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

JUNE E. ROUNDS-RHEAUME,

Plaintiff,

v.

UNIVERSITY OF WISCONSIN
STATE LABORATORY OF HYGIENE,
ATTORNEY JOHN C. DOWLING,
ATTORNEY BRIAN D. VAUGHAN,
PERSONNEL DIRECTOR SANDRA K. PRISBE,
PERSONNEL DIRECTOR CYNDA DEMONTIGNY,
SUPERVISOR BARB WOEHRL,

Defendants.

OPINION & ORDER

16-cv-146-jdp

Pro se plaintiff June Rounds-Rheaume has filed a proposed complaint against her former employer, defendant University of Wisconsin State Laboratory of Hygiene (the Lab), and against other current or former employees of the Lab. Plaintiff alleges that defendants retaliated against her after she complained about discrimination and corruption. The court granted plaintiff leave to proceed without prepaying her filing fees. Dkt. 3.

The next step in this case is for me to screen plaintiff's 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, I must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). After reviewing the complaint with this principle in mind, I conclude that plaintiff has stated a claim against the Lab for retaliation, in violation of Title VII of the Civil Rights Act of 1964. I also conclude that plaintiff has stated claims against the individual defendants

for retaliation, in violation of the First Amendment. I will therefore grant plaintiff leave to proceed against all defendants.

ALLEGATIONS OF FACT

Plaintiff is a citizen of Florida, and she worked for the Lab from 1978 to 2004. Defendants John Dowling, Brian Vaughan, Sandra Prisbe, Cynda Demontigny, and Barb Woehrl, are all current or former employees of the Lab. The complaint suggests that the Lab is part of the University of Wisconsin, and so I infer that the individual defendants are (or were) public employees.

In 2004, while plaintiff was still working for the Lab, she filed a written grievance with her union. Plaintiff does not provide details about what motivated her to file the grievance, although she alleges that she asked defendants Prisbe and Woehrl "for a non-hostile, non-discriminatory work place." Dkt. 1, at 3.[1] In retaliation for filing the grievance, Prisbe and Woehrl issued plaintiff a suspension without pay "based on falsified performance statements of [plaintiff's] work duties, and character." *Id.* Plaintiff quit her job later that year.

In 2007, plaintiff filed a charge of retaliation with the Wisconsin Department of Workforce Development—Equal Rights Division (ERD) and with the federal Equal Employment Opportunity Commission (EEOC). The charge related to the retaliation that plaintiff had experienced in 2004. Plaintiff dropped her charge because she "believed obstruction of justice could be involved." *Id.*

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[1] In different parts of her complaint, plaintiff alleges that she had complained about "two younger male employees," Dkt. 1, at 3, and that she had complained about "crimes and corruption at the" Lab, *id.* at 2.

Over the years that followed, the Lab continued to retaliate against plaintiff. Specifically, the Lab did not provide an accurate description of plaintiff's position, experience, or character to plaintiff's prospective employers. When plaintiff complained to the Lab and to the chancellor of the university, defendants Dowling, Vaughan, and Demontigny failed to investigate the issue. Plaintiff eventually stopped interviewing for work because she could not accurately describe the duties of her position with the Lab to prospective employers without getting into the conflict that led her to leave her job.

At some point (it is not clear when), plaintiff filed another charge with the ERD and with the EEOC. She alleged that defendants were continuing to retaliate against her by refusing to help her with the inaccurate description of her former position. The case progressed far enough that an administrative law judge recommended that the Lab correct plaintiff's position description, which it did in October 2015. Plaintiff received a "reference letter" from the Lab with an accurate description of her job duties, and she now alleges that the Lab should have provided this description when she filed her initial complaint. *Id.*

Plaintiff filed this suit on March 8, 2016, and she attached correspondence from the EEOC to her complaint. Dkt. 1-1. The notice from the EEOC indicates that the agency closed plaintiff's case because she had waited too long to file a charge. In the body of plaintiff's complaint, she alleges that her charge was timely and that it described ongoing discrimination and retaliation.

ANALYSIS

Under Federal Rule of Civil Procedure 8, 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, plaintiff alleges that defendants have retaliated against her by failing to provide an accurate description of her position with the Lab, which has prevented plaintiff from finding other employment. Based on these allegations, I understand plaintiff to be asserting retaliation claims against the Lab under Title VII and against the individual defendants under the First Amendment.

Title VII's retaliation provision makes it unlawful for an employer to discriminate against an employee "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).

