

State of Wisconsin



Labor and Industry Review Commission

Sonja Ohren , Complainant	Fair Employment Decision¹
Ascension Health Alliance , Respondent	Dated and Mailed:
ERD Case No. CR202100457 EEOC Case No. 26G202100376C	December 29, 2021 ohrenso1_rsd.doc:164

The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/
Michael H. Gillick, Chairperson

/s/
Georgia E. Maxwell, Commissioner

/s/
Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

Procedural Posture

On March 1, 2021, the complainant filed a complaint with the Equal Rights Division of the Department of Workforce Development alleging that the respondent discriminated against her based upon her sex, age, disability, and because she opposed discrimination in the workplace, all in violation of the Wisconsin Fair Employment Act. The respondent filed a response to the complaint in which it argued that the complainant's complaint was time-barred and, on June 11, 2021, an equal rights officer for the Equal Rights Division issued a preliminary determination dismissing the complaint for lack of timeliness. The complainant filed an appeal of that determination. On August 17, 2021, an administrative law judge for the Equal Rights Division issued a decision affirming the preliminary determination and dismissing the complaint because it was filed beyond the statute of limitations. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

Memorandum Opinion

Wisconsin statute § 111.39(1) provides that the department may receive and investigate a complaint charging discrimination or discriminatory practices in a particular case if the complaint is filed with the department no more than 300 days after the alleged discrimination occurred. The complainant's complaint having been filed on March 1, 2021, the only timely acts of discrimination were those occurring on or after May 5, 2020, 300 days prior to the filing of the complaint. The administrative law judge found that the complainant's allegations of retaliation all occurred before May 5, 2020, and therefore were untimely.

In her petition for commission review the complainant argues that her allegations go beyond the termination of her employment on May 1, 2020, and are not outside the limitations period. The complainant states that on May 4, she requested that the respondent reimburse her for unpaid overtime and that on May 14 the respondent asked her to sign an acknowledgement form that she contends is in violation of her rights. The complainant also states that she requested her personnel file on May 21, and that on June 4, she received a response which included documents she had previously been told would not go into her personnel file. The commission does not find these arguments persuasive. The complainant's complaint indicates that the most recent date of discrimination was May 1, 2020, the date on which her employment was terminated. Her complaint makes no mention of being asked to sign an acknowledgment form on May 14, or of her subsequent request to receive a copy of her personnel file. Rather, all of the allegations raised in the complaint occurred on or before May 1, 2020, the last day

she was employed by the respondent. Further, neither of the post-May 5 allegations appear to be discriminatory acts that would be covered by the statute, even if raised in a timely filed complaint.

In her petition the complainant also states that she was hesitant to file a complaint due to the fear of retaliation. However, fear of retaliation is not a basis for overlooking the statute of limitations, particularly given that the law specifically prohibits retaliation and provides a cause of action if retaliation occurs. Further, the commission notes that once the employment relationship with the respondent ended the complainant would have had no reason to delay in filing a complaint; fear of retaliation cannot explain the complainant's decision to wait more than 300 days from the date of the separation to file her discrimination complaint. The dismissal of the complaint is affirmed.

cc: Attorney Sarah Salerno