

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

DOMINIQUE S. ELLIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-17-58-M
	)	
REGENTS FOR THE OKLAHOMA	)	
STATE UNIVERSITY AND	)	
AGRICULTURAL AND	)	
MECHANICAL COLLEGES,	)	
	)	
Defendant.	)	

**ORDER**

Before the Court is defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim upon Which Relief Can Be Granted, filed February 14, 2017. On March 24, 2017, plaintiff, who is proceeding *pro se*, filed his response, and on March 30, 2017, defendant filed its reply.

Plaintiff is a former employee of Northeastern Oklahoma A&M College. On January 19, 2017, plaintiff brought the instant action alleging that defendant has violated the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (“FLSA”) and the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001, et seq. (“PPACA”). Defendant now moves to dismiss plaintiff’s Complaint due to lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Defendant asserts that plaintiff’s FLSA claims are barred due to defendant’s sovereign immunity. Suits brought against a state or its entities for wage and overtime claims under the FLSA are barred by Eleventh Amendment sovereign immunity. *See Aaron v. State of Kan.*, 115 F.3d 813 (10th Cir. 1997). Since defendant is an entity of the State of Oklahoma, the Court finds

that plaintiff's FLSA claims for wage and overtime claims are barred by the Eleventh Amendment and should be dismissed.

Defendant further asserts that plaintiff's PPACA claim should be dismissed because the PPACA does not provide for a private right of action under the circumstances plaintiff has alleged. In addressing the creation/existence of private rights of action, the United States Supreme Court has stated:


Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy. Statutory intent on this latter point is determinative. Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute. Raising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals.

*Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) (internal quotations and citations omitted).

Having reviewed the parties' submissions, the PPACA, and the limited case law on this issue, the Court finds that there is no private right of action under the PPACA for the type of claim asserted by plaintiff in his Complaint. The Court would note that with the exception of cases involving plaintiffs specifically alleging discrimination, which plaintiff does not allege in this case, courts have generally found no private right of action exists for claims brought under the PPACA. *See, e.g., Mills v. Bluecross Blueshield of Tenn., Inc.*, No. 3:15-CV-552-PLR-HBG, 2017 WL 78488, slip. op. (E.D. Tenn. Jan. 9, 2017); *Dominion Pathology Labs., P.C. v. Anthem Health Plans of Va., Inc.*, 111 F. Supp. 3d 731 (E.D. Va. 2015). The Court, therefore, finds that plaintiff's PPACA claim should be dismissed.

Accordingly, for the reasons set forth above, the Court GRANTS defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim upon Which Relief Can Be Granted [docket nos. 5 and 6] and DISMISSES this action.

**IT IS SO ORDERED this 5th day of April, 2017.**

  
VICKI MILES-LaGRANGE  
UNITED STATES DISTRICT JUDGE