

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

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SCOTT THOMAS SCHNEIDER,

Plaintiff,

v.

HARMON SOLUTIONS GROUP,

Defendant.

OPINION and ORDER

Case No. 19-cv-202-wmc

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In a prior order, the court granted *pro se* plaintiff Scott Thomas Schneider leave to proceed in this lawsuit against defendant Harmon Solutions Group LLC, on claims that defendants discriminated him on the basis of his disability and gender, as well as a claim under the FMLA. (Dkt. #8, at 5-6.) Schneider has since filed two, proposed amended complaints that seek to add several defendants: Codeblue LLC, John Parris, Nancy Puerner, Nicole Darby, Jody Glampe, Erica Hudson, Haley Zblewski, Vaness Bluem, Jill Schiedler, Brady Kmiecik, Karyn Komro, Timothy Hoerle, and Sarah Schunk. (Dkt. ##12, 14.) Since Schneider is proceeding in this lawsuit *in forma pauperis*, the court must screen his most recently amended. 28 U.S.C. § 1915(e)(2). For the reasons that follow, in addition to proceeding against Harmon Solutions Group LLC on ADA, Title VII and FMLA claims, plaintiff will now be allowed to proceed (1) against defendant Codeblue on those same claims, and (2) against defendants Schunk, Darby and Bluem on his FMLA claim. However, he will be denied leave to proceed against any of the other proposed defendants.

## OPINION

As an initial matter, the only proper defendant to an ADA or Title VII claim related to employment discrimination is the employer, not the employees. *United States Equal Employment Opportunity Comm'n v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1281 (7th Cir. 1995) (no individual liability under Title VII or the ADA). As such, Schneider may not proceed against the individual defendants with respect to his Title VII or ADA claims. For the same reason, however, the court will allow Schneider to proceed against Codeblue as a defendant, since it appears to be affiliated with Harmon Solutions Group, and Schneider claims that both entities were responsible for his employment.

At least for purposes of screening, the court will allow plaintiff to proceed against some of the individual defendants on FMLA claims, since they may be brought against individuals. *See Eppinger v. Caterpillar, Inc.*, 682 F. App'x 479, 481 (7th Cir. 2017) (“The FMLA’s definition of ‘employer’ is broader than that of Title VII and encompasses some individual liability.”). Under 29 U.S.C. § 2615(a)(1), an employer may not “interfere with, restrain, or deny the exercise of or attempt to exercise” an employee’s right to take leave. *See Simpson v. Office of Chief Judge of Cir. Ct. of Will Cty.*, 559 F.3d 706, 712 (7th Cir. 2009). To state an FMLA retaliation claim, a plaintiff must allege that: (1) he engaged in protected activity; (2) he suffered an adverse employment action; and (3) there is a causal connection between the two. *Carter v. Chicago State Univ.*, 778 F.3d 651, 657 (7th Cir. 2015) (citing *Stephens v. Erickson*, 569 F.3d 779, 786 (7th Cir. 2009); *see also Scruggs v. Carrier Corp.*, 688 F.3d 821, 826 (7th Cir. 2012) (quoting *Makowski v. SmithAmundsen LLC*, 662 F.3d 818, 824 (7th Cir. 2011)). Furthermore, “[a] plaintiff may assert FMLA claims

against an individual who had supervisory authority over the plaintiff and is at least partly responsible for the alleged violation.” *Nair v. Winning Wheels, Inc.*, No. 17-cv-50266, 2019 WL 764047, at \*3 (N.D. Ill. Feb. 21, 2019) (quoting *Baier v. Rohr-Mont Motors, Inc.*, No. 12-cv-8234, 2014 WL 6434584, at \*8 (N.D. Ill. Nov. 17, 2014)).

Since his amended complaint clarifies the individual defendant’s involvement, the court will briefly review Schneider’s allegations with respect to each. To start, Schneider alleges that in October 2017, he asked HR manager Parris for an accommodation related to his ability to stand while on the phone processing insurance claim. Allegedly in response, Parris then moved Schneider to an isolated area. Later that same day, after Schneider asked to move back to his previous desk, Parris allowed it, while at the same time, telling Schneider not to complain anymore. Allegedly, defendant Zblewski, a Team Lead, was involved in passing this last message along to Schneider.

