IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICK ROLISON, **Plaintiff,** **v.** **THE EDGEWOOD COMPANY, INC.,** **Defendant.**	**CIVIL ACTION** **NO. 23-3909**

MEMORANDUM OPINION

Plaintiff Nick Rolison is suing his former employer, The Edgewood Company, Inc. ("Edgewood"), stemming from the company's actions after Rolison suffered a work-related injury. He specifically brings an interference and retaliation claim under the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, as well as claim that "Defendant unlawfully violated the public policy exception to Pennsylvania's common law tradition of at-will employment by unlawfully terminating Plaintiff's employment in retaliation for Plaintiff's decision to avail himself of the benefits of the Pennsylvania Workers' Compensation [Act]." ("WCA")

Before the Court is Edgewood's Motion, brought under Federal Rule of Civil Procedure 12(b)(6), to Dismiss the Amended Complaint. For the reasons set forth below, Edgewood's Motion shall be denied.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Rolison was working as a Laborer/Equipment Operator when, in lifting a retaining wall, he heard a pop in his back and then felt a sharp pain. He reported this work injury to Edgewood immediately and, given that he had difficulty lifting and reaching overhead, immediately went out on a leave of absence. A few days later, he was treated at a hospital and advised to be on light duty for the foreseeable future.

From the day he went out on leave of absence he "remained in constant contact" with his foreman about an anticipated return to work. Within a couple of weeks, he spoke with John Fry, Edgewood's co-owner, and requested that Edgewood open a workers' compensation claim. Fry responded: "okay, we'll get started."

A little more than a month later, Rolison received a Notice of Workers' Compensation Denial informing him that his claim was denied because he was no longer employed by Edgewood. This is how Rolison learned of his work termination. Although he still does not know the exact date on which he was terminated, Rolison understands that he was terminated for a "no call, no show."

II. LEGAL STANDARDS

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* When analyzing a motion to dismiss, the complaint must be construed "in the light most favorable to the plaintiff," with the question being "whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). Legal conclusions are disregarded, well-pleaded facts are taken as true, and a determination is made as to whether those facts state a "plausible claim for relief." *Id.* at 210-11. Here, as set forth below, the Amended Complaint contains sufficient factual matter to plausibly support Plaintiff's claims.

III. DISCUSSION

A. FMLA Interference and Retaliation Claim

An FMLA interference claim requires that the plaintiff establish that: (1) he or she was an eligible employee; (2) the employer was subject to the FMLA's requirements; (3) the plaintiff was entitled to leave under the FMLA; (4) the plaintiff notified the defendant of his or her intent to take FMLA leave; and, (5) the employer denied FMLA benefits to which he or she was entitled. *Ross v. Gilhuly*, 755 F.3d 185, 191-92 (3d Cir. 2014). "Where, as here, the employee claims that FMLA interference occurred based upon the employer's failure to inform him of his ability to take FMLA leave, the employee must show resulting prejudice." *Burbach v. Arconic Corp.*, 561 F. Supp.3d 508, 517 (W.D. Pa. 2021) (citing *Conoshenti v. Pub. Serv. Elec. & Gas. Co.*, 364 F.3d 135, 143 (3d Cir. 2004)). "Prejudice occurs when the employer's failure to advise the plaintiff of her FMLA rights 'rendered h[er] unable to exercise [the right to leave] in a meaningful way, thereby causing injury." *Lupyan v. Corinthian Colls. Inc.*, 761 F.3d 314, 318-19 (3d Cir. 2014) (alterations in original) (quoting *Conoshenti*, 364 F.3d at 143). If the plaintiff would have structured her leave in a different manner had she known of her ability to take FMLA leave, she has shown prejudice. *Burbach*, 561 F. Supp.3d at 517 (citing *Conoshenti*, 364 F.3d at 142-43).

To invoke rights under the FMLA an employee must provide adequate notice to the employer of the need to take leave. *Lichtenstein v. Univ. of Pittsburgh Med. Ctr.*, 691 F.3d 294, 303 (3d Cir. 2012) (citing 29 U.S.C. § 2612(e)(2)). "When the leave is unforeseeable, the employee's obligation is to 'provide sufficient information for an employer to reasonably determine whether the FMLA *may* apply to the leave request.'" *Id.* (quoting 29 C.F.R. § 825.303(b)). "[T]his is not a formalistic or stringent standard." *Id.*

Edgewood first argues that Rolison's Amended Complaint does not satisfy the fourth prong in that Rolison did not notify Edgewood of his intent to take FMLA leave because he did not make his employer aware of a serious health condition. However, the allegations of the Amended Complaint plausibly state otherwise: Rolison avers that he suffered an injury while at work that resulted in sharp pain and that he then immediately reported this injury to Edgewood. He then remained in constant contact with his foreman about an anticipated return date. Not only that, he also requested that Edgewood open a workers' compensation claim when he spoke with Edgewood's co-owner.