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). Here, plaintiff alleges that she worked for the Lab, submitted a grievance to her union to address discrimination in the workplace, and then experienced several adverse employment actions. After plaintiff filed a charge of discrimination to address these adverse actions, her employer retaliated against her by providing an inaccurate description of plaintiff's position, work performance, and character. Construing plaintiff's complaint

liberally and accepting her allegations as true for purposes of screening it, I conclude that she has provided a short and plain statement of a claim for retaliation. I will permit plaintiff to proceed against the Lab with this claim.

Although plaintiff has adequately pleaded a Title VII claim against the Lab, she cannot sue defendants Dowling, Vaughan, Prisbe, Demontigny, or Woehrl under Title VII. "Title VII authorizes suit *only* against the employer. Individual people who are agents of the employer cannot be sued as employers under Title VII." *Passananti v. Cook County*, 689 F.3d 655, 662 n.4 (7th Cir. 2012) (original emphasis). This means that even though the individual defendants whom plaintiff identifies in her complaint participated in retaliatory conduct, they cannot be held liable under Title VII.

But plaintiff has adequately alleged other retaliation claims against the individual defendants. Because they are state actors, plaintiff can bring claims against them under 42 U.S.C. § 1983 for violating her constitutional rights. To state a claim for unlawful retaliation in violation of the First Amendment, plaintiff must allege that: "(1) she engaged in constitutionally protected speech; (2) she suffered a deprivation likely to deter her from exercising her First Amendment rights; and (3) her speech was a motivating factor in her employer's adverse action." *Valentino v. Village of South Chicago Heights*, 575 F.3d 664, 670 (7th Cir. 2009). To qualify for constitutional protection, plaintiff's speech must have been in her capacity as a private citizen and on a matter of public concern. *Id.* at 671. "Generally, speech relating to only the effect an employer's action has on the speaker is not shielded by the First Amendment, since it rarely involves a matter of public concern." *Wallscetti v. Fox*, 258 F.3d 662, 667 (7th Cir. 2001). Thus, plaintiff's complaints of harassment may not qualify as protected speech (at this point, I cannot definitively conclude one way or another

because plaintiff has not alleged what specifically she complained about). But if plaintiff was in fact alerting her employer to "crimes and possible corruption," Dkt. 1, at 2, then this speech could qualify for constitutional protection because it was on a matter of public concern. *See Schad v. Jones*, 415 F.3d 671, 675 (7th Cir. 2005) ("[O]ur cases have consistently held that speech alleging government corruption and malfeasance is of public concern in its substance." (citations and internal quotation marks omitted)). Accepting plaintiff's allegations as true, and drawing all reasonable inferences in her favor for purposes of screening the complaint, I conclude that she has alleged First Amendment retaliation claims against defendants Dowling, Vaughan, Prisbe, Demontigny, and Woehrl.

I will address one final issue in closing: timeliness. Before filing suit under Title VII, a plaintiff must file a charge with the EEOC within 300 days after the complained-of conduct occurs. 42 U.S.C. § 2000e-5; *see also Whitehead v. Jayson Reynolds Woodline MFG, Inc.*, No. 13-cv-490, 2015 WL 3825491, at *2 (W.D. Wis. June 19, 2015) (reviewing Title VII's exhaustion requirements). "A charge filed beyond the 300–day period is untimely and barred." *Majors v. Gen. Elec. Co.*, 714 F.3d 527, 536 (7th Cir. 2013) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109 (2002)). Plaintiff appears to understand that she must overcome the issue of timeliness to pursue her retaliation claim against the Lab and that, on its face, this claim seems to be untimely. She has preemptively addressed the issue by contending that her charge to the EEOC alleged ongoing discrimination. *See* Dkt. 1, at 2-3. In granting plaintiff leave to proceed, I am *not* determining whether her EEOC charge was timely. This issue will have to wait until the Lab is served with, and responds to, plaintiff's complaint because "[f]iling a timely charge with the EEOC is not a jurisdictional prerequisite to suit in federal court; rather, it is an affirmative defense akin to administrative exhaustion."

Salas v. Wis. Dep't of Corr., 493 F.3d 913, 921 (7th Cir. 2007). It will be up to the Lab to decide whether to challenge the timeliness of plaintiff's EEOC charge.

ORDER

IT IS ORDERED that:

1. Plaintiff June E. Rounds-Rheaume is GRANTED leave to proceed with her Title VII claim against defendant University of Wisconsin State Laboratory of Hygiene for retaliating against her by providing an inaccurate description of her position, work performance, and character to prospective employers.

2. Plaintiff is GRANTED leave to proceed with her First Amendment claims against defendants John Dowling, Brian Vaughan, Sandra Prisbe, Cynda Demontigny, and Barb Woehrl for retaliating against her by providing an inaccurate description of her position, work performance, and character to prospective employers.

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 June 2, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge