

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

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AMY L. GABEL,

Plaintiff,

v.

MILLERCOORS, MIKE LOZANO,  
RORY PETERS, CHRIS LETO, and  
ERIC TILLMAN,

Defendants.

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OPINION & ORDER

14-cv-489-jdp

Pro se plaintiff Amy Gabel filed a proposed complaint under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* She alleged that defendant MillerCoors was retaliating against her for filing a lawsuit against the company in 2011. The court granted plaintiff leave to proceed without prepayment of her filing fees, Dkt. 3, and I screened her complaint, Dkt. 4. I noted that plaintiff had not alleged any employment relationship with MillerCoors, nor had she adequately described the adverse actions that the company took against her. I therefore dismissed plaintiff's complaint in its entirety for failure to comply with Federal Rule of Civil Procedure 8, but I afforded plaintiff an opportunity to amend her complaint to provide a short and plain statement of a claim for retaliation.

Plaintiff has now filed an amended complaint. Dkt. 7. I must again screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915. In screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After reviewing the amended complaint with this principle in mind, I conclude that plaintiff has provided a short and plain statement of a claim for retaliation against defendants

MillerCoors, Mike Lozano, Rory Peters, Chris Leto, and Eric Tillman. I will therefore grant plaintiff leave to proceed on these claims.

#### ALLEGATIONS OF FACT

Plaintiff's amended complaint is a narrative letter in which she describes several wrongs she has suffered. The document does not contain numbered paragraphs (indeed, the entire document is one unbroken paragraph), identify any defendants besides MillerCoors, or request any relief—all of which are required by the Federal Rules of Civil Procedure. Plaintiff's initial complaint, however, contains these elements and so I will consider the two documents together as the "complaint" in this case. In her complaint, plaintiff alleges the following facts.

Plaintiff was employed by MillerCoors. While she was with the company, plaintiff was the victim of sexual harassment. She complained to her supervisors and eventually filed a charge with the "Equal Rights Division." Sometime later, plaintiff was fired. Her charge led to a lawsuit against MillerCoors for sex discrimination and for retaliatory unlawful termination, but plaintiff settled the case on advice from her attorney. Plaintiff now alleges that since the case settled, MillerCoors and her supervisors<sup>1</sup> have "pursued a psychological mode of harm by informing everyone they knew that [plaintiff] was crazy and that [she] would sue them too." Dkt. 7, at 1.

Plaintiff devotes most of her complaint to recounting various affronts she has received since leaving MillerCoors. Some of the incidents relate to difficulties she had with later employers and prospective employers. Plaintiff alleges, for example, that she was teased at a job

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<sup>1</sup> Plaintiff's amended complaint only discusses defendant Lozano in passing and does not allege unlawful conduct by any of the other named defendants. She does, however, refer to "supervisors" throughout her complaint. In plaintiff's initial complaint, she identified defendants Lozano, Peters, Leto, and Tillman as her "managers/supervisors," and thus I construe the term "supervisors" in plaintiff's amended complaint to refer to these defendants.

interview because she has Crohn's disease—information that, according to plaintiff, could only have come from MillerCoors—and at a later job, was treated differently once her employer heard rumors about plaintiff's time at MillerCoors. Plaintiff also alleges that supervisors at MillerCoors warned contractors and other industry professionals not to hire her because she would undoubtedly sue them for discrimination. Plaintiff states that, since her lawsuit, MillerCoors has refused to give her even a neutral reference and that this has severely limited her ability to find employment.

Many of plaintiff's allegations, however, are unrelated to MillerCoors's conduct. Plaintiff summarizes a series of pranks others have played on her, including harassment from neighbors, loud cars driving past her house, and jokes about her leaving Christmas decorations up for too long. Plaintiff also alleges that the Janesville police department has been less responsive to her complaints since she sued MillerCoors. Although plaintiff suggests that these pranks were performed by "friends" of MillerCoors as part of a large conspiracy to engage in psychological warfare against her, plaintiff offers little in the way of information as to how MillerCoors is coordinating and directing such an effort.

Finally, plaintiff describes a series of incidents that appear to have occurred while she was still working at MillerCoors. She hints at: (1) an "ammonia attack" where her former co-workers rigged an ammonia system at work and then blamed her for its malfunctioning; (2) overuse of the color blue as an apparent joke about her Crohn's disease; and (3) other harassing conduct. Plaintiff does not explain, however, whether these events were the subject of her initial suit against MillerCoors or whether they were in retaliation for the suit she filed against the company. But given that they occurred while she still worked at MillerCoors, the former seems more likely. Plaintiff concludes her complaint by noting that she cannot prove everything

MillerCoors has done to her, but that she can prove that the company is actively preventing her from getting a job because of her lawsuit and her gender.