Edgewood next argues that Rolison does not meet the fifth prong for an FMLA interference claim because he does not sufficiently plead a causal and/or temporal link between his work injury and his termination. This argument, however, is inapposite because the fifth prong of an FMLA interference claim focuses on the plaintiff "show[ing] that FMLA benefits were actually withheld," not on a temporal link. *See Ross*, 755 F.3d at 192 (citing *Callison v. City of Philadelphia*, 430 F.3d 117, 117 (3d Cir. 2005)). As for causation, Rolison has pled that he was qualified for leave under the FMLA, that Edgewood knew of his injury, and that Edgewood did not provide him such leave. Further, his allegations plausibly suggest prejudice in that he was terminated without being informed of his FMLA rights. Thus, his FMLA interference claim proceeds.[1]

[1] To the extent that Edgewood's argument pertains to Rolison's FMLA retaliation claim, it also fails. Rolison avers that he suffered his work injury on April 20, 2023; that he spoke again about the injury on May 2, 2023; and that he discovered his employment termination on June 7, 2023. Given these facts, Edgewood would have been aware of Rolison's serious health issue and thus known to alert him of his ability to take FMLA leave on May 2, 2023 when he requested that Edgewood file a workers' compensation claim. This occurred approximately one month before Rolison's employment termination, a short enough time to demonstrate linkage between Edgewood's knowledge of Rolison's need for FMLA leave and his termination. Rolison's termination was likely even earlier than June 7, 2023, because that is the date where he *learned* of his termination, not when his employment actually *was* terminated. At bottom, Rolison sufficiently pleads a causal link between his entitlement to FMLA benefits and his termination.

An FMLA retaliation claim requires that the plaintiff show: (1) he or she invoked the right to FMLA-qualifying leave; (2) he or she suffered an adverse employment decision; and, (3) the adverse decision was causally connected to his or her invocation of rights. *Laguna v. Chester Hous. Auth.*, 616 F. Supp.3d 462, 471 (E.D. Pa. 2022) (quoting *Lichtenstein*, 691 F.3d at 301-02). Edgewood argues that Rolison does not satisfy the first prong because he did not engage in any protected activity. As demonstrated above, however, Rolison engaged in a protected activity when he allegedly suffered an injury at work and then immediately notified Edgewood of the injury, remained in constant contact with his foreman, and requested Fry that the company make a workers' compensation claim. Thus, the FMLA retaliation claim also proceeds.

B. Wrongful Termination Claim Under Pennsylvania Common Law

Under Pennsylvania law, an employer may generally dismiss an employee for any reason unless restrained by contract. *Shick v. Shirey*, 716 A.2d 1231, 1233 (Pa. 1998) (quoting *Henry v. Pittsburgh & Lake Erie R.R. Co.*, 21 A. 157, 157 (1891)). Such power is not absolute and "may be qualified by the dictates of public policy." *Id.* Relevant here, "a cause of action exists under Pennsylvania law for wrongful discharge of an employee who files a claim for workers' compensation benefits." *Id.* at 1238.

Here, Edgewood argues that the Amended Complaint "is devoid of any factual allegations that Edgewood terminated Rolison in direct retaliation for availing himself of any of the benefits provide[d] to him under the Pennsylvania Workers' Compensation Act." *Id.*at 12-13. But that is not so. Although Rolison does not know the specific date of his employment termination because he did not find out that he had been fired until he received a "Notice of Workers' Compensation Denial" on June 7, 2023, it is plausible that Edgewood terminated his employment for seeking workers' compensation given the allegations that: (1) Edgewood was

alerted to Rolison's injury in late April; (2) Rolison asked Fry to open a workers' compensation claim; (3) Fry told Rolison that the company would "get started" on a workers' compensation claim in May; and, (4) the company must have terminated his employment within approximately one month of that statement when Rolison learned of his termination on June 7.

"[A] cause of action exists under Pennsylvania law for wrongful discharge of an employee who files a claim for workers' compensation benefits *with an employer* but has not filed a claim petition with the [Workers' Compensation] Bureau." *Owens v. Lehigh Valley Hosp.*, 103 A.3d 859, 869 (Pa. Commw. 2014) (emphasis added). Rolison was not merely contemplating whether to file a workers' compensation claim or casually discussing it. Rather, he specifically told his employer's co-owner that he wanted Edgewood to file a workers' compensation claim on his behalf to which the co-owner said "okay, we'll get started."

The court's analysis in *Smith v. R.R. Donnelly & Sons Co.*, 2011 WL 4346340, (E.D. Pa. Sept. 16, 2011), is instructive. In *Smith*, the court analyzed state and federal cases to determine whether the plaintiff in that case had engaged in protected activity under the WCA. *Id.* at *3-*5. The court concluded that "federal courts in Pennsylvania have oft predicted that the Pennsylvania Supreme Court, in furthering the public policy underlying the WCA, would extend the protection of the Act to injured employees who have expressed their intent to pursue workers compensation claims." *Id.* at *6. It went on to state:

> it is the reporting of the work-related injury in conjunction with the employee's expression of intent to file a workers['] compensation claim that is enough to trigger the protection afforded by the [WCA]. This stands to reason because, without question, the internal reporting of a workplace injury to the employer is the first step in pursuing a workers' compensation remedy.

Id. To find otherwise would lead to an employer having "a window to escape liability by beating an injured employee to the punch" where the employer "who had been notified that an employee

has been injured on the job and knows of the injured employee's intent to file a workers[']compensation claim . . . may terminate the injured employee before that employee reasonably has the opportunity" to actually file a claim. *Id.*

The same reasoning applies here. Although Rolison did not learn of his employment being terminated until June 7, 2023, and did not file a claim with the Bureau of Workers' Compensation until June 1, 2023, he specifically asked his employer to file a workers' compensation claim on May 2, 2023. It is plausible that Edgewood then terminated Rolison's employment for making that request. Dismissing Rolison's claim here could encourage Edgewood, or any company, to terminate an employee any time he or she notified the company of an intent to file a workers' compensation claim and thus avoid liability. Such an outcome would frustrate the very purpose of Pennsylvania's public policy to prevent the "wrongful discharge of an employee who files a claim for workers' compensation benefits." *See Shick*, 716 A.2d at 1238. Thus, Count II of the Amended Complaint also proceeds to discovery.

An appropriate order follows.

BY THE COURT:

/s/Wendy Beetlestone, J.

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WENDY BEETLESTONE, J.