

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

TERESA POWERS, : NO: 1:13-CV-00703  
 :  
 Plaintiff, :  
 :  
 v. : **OPINION AND ORDER**  
 :  
 OHIO DEPARTMENT OF :  
 TRANSPORTATION, :  
 :  
 Defendant. :

This matter is before the Court on Defendant's Partial Motion for Judgment on the Pleadings (doc. 3), Plaintiff's Response in Opposition and Motion to Amend Complaint (doc. 5), and Defendant's Reply (doc. 6). For the reasons indicated herein, the Court GRANTS Defendant's Motion as to Counts I and II, and DENIES Plaintiff's Motion to Amend.

Plaintiff has been an employee of Defendant Ohio Department of Transportation for nearly twenty-five years, and brings allegations that after she came under the supervision of Transportation Manager Chris Bateman, she was treated differently than male employees, and disciplined for taking intermittent leave (doc. 1). She brings a three-count Complaint, raising claims for Family and Medical Leave Act ("FMLA") interference, FMLA retaliation, and gender discrimination (*Id.*).

Defendant moves for judgment on the pleadings as to Plaintiff's FMLA claims, contending as a state agency it has Eleventh Amendment immunity (doc. 3, citing *Touvell v. Ohio*

Department of Mental Retardation and Developmental Disabilities, 422 F.3d 392 (6<sup>th</sup> Cir. 2005). Plaintiff responds, requesting the Court allow her to amend her Complaint to frame the FMLA claims as pendent "state" claims pursuant to 28 U.S.C. 1367(a) (doc. 5). Defendant replies that FMLA claims sound in federal law, not state law, and that in any event, Congress has not abrogated the Eleventh Amendment as to FMLA self-care claims, and Plaintiff must pursue such claims in the Ohio Court of Claims (doc. 6).

Having reviewed this matter, the Court finds Defendant's position correct. In the Sixth Circuit, it is clear that where the state has not waived its sovereign immunity, a plaintiff cannot bring FMLA self-care claims against the state in federal court. Touvell v. Ohio Department of Mental Retardation and Developmental Disabilities, 422 F.3d 392 (6<sup>th</sup> Cir. 2005). The Court cannot exercise supplemental jurisdiction over such claims, and an amendment of the Complaint to allow such jurisdiction would be futile. Accordingly, the Court GRANTS Defendant's Partial Motion for Judgment on the Pleadings (doc. 3), such that Plaintiff's FMLA claims are dismissed. Plaintiff may proceed in this Court with her Title VII gender-discrimination claims, for which Congress has shown a clear intent to abrogate Eleventh Amendment immunity. Fitzpatrick v. Bitzer, 427 U.S. 445, 449 n.2 (1976).

SO ORDERED.

Dated: 4/28/11

  
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S. Arthur Spiegel  
United States Senior District Judge