

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

MARYLEE ARRIGO,

Plaintiff,

v.

LINK STOP, INC.,
ASHLAND LAKE SUPERIOR LODGE, LLC,
LINK INTERNATIONAL INVESTMENTS, LLC,
JAY E. LINK, GRANDMA LINK'S RESTAURANT
AND LOUNGE, LLC and GORDON PINES
GOLF COURSE,

Defendants.

ORDER

12-cv-700-bbc

Plaintiff Marylee Arrigo is proceeding against defendants Link Stop, Inc., Ashland Lake Superior Lodge, LLC, Link International Investments, LLC, Grandma Link's Restaurant and Lounge, LLC, Gordon Pines Golf Course and Jay Link on claims under the federal Family and Medical Leave Act, 29 U.S.C. § 2615. Plaintiff has filed a motion to amend her complaint to add a claim for sex and pregnancy discrimination under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-5, and for disability discrimination under the Americans with Disabilities Act, 42 U.S.C. § 12112. Dkt. #23. Defendants oppose the motion, arguing that plaintiff's delay in adding these claims would cause them undue prejudice.

According to the pretrial conference order, plaintiff's deadline for amending her

complaint expired on December 11, 2012. Dkt. #18. Thus, whether to grant plaintiff leave to amend her complaint is a decision left to the court's discretion. Hudson v. McHugh, 148 F.3d 859, 864 (7th Cir. 1998). Under Fed. R. Civ. P. 15(a)(2), a court should freely grant a party leave to amend its pleadings "when justice so requires." However, a request to amend may be denied on several grounds, including undue delay, undue prejudice to the party opposing the motion or futility of the amendment. Sound of Music v. Minnesota Mining & Manufacturing Co., 477 F.3d 910, 922-23 (7th Cir. 2007).

I am denying plaintiff's motion because she waited far too long to seek leave to amend her complaint. She requested leave to amend on April 1, 2013, nearly four months after the deadline for doing so and more than six months after filing her original complaint in this case. Plaintiff does not provide a persuasive reason for waiting so long. She says that she did not add her Title VII or ADA claims earlier because she was pursuing her sex and disability discrimination claims, at the state administrative level, along with claims under Wisconsin's Family and Medical Leave Act,. In February 2013, plaintiff learned that defendants did not employ a sufficient number of employees to be covered by Wisconsin's Family Medical Leave Act. (Defendants contend that plaintiff should have known this earlier because they have argued since 2011 that they were not covered by the Act.) After discovering that her Wisconsin FMLA claim was not viable, plaintiff withdrew all of her state law claims and requested leave to amend her complaint in this court. However, plaintiff does not explain why she had to wait to amend her complaint in this case until she determined whether defendant was covered by Wisconsin's FMLA. She does not contend

that her sex and disability discrimination claims hinged on this information. In fact, she does not explain why she decided to dismiss her sex and disability discrimination claims at the state level, rather than dismissing only her Wisconsin FMLA claims. Rather, it appears that plaintiff chose to pursue state law avenues of relief and changed her mind after realizing that she could not raise all of her claims at the state agency level. Plaintiff's decision to abandon her state law claims after nearly two years of litigation at the state level is not sufficient reason to permit her to add those claims to her federal lawsuit.

Plaintiff argues that there is sufficient time in the schedule to allow her to pursue her Title VII and ADA claims without causing prejudice to defendants. It is true that the schedule in this case was modified last week to accommodate plaintiff's counsel's upcoming maternity leave. However, that does not mean that defendants would suffer no prejudice. Defendants have filed a motion for summary judgment addressing plaintiff's FMLA claims that is being briefed by the parties. Although plaintiff filed her motion for leave to amend her complaint before defendants filed their motion for summary judgment, granting her motion would have required modification of the summary judgment schedule to allow defendants time to conduct discovery and craft arguments regarding plaintiff's two new claims. Now that defendants have filed a motion for summary judgment, granting plaintiff's motion would require defendants to file new summary judgment briefs to encompass plaintiff's proposed claims. It would be unfair to defendants to require them to litigate these new claims at this stage in the case.

Finally, plaintiff argues that she will simply file a new federal case asserting Title VII

and ADA claims if she is not permitted to bring those claims in this case and that proceeding with two cases would be inefficient. It is questionable whether plaintiff would be able to raise her Title VII and ADA claims in a new case in light of the doctrine of claim preclusion. However, I need not decide that issue now because, although it is true that proceeding with two cases would be inefficient, it was also inefficient for plaintiff to pursue claims for two years at the state level and then seek to add them to a federal case that had been proceeding for a number of months. Similarly, it would be inefficient to hold multiple rounds of summary judgment, regardless how much time is in the new schedule. For these reasons, plaintiff's motion for leave to amend her complaint will be denied.

ORDER

IT IS ORDERED that plaintiff Marylee Arrigo's motion for leave to amend her complaint, dkt. #23, is DENIED.

Entered this 23d day of May, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge