

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

PEARL CISTRUNK,

Plaintiff,

v.

LA PETITE ACADEMY,

Defendant.

OPINION and ORDER

07-C-170-C

In this civil action for monetary and injunctive relief, plaintiff Pearl Cistrunk, a former employee of defendant La Petite Academy, is proceeding on a claim that defendant violated her rights under Title VII of the Civil Rights Act of 1964 by discriminating against her because of her race and gender and firing her in retaliation for her complaints about persistent racial and sexual harassment. On June 5, 2007, defendant moved to dismiss plaintiff's suit on the ground that plaintiff had filed her lawsuit before the Equal Employment Opportunity Commission (EEOC) issued her a "right to sue" letter, a necessary precursor to any federal lawsuit. I stayed a decision on the motion in order to provide plaintiff an opportunity to respond. The deadline for response has come and gone, and plaintiff has not opposed defendant's motion in any way.

As I explained in an order dated June 12, 2007, dkt. #11, the law is clear that before a litigant may bring suit under Title VII, she must (1) file a charge with the EEOC within a specified time period and (2) wait to sue until receiving notification (a “right to sue” letter) that the Commission does not intend to sue on her behalf. Doe v. Oberweis Dairy, 456 F.3d 704, 708 (7th Cir. 2006). Although the “receipt of a right-to-sue letter is not a jurisdictional prerequisite to bringing a Title VII suit,” defendants can assert the lack of such a letter as a defense, Worth v. Tyer, 276 F.3d 249, 259 (7th Cir. 2001), subjecting plaintiff’s Title VII claim to possible dismissal at any time prior to the receipt of such a letter. Klassy v. Physicians Plus Insurance Co., 276 F. Supp. 2d 952, 958 (7th Cir. 2003) (citing Perkins v. Silverstein, 939 F.2d 463, 471 (7th Cir. 1991)).

Plaintiff has not disputed defendant’s assertion that she filed her lawsuit prematurely; therefore, the motion to dismiss must be granted.

ORDER

IT IS ORDERED that defendant La Petite Academy’s motion to dismiss is

GRANTED. The complaint is DISMISSED without prejudice and the clerk of court is directed to close this case.

Entered this 9th day of July, 2007.

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