UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-22383-CIV-ALTONAGA/O'Sullivan

OLGA MELENDEZ,

Plaintiff,

vs.

TOWN OF BAY HARBOR ISLANDS,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court on Defendant, Town of Bay Harbor Islands's (the "Town['s]" or "Bay Harbor['s]") Motion to Dismiss Amended Complaint . . . ("Motion") [ECF No. 22], filed September 19, 2014. On October 10, 2014, Plaintiff, Olga Melendez ("Melendez") filed her Response . . . ("Response") [ECF No. 25]. The Town filed its Reply . . . [ECF No. 26] on October 20, 2014. The Court has carefully reviewed the parties' written submissions and applicable law.

I. BACKGROUND[1]

This case concerns a female Bay Harbor police officer's discrimination claims against her employer, the Bay Harbor police department. (*See generally* Am. Compl.). Bay Harbor is a Florida municipality in Miami-Dade County. (*See id.* ¶ 7). Melendez joined the police department as an officer in March 2003. (*See id.* ¶¶ 6, 13).

In April 2012, Melendez informed her superiors she was pregnant and requested she be reassigned to light duty "due to her pregnancy and discomfort sitting in a patrol car." (*Id.* ¶ 16). Melendez alleges "there were light duty tasks available . . . such as paperwork for the exhibit

[1] The facts are taken from Melendez's Amended Complaint [ECF No. 15], are presented in the light most favorable to Melendez, and are taken as true.

room," but she was "denied the ability to work light duty," which forced her to take a leave of absence pursuant to the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.* (*Id.* ¶ 17 (alteration added)). Melendez claims "non-pregnant workers were afforded the ability to work light duty," and she lost compensation while on FMLA leave, as she could have been working. (*Id.* ¶¶ 17–18). Melendez further alleges the department did not have a suitable changing area for female employees, and she was forced to use a former male lavatory covered with a shower curtain as a makeshift changing room. (*See id.* ¶¶ 19–20). She claims a male colleague walked in on her changing multiple times, and as a result she "constantly had a fear that she would be walked in on at any moment by a male co-worker." (*Id.* ¶ 21). This same superior — Sergeant Alan Block — "regularly made sexual advances" toward Melendez and created a hostile work environment. (*Id.* ¶ 22).

On September 19, 2013, Melendez filed a Charge of Discrimination with the Equal Opportunity Employment Commission ("EEOC") ("EEOC Charge"). (*See id.* ¶¶ 14–15; Charge of Discrimination ("EEOC Charge") [ECF No. 15-2]). She received a Notice of Right to Sue from the EEOC on March 28, 2014. (*See* Am. Compl. ¶ 11; Notice of Right to Sue [ECF No. 15-1]). Melendez initiated this suit on June 26, 2014 (*see* Complaint [ECF No. 1]), and thereafter filed her Amended Complaint (*see* Am. Compl.).

The Amended Complaint states six claims for relief: (1) discrimination on the basis of pregnancy under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended by the Pregnancy Discrimination Act of 1978 ("PDA"), 42 U.S.C. section 2000e(k); (2) sex discrimination under Title VII, 42 U.S.C. section 2000e-2(a); (3) hostile work environment under Title VII, 42 U.S.C. section 42 U.S.C. section 2000e-2(a); (4) discrimination based on pregnancy under the Florida Civil Rights Act of 1992, Florida Statutes section 760.10(1) (the "FCRA"); (5)

sex discrimination under the FCRA, Florida Statutes section 760.10(1); and (6) hostile work environment under the FCRA, Florida Statutes section 760.10(1). Bay Harbor seeks dismissal of all counts and the striking Melendez's requests for punitive damages. (*See generally* Mot.).

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although this pleading standard "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Twombly*, 550 U.S. at 555). Pleadings must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Indeed, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679 (citing *Twombly*, 550 U.S. at 556).

To meet this "plausibility standard," a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citing *Twombly*, 550 U.S. at 556 (alteration added)). "The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678). When reviewing a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and take the factual allegations therein as true. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

III. ANALYSIS

Melendez states claims for sexual harassment as well as discrimination on the basis of sex and pregnancy under Title VII and the FCRA. (*See generally* Am Compl.). Bay Harbor argues all of Melendez's claims are time-barred and, even if timely, they fail to state claims for relief. (*See generally* Mot.). Bay Harbor also asserts Melendez's requests for punitive damages must be stricken. (*See id.* 2, 10). The Court considers each argument in turn.

A. Timeliness

Bay Harbor argues Melendez's Title VII claims are time-barred because she failed to file her EEOC Charge within 300 days of the alleged discrimination, and her FCRA claims are similarly untimely, as the FCRA requires a plaintiff to file a complaint within 365 days of the discriminatory acts. (*See id.* 1–4). Melendez insists the discriminatory acts were ongoing, and she actually initiated the requisite administrative process on June 11, 2013, when she filed an Intake Questionnaire with the EEOC. (*See* Resp. 2–4; *see also* Am. Compl. Ex. C [ECF No. 15-3]).

Title VII requires plaintiffs to "exhaust certain administrative remedies before filing a suit for employment discrimination." *E.E.O.C. v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1271 (11th Cir. 2002) (citations omitted). A plaintiff initiates the administrative process by filing a timely charge of discrimination. *See id.* (citations omitted). "For a charge to be timely in a deferral state such as Florida, it must be filed within 300 days of the last discriminatory act." *Id.* (citing 42 U.S.C. § 2000e-5(e)(1)). A limitations period may be extended where a discriminatory practice constitutes a "continuing violation." *Id.* "In determining whether a discriminatory employment practice constitutes a continuing violation, [a court] must distinguish between the present consequence of a one-time violation, which does not extend the limitations period, and

the continuation of the violation into the present, which does." *Id.* (internal quotation marks and citation omitted); *see also Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 120 (2002) ("A court's task is to determine whether the acts about which an employee complains are part of the same actionable [discriminatory practice], and if so, whether any act falls within the statutory time period." (alteration added)).

Courts consider "whether the claims were related in subject matter, frequency, and permanence" in deciding whether a continuing practice exists. *Roberts v. Gadsden Mem'l Hosp.*, 835 F.2d 793, 800 (11th Cir. 1988) (citation omitted). "[W]here the allegedly discriminatory incidents are substantially identical and the acts of alleged discrimination are frequent a finding of a continuing violation is more likely." *Lewis v. Bd. of Trustees of Ala. State Univ.*, 874 F. Supp. 1299, 1304 (M.D. Ala. 1995) (alteration added; citation omitted).

Although the Town insists Melendez's allegations relate solely to the initial denial of light duty work in April 2012 (*see* Mot. 3), Melendez maintains the discrimination continued for several months past that date, as she continued to lose pay and benefits throughout her pregnancy due to the FMLA leave she was forced to take. (*See* Resp. 3–4). Her description of the nature of her claim is the more accurate one. To the extent she asserts she was harmed by the denial of light duty during her pregnancy, she has alleged a continuing violation. *See Bazemore v. Friday*, 478 U.S. 385, 395–96 (1986) (holding a perpetuation of salary disparities constituted a continuing violation); *Calloway v. Partners Nat'l Health Plans*, 986 F.2d 446, 448 (11th Cir. 1993) ("Partners discriminated against Calloway not only on the day that it offered her less than her white predecessor, but also on every day of her employment."); *Lewis*, 874 F. Supp. at 1304 ("The Board's repeated refusal to change Lewis'[s] schedule could be characterized as an

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