Later in October, Schneider asked his Team Lead, defendant Vanessa Bluem, about potential accommodations because of his chronic fatigue and pain, but she allegedly told him to seek psychological help if he could not perform his job. Next, in November 2017, another Team Lead, defendant Schiedler, allegedly “accosted” him for leaving the building to move his parked car to avoid a ticket. While admitting fault, Schneider allegedly took the opportunity to explain that the reason for his parking illegally was his disabling condition. Similar to Bluem, defendant Schiedler did not want to discuss his condition; instead, she referred him to Bluem.

Schneider formally took leave under the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601, *et seq.*, on or around January 2018. Around that same time, he alleges

that defendant Glampe, who was the receptionist handling his FLMA paperwork, made repeated offensive remarks questioning his claimed disability and shaming him for taking the leave.

Before Schneider was scheduled to return to work in April of 2018, he apparently approached defendant Bluem with a proposed schedule that Schneider created with the help of his “treating specialist,” but Bluem allegedly refused to adjust his schedule. This caused Schneider to seek a note from his primary physician related to his need for an adjusted schedule. Even with this note, Bluem refused to adjust his schedule, telling Schneider that he could not work at HSG, which only worsened his disabling condition. Despite this setback, Schneider did ultimately return to work, apparently under some agreed-upon set of accommodations. Even then, Bluem allegedly complained openly about those accommodations. At some point after his return to work, defendant Kmiecik also made remarks about Schneider’s mood and energy levels.

On May 10, 2018, Schneider complained to the operations manager, defendant Darby about similar remarks made by two other individuals (defendant Schunk and another, unidentified individual). During that meeting, among other things, Schneider apparently asked for further accommodations for his disability, referencing the EEOC Enforcement Guidelines. However, that request was denied, and Schneider was instead again referred back to Bluem.

Following these events, Schneider sent Erica Hudson a three-paragraph Skype message about the handling of his disability, which she perceived to be harassing. On June 15, 2018, Hudson filed a formal harassment charge against Schneider. Rather than

communicate with him about Hudson's charges, HSG then terminated Schneider for threatening Hudson on June 19. Among other reasons, Schneider maintains that this decision was made because HSG incorrectly assumed that he, as the male, was actively aggressive.

Since Schneider's allegations do not even mention defendants Puerner, Kumro or Hoerle, these defendants will be dismissed, having failed to offer any basis for a reasonable trier of fact to infer that any of these individuals supervised Schneider or were personally involved in any of the alleged violations. Defendant Schunk will also be dismissed for the same reason on the facts alleged.

As for defendants Parris and Zblewski, Schneider does allege that they were responsible for directing Schneider's momentary placement elsewhere in the office, ostensibly in retaliation for seeking reasonable accommodations at work. However, Schneider does not allege that either had supervisory authority over him personally, nor that they actually took any adverse employment action against him after he took FMLA leave, so these two defendants will be dismissed. Similarly, Schneider's allegations as to defendants Schiedler, Glampe, Hudson or Kmiecik do not suggest that any of them had supervisory authority over him, nor that they took any adverse employment action against him with respect to his work schedule or accommodations. Therefore, the court will dismiss these defendants as well.

Finally, the court will allow Schneider to proceed against defendants Darby and Bluem, at least at this stage. Specifically, after he took FMLA leave in 2017 and 2018, Schneider alleges that his supervisor, Bluem, refused to modify his schedule as requested,

and that Darby, who may have had supervisory authority over Schneider as operations manager, did nothing in response to his complaint that Bluem was making offensive remarks about the reasonable accommodations being made for him. At this stage, therefore, it may be reasonable to infer that these two individuals' handling of his need for an adjusted schedule, as well as the complaints about offensive comments, were sufficiently adverse and were motivated, at least in part, by Schneider's decision to take FMLA leave on two different occasions. Accordingly, the court will grant Schneider leave to proceed against defendants Darby and Bluem under the FMLA, but will dismiss those same claims against the other individual defendants.

#### ORDER

IT IS ORDERED that:

1. In addition to proceeding against Harmon Solutions Group LLC on ADA, Title VII and FMLA claims as previously approved in the court's prior order, plaintiff Scott Thomas Schneider is GRANTED leave to proceed: (a) on those same claims against defendant Code Blue LLC; and (b) on his FMLA claim against defendants Nicole Darby and Vanessa Bluem.
2. Defendants John Parris, Nancy Puerner, Jody Glampe, Erica Hudson, Haley Zblewski, Jill Schiedler, Brady Kmiecik, Karyn Komro, Timothy Hoerle and Sarah Schunk are DISMISSED without prejudice.

3. The clerk of court is directed to forward copies of Schneider's amended complaint (dkt. #14) and this order to the United States Marshal for service on defendants.

Entered this 29th day of July, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge