

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MARGARET ZAKRZEWSKI,)	
)	
Plaintiff,)	
)	
v.)	No. 2:07-2819-BBD-egb
)	
)	
FIRST CAROLINA MANAGEMENT, INC.,)	
)	
Defendant.)	

ORDER ON PLAINTIFF’S MOTION TO COMPEL AND TO EXTEND THE
DISCOVERY DEADLINE FOR LIMITED PURPOSES

Plaintiff, Margaret Zakrzewski, has filed this lawsuit alleging violations of Title VII, Section 1981, and Tennessee law. Plaintiff claims that Defendant First Carolina Management, Inc. discriminated against her based on national origin and race by reassigning her to the day shift, which resulted in reduced hours and benefits, and retaliated against her for filing a charge with the EEOC, ultimately terminating her. Before the Court is Plaintiff’s motion to compel Defendant to answer discovery requests, and to extend the discovery cutoff date for limited purposes (Doc. 35). The motion was referred to the United States Magistrate Judge for determination. For the following reasons, Plaintiff’s motion is granted in part and denied in part.

On November 12, 2008, Plaintiff served Defendant with Plaintiff’s Fourth Discovery Requests. Defendant responded to these Requests on December 12, 2008. Plaintiff’s Requests seek information regarding the number of housekeeping staff employed by Defendant from February 16, 2006 through March 20, 2007 (Interrogatory No. 4-1) and

whether Plaintiff received more warnings and write-ups than Defendant's other housekeeping employees during that period (Requests for Admission 4-1 and 4-2). In the alternative to answering the Requests for Admission, Plaintiff asks Defendant to produce all write-ups and written records of verbal warnings for each housekeeper who received more write-ups and written records of verbal warnings than Plaintiff between February 16, 2006 and March 20, 2007 (Request for Production No. 4-1).

Defendant objects to these requests, stating they are burdensome and request information that is not relevant and/or not reasonably calculated to lead to the discovery of relevant evidence. Defendant maintains that the information Plaintiff seeks is beyond the scope of discovery because it does not relate to a claim or defense in this action, and that the information Plaintiff is seeking is highly confidential because it is contained in personnel files.

Rule 26 states that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . ." *Fed. R. Civ. P. 26(b)(1)*. Relevancy for discovery purposes is extremely broad; the information sought need not be admissible in court in order to be relevant. Rather, the relevancy burden is met if the party can show that the information sought "appears reasonably calculated to lead to the discovery of admissible evidence." *Fed. R. Civ. P. 26(b)(1)*. Moreover, "it is well established that the scope of discovery is within the sound discretion of the trial court." *Coleman v. American Red Cross*, 23 F.3d 1091, 1096 (6th Cir. 1994) (*quoting United States v. Guy*, 978 F.2d 934, 938 (6th Cir. 1992)).

Here, Plaintiff has limited the time period to a little over one year, and the requests only pertain to housekeeping staff rather than all employees. The questions, therefore, are

tailored to elicit the specific information Plaintiff seeks and not burdensome. Further, Plaintiff has demonstrated that the information sought is relevant to her retaliation claim, as it relates to whether “she was held to a higher standard and singled out for harsher treatment in retaliation for filing the EEOC charge.” (Plaintiff’s Motion at 3). Accordingly, Defendant is ORDERED to respond to Interrogatory No. 4-1 and Requests for Admission 4-1 and 4-2.

On the other hand, Request for Production No. 4-1 seeks all write-ups and written records of verbal warnings for each housekeeper who received more write-ups and written records of verbal warnings than Plaintiff during the specified time period. While the number of warnings and write-ups other housekeeping employees received is relevant to her retaliation claim, here Plaintiff goes far beyond that, seeking the *content* of such disciplinary measures against persons who are not parties in this action. Plaintiff has failed to demonstrate the relevance of this sensitive and private information. *See Blackmond v. UT Medical Group, Inc.*, 2004 U.S. Dist. LEXIS 27197, at *3-4 (W.D. Tenn. Nov. 4, 2004) (noting that because of the private nature of personnel files, they should only be produced upon a compelling showing of relevance by the requesting party).¹ Moreover, such information would be extremely burdensome to produce in light of its questionable relevance, as it would require extensive redaction of identifying information. Accordingly, Plaintiff’s Motion to Compel with regard to Request for Production No. 4-1 is DENIED.

Plaintiff’s Request for Admission 5-1 asks Defendant to admit that Jimmy Peoples was not a guest during a specific period of time. Plaintiff’s Request for Production of

¹ Here, of course, Plaintiff is not seeking the non-party employees’ entire personnel files, but nonetheless is seeking private information about third parties that is of a sensitive nature. This Court is not suggesting that a requesting party must meet a higher burden of proof for discovery of *any* information that is contained in a personnel file, and specifically rejects Defendant’s interpretation of *Blackmond* in that regard. The court in *Blackmond* was addressing the production of personnel files in their *entirety*, which obviously would include private and sensitive information.

Documents No. 5-1 asks Defendant to produce documents showing that Jimmy Peebles was a guest during the relevant time period. Plaintiff has shown that the requested information is relevant to her retaliation claim; the requests seek to elicit information as to whether Defendant's agents fabricated a write-up of Plaintiff dated five days before she was terminated. Defendant objects that the requests are untimely because the discovery deadline was submitted two days before the discovery deadline of December 17, 2008. However, the Court, on December 31, 2008, granted Defendant's Motion to Modify Scheduling Order, which extended the deadline for completing discovery to January 30, 2009. Accordingly Plaintiff's Request for Admission 5-1 and Request for Production of Documents No. 5-1 were timely submitted. It is hereby ORDERED that Defendant respond to Plaintiff's Request for Admission 5-1 and Request for Production of Documents No. 5-1.

With regard to Plaintiff's Request for Production Nos. 1-7 and 1-8, which seek information about Defendant's finances, Defendant has agreed to produce documents responsive to Request for Production No. 1-7 pursuant to a protective order. This financial statement will reflect Defendant's assets, liabilities and net worth, which is sufficient to address Plaintiff's punitive damages claim. Plaintiff, however, has not demonstrated sufficient reason for Defendant to respond to Request for Production No. 1-8, which requests Defendant's most recent federal income tax return. Such information is duplicative and unnecessary. *See Fed. R. Civ. P. 26(b)(2)(C)(i); Medtronic Sofamor Denak, Inc. v. Michelson*, 2003 U.S. Dist. LEXIS 14055, at *6 (W.D. Tenn. July 23, 2003) (noting that "unnecessary disclosure of financial information should be avoided").

The parties shall file the agreed protective order with the Court within ten days of this Order. Defendant shall respond to Interrogatory No. 4-1, Requests for Admission 4-1, 4-2,

and 5-1 and Request for Production of Documents Nos. 1-7 and 5-1 within fifteen day of this Order.

IT IS SO ORDERED this 10th day of February, 2009.

s/ Edward G. Bryant
UNITED STATES MAGISTRATE JUDGE