#### ANALYSIS

Under Rule 8, a plaintiff must present “a short and plain statement of the claim showing that [she] is entitled to relief.” The purpose of the requirement is “to provide the defendant with ‘fair notice’ of the claim and its basis.” *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). Here, I understand plaintiff to assert claims against defendants for violations of Title VII. Plaintiff appears to allege that MillerCoors is passing disparaging information about her to prospective employers in retaliation for a lawsuit she filed against MillerCoors in 2011. Although much of the factual material in her complaint does not appear to be relevant, plaintiff has provided a short and plain statement of a claim for retaliation.

Title VII’s retaliation provision makes it unlawful for an employer to discriminate against an employee or applicant for employment “because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a). “To plead a retaliation claim under Title VII, a plaintiff must allege that she engaged in statutorily protected activity and was subjected to adverse employment action as a result of that activity, though she need not use those terms, of course.” *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1029 (7th Cir. 2013). Here, plaintiff’s complaint alleges that she worked for MillerCoors and ultimately sued the company for violations of Title VII. After that case settled, plaintiff alleges that MillerCoors retaliated against her by blacklisting her with potential employers.

The Seventh Circuit has given a broad reach to Title VII's retaliation provision, concluding "that former employees, in so far as they are complaining of retaliation that impinges on their future employment prospects or otherwise has a nexus to employment, do have the right to sue their former employers." *Veprinsky v. Fluor Daniel, Inc.*, 87 F.3d 881, 891 (7th Cir. 1996). Construing plaintiff's complaint liberally, her allegations plausibly describe retaliatory conduct by MillerCoors. Plaintiff states that her supervisors warned other employers that she "was crazy" and would sue them. She further alleges that her supervisors advised other companies not to hire her. Plaintiff's complaint also suggests that MillerCoors passed embarrassing information about her to potential employers for the sole purpose of embarrassing her and hindering her chances of finding a job. Many of plaintiff's factual allegations (*e.g.*, the pranks by neighbors, the jokes about Christmas decorations, the delayed responses from police officers) do not have a nexus to employment and therefore do not rise to the level of actionable conduct under Title VII. But even stripping these facts away, plaintiff has still provided a short and plain statement of a claim for retaliation. I will therefore allow her to proceed on her allegations involving defendants passing disparaging information about her to prospective employers and refusing to give her a neutral reference (to the extent that MillerCoors promised to do so as part of its settlement agreement in plaintiff's 2011 lawsuit).

I will not, however, permit plaintiff to proceed on claims involving allegations of pranks and other poor treatment that occurred outside the context of plaintiff's employment. She may not, for example, base a retaliation claim on her neighbors' rude remarks or behavior or on allegations of unsatisfactory responses from police officers. Nor will I permit plaintiff to proceed on claims that involve conduct that occurred while plaintiff was still employed with MillerCoors. Plaintiff affirmatively alleges that this case is about MillerCoors retaliating against her for a lawsuit she filed in 2011; a lawsuit that, according to plaintiff, addressed workplace harassment

and sex discrimination. Plaintiff confirms that the first lawsuit settled, and she cannot now seek to revive those allegations to form the basis of a second suit against MillerCoors.

As I have already informed plaintiff, Title VII includes various procedural requirements that she must satisfy before filing a lawsuit in federal court. One important requirement is that a person may not bring a discrimination claim until she has received a “right to sue” letter from the Equal Employment Opportunity Commission. 42 U.S.C. § 2000e-5(f). After receiving that letter, a person would have 90 days to file a lawsuit. *Prince v. Stewart*, 580 F.3d 571, 574 (7th Cir. 2009); *see also* 42 U.S.C. § 2000e-5(e)(1) (establishing time limits within which to file a charge of discrimination with the EEOC). It is doubtful that the charge plaintiff filed with the Equal Rights Division satisfies this requirement because that complaint was for sexual harassment and unlawful termination. In contrast, this suit alleges that MillerCoors retaliated against plaintiff for filing *that very charge*. Ultimately, MillerCoors would have the burden to prove that plaintiff failed to satisfy the prerequisites for a Title VII suit, and so I will not deny plaintiff leave to proceed on this basis.

## ORDER

IT IS ORDERED that:

1. Plaintiff Amy Gabel is GRANTED leave to proceed on her Title VII claims against defendants MillerCoors, Lozano, Peters, Leto, and Tillman for retaliating against her because of her 2011 lawsuit by passing disparaging information about her to prospective employers.
2. Plaintiff is DENIED leave to proceed on other, unrelated allegations, as discussed above.
3. The court will send copies of plaintiff’s complaint and this order to the United States Marshal for service on defendants.
4. For the time being, plaintiff must send defendants a copy of every paper or document that she files with the court. Once plaintiff learns the name of the lawyer who will be

representing defendants, she should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that she has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for her own files. If she is unable to use a photocopy machine, she may send out identical handwritten or typed copies of her documents.
6. Plaintiff is obligated to pay the \$350 filing fee for this case.

Entered this 18th day of November, 2014.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge