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

LAURETTE BROWN,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF TRANSPORTATION,

Defendant.

OPINION AND ORDER

18-cv-769-wmc

Pro se plaintiff Laurette Brown has filed this civil lawsuit against defendant Wisconsin Department of Transportation ("DOT") for terminating her after she went on medical leave. Brown alleges that she worked at the DOT from June 2008 until December 3, 2017, as a Senior Civil Transportation Engineer, and that she was terminated while she was taking medical leave, even though she requested an extension of medical leave. Brown further alleges that she was discriminated against on the basis of her disability, race and age, and that she was retaliated against after she sought a reasonable accommodation and complaint about mistreatment on the basis of her race, age and disability, all in violation of her rights under the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and the Age Discrimination in Employment Act.

Because Brown is proceeding without prepayment of the full filing fee, her complaint must be screened under 28 U.S.C. § 1915(e)(2) to determine whether any portion is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. For the reasons

that follow, the court finds plaintiff's allegations sufficient for her to proceed under the generous pleading standard that applies to these statutory claims.

OPINION[1]

Based on the allegations in her complaint and attachments, the court understands Brown to be pursuing four claims against the DOT: (1) discrimination under the Americans with Disabilities Act, 42 U.S.C. § 12112(a); (2) race discrimination under Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e-2(a)(1); (3) age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 623(a)(1); and (4) retaliation in violation of the ADA, Title VII and the ADEA Title VII.[2] Although Brown provides few factual allegations in her complaint, in incorporating the allegations she lodged against DOT in the Charge of Discrimination form she attaches to her complaint, her allegations are sufficient for her to proceed on each of these claims, which the court addresses in turn.

I. ADA

The ADA prohibits employers from discriminating against employees with disabilities who are otherwise qualified. The act defines "discriminate" broadly, including discrimination regarding job application procedures, job training, and other terms,

[1] In addressing any pro se litigant's complaint, the court reads the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the following allegations based on Brown's complaint and its attachments. *See* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.").

[2] Plaintiff does not invoke the Family and Medical Leave Act ("FMLA"), so the court has not read such a claim into this case. If plaintiff intends to pursue such a claim, she should promptly seek leave to amend her complaint to add that claim, which the court would then screen under § 1915(e)(2).

conditions, and privileges of employment. 42 U.S.C. § 12112(a). To prove disability discrimination under the ADA, a plaintiff must show that (1) she is disabled within the meaning of the ADA; (2) she is qualified to perform the essential functions of the job; and (3) she suffered from an adverse employment action because of her disability. *Nese v. Julian Nordic Construction Co.*, 405 F.3d 638, 641 (7th Cir. 2005). For plaintiff's claim to proceed past screening, however, she "is not required to plead legal theories, let alone to plead facts that correspond to 'elements' of any particular claim." *Stumm v. Wilkie*, 796 F. App'x 292, 295 (7th Cir. 2019) (citing *Chapman v. Yellow Cab Coop.*, 875 F.3d 846, 848 (7th Cir. 2017)).

Brown does not provide details about her disability, but she alleges that her employer was "aware of [her] disability" (dkt. #1-1), which is sufficient to satisfy the first element of this claim. She further alleges that she made a reasonable accommodation request, which was denied, giving rise to an inference that she believes herself to be qualified to perform the functions of the job with the DOT. Finally, she alleges that she was terminated on December 3, 2017, and that she believes she was discriminated against because of her disability. These allegations are sufficient to state a claim for disability discrimination under the ADA.

II. Title VII and ADEA

Brown similarly alleges that the DOT discriminated against her based on her race and age. Title VII prohibits employers from discriminating against employees "because of [their] race." To prevail on a Title VII employment discrimination claim, Brown must show:

> (1) she is a member of a protected class, (2) she performed reasonably on the job in accord with her employer['s] legitimate expectations, (3) despite her reasonable performance, she was subjected to an adverse employment action, and (4) similarly situated employees outside of her protected class were treated more favorably by the employer

David v. Board of Trs. of Cmty. Coll. Dist. No. 508, 846 F.3d 216, 225 (7th Cir. 2017) (alteration in original) (quoting *Andrews v. CBOCS West, Inc.*, 743 F.3d 230, 234 (7th Cir. 2014), overruled on other grounds by *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765 (7th Cir. 2016)).

