

representative, a letter complaining about racial discrimination. Three days later, she says that she heard Osborne tell another employee that Osborne wanted the same thing as her supervisor: Nelson unemployed by the company. She says that this made her “believe that this meant Ms. Osborne didn’t want me employed with [Napa].” She did not return to work. She does not say when she was officially terminated by Napa. On September 29, Nelson says she was sent home pending an investigation into her complaints.

On October 2, 2014, she filed a complaint with the Equal Employment Opportunity Commission. On April 2, 2015, the Commission told her that it was ending its case and she had ninety days to bring a lawsuit against Napa. On August 3, 2015, she sued Napa for (a) race discrimination in violation of 42 U.S.C. 1981 and Title VII, and (b) because it fired her for filing a workers’ compensation claim.

3. *Title VII*

For claims of discrimination under Title VII, Nelson is required to sue Napa within ninety days of receiving her right-to-sue letter from the Commission. Although she did not attach it to her complaints, the court recognizes the letter attached to the motion to dismiss of Napa as a copy of the public document sent by the Commission. She filed this lawsuit 123 days after the Commission issued her the letter – 33 days after the deadline to file. Her Title VII claims are precluded by statute.

This claim will be dismissed with prejudice.

4. *Workers’ Compensation Claim*

To state a claim for retaliation under the Texas Workers’ Compensation Act Nelson has plausibly to show (a) she was participating in a protected activity; (b) she suffered an adverse employment action; and (c) that the two are causally connected.

She has not pleaded that she was constructively terminated.

Rather than giving a factual basis for her claims, her amended complaint consists of a frayed string of unsubstantiated conclusions and recitations of the law. She has not established when she filed her workers’ compensation claim, when or why she was officially terminated, or a reasonable connection between them. She also does not identify a comparable employee that was treated differently than she was. Taking her at her word, Nelson says she chose to stop showing up for work because of speculative, chit-chat; her choice is not attributable to Napa.

This claim will be dismissed with prejudice.

5. *Equal Rights Act*

To state a claim under federal civil rights statutes guaranteeing equal rights under the law, Nelson has to plausibly show that she (a) is member of a protected class; (b) is qualified for the position; (c) was subject to an adverse employment action; and (d) was treated differently than others outside her class who were similarly situated.

Nelson is non-hispanic Caucasian. If the amended complaint is generously read, she says that Napa treated her differently than Hispanic employees twice. First, when it sent her home from work for wearing shorts that were too revealing, and, second, when it did not assign her to light-duty work. She does not provide reasonable facts that explain how she was treated differently than others because of her non-hispanic status nor does she identify the Hispanic employees that were treated better than she was.

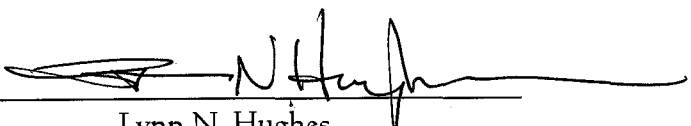
Even if she could show that some Hispanic employees were not sent home for wearing equally-short shorts or were assigned to light-duty work, she still would not describe a claim entitled to relief. Federal civil right statutes were not intended to be used as a means to analyze every decision made by an employer; that statutes were meant to prevent employers from discriminating by race during meaningful employment actions – hiring, firing, promoting, or paying. She has not established that she was terminated, not promoted, or underpaid by Napa because of her class. Reprimands, snide comments, hurt feelings, or suppositions about what one supervisor might have been thinking do not constitute an adverse employment action.

This claim will be dismissed with prejudice.

6. *Conclusion*

Because some of Nelson's claims are precluded by statute and the rest are not substantiated by specific facts that establish she could plausibly be entitled to relief, her claims will be dismissed with prejudice.

Signed on December 1, 2015, at Houston, Texas.



Lynn N. Hughes
United States District Judge