

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RONALD FITHEN, *et al.*,

Plaintiffs,

vs.

Civil Action 2:09-CV-777
Judge Watson
Magistrate Judge King

CITY OF GAHANNA, OHIO,
et al.,

Defendants.

OPINION AND ORDER

Plaintiff Ronald Fithen asserts various claims under federal and state law, including the FMLA, 29 U.S.C. §2601 *et seq.* This matter is now before the Court on plaintiffs' motion for leave to amend the complaint to join as an additional defendant Kristin Treadway, identified as the human resources director for the Gahanna Police Department. Doc. Nos. 5, 10.

Plaintiffs' motion is governed by Rule 15(a) of Federal Rules of Civil Procedure, which provides that "[t]he court should freely give leave [to amend] when justice so requires." F.R. Civ. P. 15(a)(2). The grant or denial of a request to amend a complaint is left to the broad discretion of the trial court. *General Elec. Co. v. Sargent & Lundy*, 915 F.2d 1119, 1130 (6th Cir. 1990). In exercising its discretion, the trial court may consider such factors as "undue delay, bad faith or dilatory motive on the part of a movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment [and] futility of the amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

In objecting to the proposed amendment, defendants argue that

the proposed amended complaint fails to assert a claim against Kristin Treadway. In reply, however, plaintiffs point out that, as the Director of Human Resources for the defendant city, the proposed new party defendant may be subject to individual liability on plaintiff's claim under the FMLA. See *Mitchell v. Chapman*, 343 F.3d 811, 827 (6th Cir. 2003)(recognizing the great weight of authority that the FMLA imposes individual liability on private-sector employers).

Under these circumstances, plaintiffs' motion to amend the complaint to assert a claim against a new party defendant, Doc. No. 5, 10, is **GRANTED**. Plaintiff shall promptly effect service of process on the newly-joined defendant.

October 26, 2009

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge