

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____ :
VIVIAN J. PITTS, :

Plaintiff, :

v. :

CIVIL ACTION

THE CHESTER COUNTY :

HOSPITAL, :

Defendant. :

No. 99-2488
: _____ :

MEMORANDUM

BUCKWALTER, J.

January 11, 2000

Presently before the Court in this Title 42 U.S.C. § 1981 action is Defendant Chester County Hospital's ("Defendant") Partial Motion to Dismiss with regard to all of Plaintiff Vivian J. Pitts' ("Plaintiff") claims based upon conduct occurring prior to May 14, 1997. For the reasons set forth below, Defendant's Motion is denied.

I. DISCUSSION

A. Section 1981 Claims

Plaintiff was terminated from her employment on May 14, 1997 and she filed her Complaint exactly two years later on May 14, 1999. However, her Complaint contains allegations of Section 1981 violations regarding her salary and subsequent raises, all of which took place prior to her termination. Defendant asserts that all of Plaintiff's allegations pertaining to dates prior to May 14, 1997 are time-barred by Pennsylvania's two-year statute of limitations.

Plaintiff counters in contending that “neither the Supreme Court, nor any Federal Court of Appeals, addressed the statute of limitations under Section 1981 subsequent to the enactment of 28 U.S.C. Section 1658.” Section 1658 provides a four-year statute of limitations for all federal causes of action arising after December 1, 1990.

“It is well-settled in the Third Circuit that the statute of limitations for claims arising under § 1981 is borrowed from the relevant state law.” Williams v. Home Depot, U.S.A., Inc., 1999 WL 788597, *3 (E.D. Pa. October 5, 1999); see also, Goodman v. Lukens Steel Co., 482 U.S. 656, 662 (1987). Pennsylvania’s statute of limitations for personal injury actions bars suits commenced more than two years following the date of the alleged injury. Id.; see also Goodman, 482 U.S. at 662. Therefore, unless the enactment of Section 1658 is applicable to the within Section 1981 claims, Plaintiff’s allegations prior to May 14, 1997 are time-barred. I find that Section 1658 is applicable to the within claims, and as a result, Defendant’s Motion must be denied.

On December 1, 1990, Section 1658 was enacted and provides, “Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.” Title 28 U.S.C. § 1658. Plaintiff asserts that pursuant to the enactment of Section 1658, the Civil Rights Act of 1991 enabled Section 1981 to apply to claims like her own unequal pay claim, which had previously not been within the scope of the statute. Plaintiff cites to Rogers v. Apple South, Inc., 35 F.Supp.2d 974 (W.D.Ky. 1999), where the United States District Court for the Western District of Kentucky found that the Civil Rights Act of 1991 amendments to Section 1981 do constitute an enactment. Plaintiff then reaches the conclusion--

as did the Court in Rogers -- that the Civil Rights Act of 1991 was an “Act of Congress” that should be deemed to have been enacted after Section 1658 took effect. I agree and therefore must deny the Defendant’s Motion.

While this very issue has been addressed several times throughout the federal trial courts, there has not been unanimity in its resolution. As it is well known, Section 1981, enacted as the Civil Rights Act of 1866, remained unchanged for over 130 years, and in 1989, the United States Supreme Court held that it “did not cover postformation conduct unrelated to an employee’s right to enforce his or her contract, such as incidents relating to conditions of employment.” Patterson v. McLean Credit Union, 491 U.S. 164, 179-80 (1989).

In 1991, Congress amended Section 1981 by enacting the Civil Rights Act of 1991 which restored several rights previously limited by the Patterson Court’s construction. In pertinent part, the amendment reads:

For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

Clearly, Plaintiff’s claims of unequal salary and unequal salary increases in violation of Section 1981 are causes of action that fall within the purview of this very language. Prior to the 1991 amendments, Plaintiff would not have had any such cause of action under Section 1981. Section 1658 was enacted on December 1, 1990 and it explicitly pertains to Acts of Congress “enacted after the date of the enactment of this section.” Defendant asserts that it was not the intent of Congress that amendments should be construed as “Acts of Congress.” While several courts have so held, I believe that the 1991 amendment -- one in which new causes of action were

introduced -- is an "Act of Congress." As mentioned, the legislation embodying the amendment is entitled "the Civil Rights Act of 1991."

The intent of Congress in enacting Section 1658 was to have the statute apply to new causes of action and to create uniformity in regard to the commencement of federal claims. See Rodgers, 35 F.Supp.2d at 976. While other courts within this circuit have reached a different conclusion¹, I believe that the amendment to 1981 enables plaintiff to bring her unequal pay and raise claims in this particular case. Its enactment was the very Act of Congress that remains the focal point of Section 1658.

II. CONCLUSION

Section 1658 created a statute of limitations for all civil actions initiated pursuant to an Act of Congress enacted after December 1, 1990. Section 1981 was amended by the Civil Rights Act of 1991 after Section 1658 was enacted, and the amendment created the right of an individual to sue for the very reason that Plaintiff has stated in her Complaint -- i.e., unequal pay and unequal pay raises in violation of Section 1981. Therefore, because the statute of limitations for such civil actions is four years, as opposed to the Pennsylvania period of two years, Plaintiff's claims remain ripe for adjudication and Defendant's Partial Motion to Dismiss fails.

An appropriate Order follows.

1. Recently, two courts within the Third Circuit have addressed this issue. In Zubi v. AT&T Corp., 1999 U.S. Dist. LEXIS 4766, at *10, the United States District Court for the District of New Jersey found that, as a matter of law, Section 1658 does not apply to claims arising under Section 1981. The court interpreted the phrase "an act of Congress enacted after the date of this section" to explicitly speak of Congress's intent. The court found that this particular statutory was very clear, stating that had Congress intended Section 1658 to apply to amendments, it would have stated, "an act of Congress enacted or amended thereafter." Id. at *8. In Williams v. Home Depot, U.S.A., Inc., 1999 WL 788597 (E.D.Pa. October 5, 1999), the court concurred with the ruling in Zubi stating, "[t]he plain statutory language and legislative history of Section 1658 clearly state that it applies only to laws created after 1990." Id. at *4.

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ORDER

AND NOW, this 11th day of January, 2000, upon consideration of Defendant Chester County Hospital's Partial Motion to Dismiss, and Plaintiff Vivian J. Pitts response thereto, it is hereby ORDERED and DECREED that said Motion is DENIED.

BY THE COURT:

RONALD L. BUCKWALTER, J.