basis to support such a search, does not meet the standard of being reasonably calculated to lead to the discovery of admissible evidence. See *Perry v. Best Lock Corp.*, 1999 WL 33494858 (S.D.Ind. Jan. 21, 1999) (granting plaintiff's motion to quash 19 subpoenas served on past, present, and prospective employers) (Exhibit 6).

3. A subpoena to Ms. Henry's current employer would be unduly harassing and intrusive, and alternative means for obtaining any relevant documents are available.

Ms. Henry has been employed in her new job for less than a year. She experienced months of unemployment and underemployment before obtaining this job. As a single parent

with two children, she wishes to preserve her job and has legitimate concerns that a subpoena to her current employer would cause problems. By serving a subpoena on her current employer, defendants will effectively advise her current employer that she is involved in a lawsuit against her former employer, that she may be a "troublemaker." As one district judge noted in a case raising the same issues, the plaintiff "has a legitimate concern that a subpoena sent to her current employer under the guise of a discovery request could be a tool for harassment and result in difficulties for her in her new job." *Graham*, 206 F.R.D. at 256.

Although other complaints and medical records might be relevant, less intrusive means for discovery exist. In fact, defendant has already obtained discovery of this information.

Charges or complaints of discrimination and harassment: In order to obtain this discovery, defendants "must present independent evidence that provides a reasonable basis ... to believe that [plaintiff] has filed complaints, grievances, lawsuits, or charges relating to" her current employment. *Graham*, 206 F.R.D. at 256. No such evidence exists. Ms. Henry testified at her deposition that she has made no charges or complaints of discrimination or harassment since Pepsi terminated her (other than this case).

Medical records: Defendants intend to seek medical records in the possession Ms. Henry's current employer. Defendants have already requested Ms. Henry's medical records for 1999 to the present.[3] Plaintiff obtained medical records from her doctors and produced them to defendants. Defendants should not be permitted to take the more intrusive step of fishing for medical records in her current employer's files. *See Graham*, 206 F.R.D. at 254 (granting motion to quash subpoena seeking medical records from current employer where such records

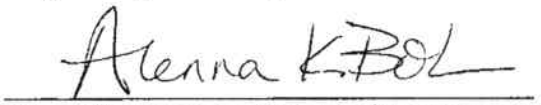
[3] Plaintiff Henry's counsel is presently attempting to resolve a dispute about medical records. On one page of the medical records she produced, plaintiff Henry redacted information relating to her sexual history that predated her employment with Pepsi by several years, on the grounds that it is irrelevant and inadmissible under Evidence Rule 412. However, plaintiff has not withheld any medical records in her possession relating to the time she has been employed by the Tribune.

were available by other means).

Conclusion

WHEREFORE, Plaintiff EEOC and Plaintiff-Intervenor Renaee Henry respectfully request that the Court issue a protective order prohibiting defendants from issuing a subpoena to the Chicago Tribune, and from otherwise contacting the Chicago Tribune, with respect to Renaeé Henry's employment.

Respectfully submitted,



One of the attorneys for Plaintiff-Intervenor
Renaeé Henry

Fern N. Trevino
Alenna K. Bolin
Law Offices of Fern Trevino
120 North LaSalle Street, Suite 1050
Chicago, Illinois 60602
Tel: (312) 630-4491
Fax: (312) 630-9281

CERTIFICATE OF SERVICE

I certify that on September 15, 2004, a copy of the foregoing was served on the following persons by facsimile transmission and U.S. Mail:

June Wallace Calhoun
John W. Hendrickson
Gregory M. Gochanour
Equal Employment Opportunity Commission
500 W. Madison Street, Suite 2800
Chicago, IL 60661

Jeffrey S. Torosian
Regina W. Calabro
Michael Best & Friedrich LLC
401 North Michigan Ave., Suite 1900
Chicago, IL 60611

Alenna K Bol

June Wallace Calhoun

One of the attorneys for Plaintiff EEOC

John W. Hendrickson
Gregory M. Gochanour
June Wallace Calhoun
Equal Employment Opportunity Commission
500 W. Madison Street, Suite 2800
Chicago, IL 60661

See Case File for Exhibits