IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JUDITH A. ECKENROD,	:	**No. 02-01787**
Plaintiff	:	
vs.	:	**Civil Action - Law**
WAT FEDERAL CREDIT UNION,	:	
Defendant	:	**Preliminary Objections**

ORDER

AND NOW, this _____day of June 2003, the Preliminary Objection filed by Defendant by way of Demurrer are **GRANTED** in part and **DENIED** in part as follows:

I. The Court GRANTS the Defendant's demurrer to Plaintiff's Cause of Action for Breach of Implied Contract. The alleged implied contract is based on the Defendant's request of November 3, 2000 for Plaintiff to produce a written report from Dr. Rekhala, Plaintiff's doctor, regarding his recommendation that Plaintiff remain out of work until further notice. The Court cannot see how a request for written medical verification that Plaintiff could not return to work for an indefinite period could be construed as a implied contract such as could overcome the presumption of at-will employment. See Rapagnani v. The Judas Co., 736 A.2d 666, 669 (Pa.Super. 1999).

While the Plaintiff contends the Defendant's request for a medical letter justifying her request that she remain

off work creates an implied contract based on the concept of additional consideration, the Court cannot agree. The Superior Court has stated:

> [A] court will find 'additional consideration' when an employee affords her employer a substantial benefit other than the services which the employee is hired to perform, or when the employee undergoes a substantial hardship other than the services, which he is hired to perform.

Id. at 671, quoting Darlington v. General Electric, 350 Pa.Super. 183, 201, 504 A.2dd 306, 315 (1986). A simple request by an employer asking an employee to medically document that they cannot work for a claimed indefinite period is an entirely logical request. Such a simple request would not be a substantial benefit to the employer or a substantial hardship to the employee sufficient to constitute additional consideration for an implied contract. Therefore, a demurrer is appropriate on this cause of action.

II. The Court DENIES the Defendant's demurrer to Plaintiff's claim of the formation of an express contract by virtue of the employee handbook given to Plaintiff by the Defendant.

While it may be difficult to construe the employee handbook as a contract which would govern the contractual terms and conditions of her continuing employment by the Defendant, the Court can only grant a demurrer in cases that

"clearly and without a doubt fail to state a claim for which relief may be granted." See Willet v. Pa. Medical Cat. Loss Fund, 549 Pa. 613, 619, 702 A.2d 850 (1997) citing County of Allegheny v. Commonwealth of Pennsylvania, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985).

An employee handbook is enforceable against an employer, as a contract:

> if a reasonable person in the employee's position would interpret its provisions as evidencing the employer's intent to supplant the at-will rule and be bound legally by its representations in the handbook. The handbook must contain a clear indication that the employer intended to overcome the at-will presumptions.

Luteran v. Loral Fairchild Corp., 455 Pa.Super. 364, 371, 688 A.2d 211, 214 (1997), (quoting Small v. Juniata College, 452 Pa.Super. 410, 415, 682 A.2d 350, 353 (1996).

While Plaintiffs may have a difficult time proving the employee handbook overcomes the at-will employment presumption, the case and record will become clearer as the case progresses beyond pleadings into discovery. As the Court has some doubt concerning the issue, it will deny the Defendant's demurrer to this Court.

III. The Court DENIES the Defendant's Demurrer to the Plaintiff's Claim for Wrongful Termination/Intentional Infliction of Emotion Distress.

The Defendant claims that a demurrer should be granted to this Count because the Pennsylvania Workers' Compensation Act is the sole avenue for relief for an employer's intentional torts. Also, the Defendant claims termination of employment is not such conduct to support a claim for intentional infliction of emotional distress. While it is true that our courts have held that the Workmen's Compensation Act, codified at 77 P.S. §481(a), is the exclusive remedy for injuries to employees in the workplace, there have been some exceptions to this policy. In Schweitler v. Rockwell International, 586 A.2d 383 (Pa.Super. 1990), the Pennsylvania Superior Court held that the exclusivity provision of the Workmen's Compensation Act was not applicable to a plaintiff's claim for assault and intentional infliction of emotional distress arising from a supervisor's actions of touching an employee's breast, demanding a sexual relationship and making lewd comments about the employee. The Court held that if the injury is caused by an act of a third person intended to injure the employee because of reasons personal to him and not directed against him as an employee or because of his employment, the exclusivity provision of the Workmen's Compensation Act would not apply. Id. at 391; see also Hoy v. Angalone, 456 Pa.Super. 596, 691 A.2d 476 (1997). While it may be argued in the case at bar that the actions of

Supervisor Haucke were employment related and not directed to Plaintiff in a way unrelated to her employment with the Defendant, such issue is better left to a later stage of this case and should not be disposed at the preliminary objections stage. It also appears to the Court that Plaintiff's claim for intentional infliction of emotional distress is based on the alleged course of conduct by Supervisor Haucke and is not solely predicated on the termination of Plaintiff's employment.

The Defendant also argues that this Count is insufficient because the Complaint does not portray conduct sufficiently outrageous to impose liability for intentional infliction of emotional distress. While Pennsylvania Courts have only allowed recovery for intentional infliction of emotional distress cases where the involved conduct was outrageous or egregious, such determination as to the sufficiency of the evidence is better left to a time frame beyond the early stage of preliminary objections. Thus, the Court will deny the Defendant's preliminary objections to this Count.

IV. The Court GRANTS the Defendant's preliminary objections to Plaintiff's cause of action for wrongful discharge – violation of public policy. The Court agrees with the Defendant that the Pennsylvania Human Relations Act

(PHRA), 43 P.S. §§951-963, and the Americans with Disability Act of 1990 (ADA), 42 U.S.C. §§12111, 12112(a), preclude a common law wrongful discharge action since remedies exist under these statutes. In her Complaint, Plaintiff is alleging a mental health condition or impairment, and she was terminated from her employment because of the limitation of her "mental impairment".

In Clay v. Advanced Computer Applications, 522 Pa. 86, 559 A.2d 917 (1989), the Pennsylvania Supreme Court established that:

> The PHRA provides a statutory remedy that precludes assertions of a common law tort action for wrongful discharge based upon discrimination.

Id. at 89, 559 A.2d at 918. See also Householder v. Kensington Mfg. Co., 360 Pa.Super 290, 294, 520 A.2d 461, 464 (1987) (Superior Court held that PHRA precluded a common law wrongful discharge/public policy claim based upon allegation Plaintiff was terminated because of her asthma.)

The Court does not believe that Plaintiff's Complaint establishes any substantive reason why the appropriate statutory remedies would not be applicable to her complaints. Since the Plaintiff has not exhausted or utilized her statutory remedies, she cannot bypass the appropriate

procedure by raising this public policy issue in this sate court tort action.

By The Court,

_____
Kenneth D. Brown, Judge

cc: Michael Collins, Esquire
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Work File