

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

DEBORAH A. HODGES,

Plaintiff,

vs.

No. 01-1197

RETAIL GROCERY
INVENTORY SERVICE, et al.,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT
AND DENYING PLAINTIFF'S MOTION TO WAIVE/AMEND
ORIGINAL COMPLAINT FILING DATE

Plaintiff has filed a motion to amend her complaint (1) to delete certain defendants who were dismissed from the action in an order entered on July 16, 2001, (2) to add various claims "of discrimination based on gender, religion, and retaliation," and (3) to attach the right to sue notice issued by the Equal Employment Opportunity Commission to her complaint. Plaintiff has filed a second motion seeking to amend the date of the filing of her complaint to comply with the filing requirements of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA"). Defendants have filed a response to Plaintiff's motion to amend the complaint. In a footnote in that response, Defendants mention the motion to waive/amend the filing date of the complaint but do not take a position as to whether the motion should be granted or denied.

Plaintiff's motion to amend the complaint is denied for two reasons. First, the portion of the motion seeking to amend the complaint to delete the defendants who have already been dismissed from the action is unnecessary and is, therefore, denied on this ground.

Second, Plaintiff has failed to attach to the motion a proposed amended complaint. Although the Federal Rules of Civil Procedure do not explicitly require such an attachment, the Rules do require that any motion “shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.” Fed. R. Civ. P. 7(b)(1). “By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that ‘the court can comprehend the basis of the motion and deal with it fairly.’” Calderon v. Kansas Dept. of Social & Rehab. Services, 81 F.3d 1180, 1186 (10th Cir. 1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice And Procedure* § 1192 at 42 (2d ed.1990)). A “request for leave to amend must give adequate notice to the district court and to the opposing party of the basis of the proposed amendment before the court is required to recognize that a motion for leave to amend is before it.” Calderon, 81 F.3d at 1186-87. Accord Looper Maintenance Service, Inc. v. City of Indianapolis, 197 F.3d 908 (7th Cir. 1999).

In the present case, the court cannot determine from Plaintiff’s request to amend the complaint “to further address complaints of discrimination” whether such an amendment is warranted. Accordingly, the motion to amend the complaint is denied on this ground.

Plaintiff’s motion to waive or amend the filing date of the original complaint is also denied. Section 626(d) of Title 29 provides that “[n]o civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission.” Plaintiff, apparently, filed her complaint before the expiration of the sixty days. However, Defendants have not raised this issue in a motion and, therefore, it would be premature for the court to consider whether Plaintiff has in fact complied with § 626(d) or whether there are grounds to waive the requirements of that section. Therefore, Plaintiff’s motion is denied as unnecessary.

For all these reasons, Plaintiff's motion to amend complaint and motion to waive/amend filing date of original complaint are DENIED.

IT IS SO ORDERED.

JAMES D. TODD
UNITED STATES DISTRICT JUDGE

DATE