The Age Discrimination in Employment Act ("ADEA") makes it unlawful for an employer to discriminate against an individual based on such individual's age. The ADEA protects employees who are at least 40 years old and have received less favorable treatment than employees who are both "substantially younger"[3] and "similarly situated." *Ransom v. CSC Consulting, Inc.*, 217 F.3d 467, 470 (7th Cir. 2000). To establish a prima facie Title VII or ADEA case at the pleading stage, "plaintiff need plead only the type of discrimination, when it occurred, and by whom." *Stumm*, 796 F. App'x at 295; *Freeman v. Metro. Water Reclamation Dist. of Greater Chi.*, 927 F.3d 961, 965 (7th Cir. 2019) ("[T]o proceed against the District under § 1983 or Title VII, Freeman needed only to allege . . . that the District fired him because of his race.").

Brown alleged in her EEOC complaint that she was 52 years old at the time she filed her complaint; that she was "subjected to harassment and intimidation because of

[3] "'Substantially younger' means at least a ten-year age difference." *Fisher v. Wayne Dalton Corp.*, 139 F.3d 1137, 1141 (7th Cir. 1998) (quoting *Kariotis v. Navistar Int'l Transp. Corp.*, 131 F.3d 672, 676 (7th Cir. 1997)).

[her] age and race," and that she believes she was "discriminated against because of [her] race, Black." (Dkt. #1-1, at 1.) Although largely conclusory, the court will grant her leave to procced on these claims, since her assertions provide adequate notice to defendant that Brown believes that her termination was the product of race and age discrimination.

III. Retaliation

Finally, Brown may also proceed on her proposed retaliation claims. A retaliation claim, under Title VII, the ADA, and the ADEA, requires the plaintiff show that: (1) she engage in statutorily protected activity, such as opposing unlawful employment practices; (2) she was the object of an adverse employment action; and (3) the adverse employment action was caused by her opposition to the unlawful employment practice. *Northington v. H&M Int'l*, 712 F.3d 1062, 1065 (7th Cir. 2013) (Title VII); *Rowlands v. United Parcel Serv. - Fort Wayne*, 901 F.3d 792, 801 (7th Cir. 2018) (ADA); *Smith v. Lafayette Bank & Trust Co.*, 674 F.3d 655, 657 (7th Cir. 2012) (ADEA). To adequately state a claim for retaliation, the plaintiff must specifically identify the protected activity in which she was engaged. *See Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 828 (7th Cir. 2014).

Brown asserts that she "made a reasonable accommodation request which was not provided," and that she "was also subjected to harassment and intimidation because of [her] age and race," of which she complained to the DOT (dkt. #1-1), which the court infers to be protected conduct. Brown further asserts after she lodged her complaint to DOT, she "was then discharged." (Dkt. #1-1, at 1.) Of course, fact-finding will provide more information about the actual reason for the DOT's decision to terminate her from her position, in particular, whether the DOT's termination decision was more directly

related to Brown's absence. At this stage, however, the court will not preclude plaintiff from developing her claim that the DOT retaliated against her for engaging in protected activity.

ORDER

IT IS ORDERED that:

1) Plaintiff Laurette Brown is GRANTED leave to proceed against defendant Wisconsin Department of Transportation, on claims under the ADA, Title VII, the ADEA and for retaliation, under the ADA and Title VII.

2) Plaintiff is DENIED leave to proceed on any other claim.

3) Plaintiff should serve defendant's lawyer with a copy of every paper or document she files with the court. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that she has sent a copy to the defendant's attorney.

4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, she may send out identical handwritten or typed copies of his documents.

5) If plaintiff moves while this case is pending, it is her obligation to inform the court of her new address. If she fails to do this and defendant or the court is unable to locate her, her case may be dismissed for failure to prosecute.

Entered this 5th day of November, 2021.

BY THE COURT:

/s/

_____
WILLIAM M. CONLEY
District Judge