

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DARLENE MARIE ARCHIBALD,

Plaintiff,

v.

ASPIRUS, INC.,
ASPIRUS VNA HOME HEALTH, INC.,
ASPIRUS VNA EXTENDED CARE, INC.,
LINDA HACKBARTH, SARAH GOETSCH,
BARBARA MOSKONAS AUSTIN and
KARLA HUBER,

Defendants.

ORDER

10-cv-558-bbc

In this civil action for monetary and injunctive relief, plaintiff Darlene Marie Archibald asserts several federal and state law claims against defendants relating to her employment with defendants Aspirus VNA Home Health, Inc. and Aspirus VNA Extended Care, Inc. On December 3, 2010, defendants filed a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), dkt. #8. On December 21, 2010, plaintiff filed a motion for leave to amend her complaint, dkt. #14. Under Fed. R. Civ. P. 15(a)(1)(B), plaintiff may amend her pleadings once as a matter of course if she does so within the time limits set forth in the

rule. Because plaintiff filed her amended complaint within 21 days after service of defendants' Rule 12(b)(6) motion, she does not need leave of court to amend her complaint. However, plaintiff should re-file her amended complaint as one document that includes all of her allegations, rather than simply set forth the paragraphs she wishes to add to her original complaint. A party reviewing the amended complaint should not have to refer back to the original to get a full picture of her claim.

In light of plaintiff's amended complaint, defendants' motion to dismiss is moot. National Pork Producers Council v. Jackson, 2009 WL 1255557, *1 (W.D. Wis. May 1, 2009) ("Because plaintiffs' amended complaint is now the operative pleading, the motion to dismiss plaintiffs' original complaint is now moot."). If defendants believe plaintiff's amended complaint is deficient, they are free to file a new motion to dismiss.

ORDER

IT IS ORDERED that

1. Plaintiff Darlene Marie Archibald's motion for leave to amend her complaint, dkt. #14, is GRANTED. Plaintiff has until January 17, 2011 in which to file and serve a document that includes all of the claims and allegations she is asserted in her amended complaint.

2. The motion to dismiss filed by defendants Aspirus, Inc., Aspirus VNA Home

Health, Inc., Aspirus VNA Extended Care, Inc., Linda Hackbarth, Sarah Goetsch, Barbara Moskonas Austin and Karla Huber, dkt. #8, is DENIED as moot.

Entered this 6th day of January, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge