
SHARON HUSSAIN,

Plaintiff,

v.

ALLIES, INC.; JUANITA SMULLEN;
TRACEY WILSON; ANNE KREEGER;
ANITA BOGDEN; CHRISTINE COCUSO;
ERICA HILL; ABC CORPORATIONS 1-5
(fictitious names describing presently
unidentified business entities); and JOHN
DOES 1-5 (fictitious names describing
presently unidentified individuals),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO. MER-L-1898-22

**ORDER
GRANTING DEFENDANT’S MOTION
TO DISMISS**

THIS MATTER, having been opened to the Court by Margolis Edelstein, attorneys for Defendants Allies, Inc., Juanita Smullen, Tracey Wilson, Anne Kreeger, Anita Bogden, Christine Cocuso, and Erica Hill (“Defendants”), for an Order to Dismiss Plaintiff’s Complaint with prejudice, and the Court having considered the papers submitted in support of the within motion, together with any papers in opposition thereto, as well as the arguments of counsel, if any; good cause having been shown; and for the reasons set forth in the attached Statement of Reasons;

IT IS ON THIS 10th day of January, 2023;

ORDERED that Defendant’s Motion to Dismiss Plaintiff’s Complaint, with prejudice, is hereby **GRANTED**; and

IT IS FURTHER ORDERED that a copy of this Order shall be deemed served upon all counsel upon its entry on e-Courts.

 X Opposed
 Unopposed

/s/ R. Brian McLaughlin
R. BRIAN MCLAUGHLIN, J.S.C.

Statement of Reasons

Plaintiff's Complaint alleges two counts: (1) a violation of the New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1 et seq.; and (2) wrongful discharge in violation of public policy. The plaintiff seeks to amend her Complaint to address its deficiencies through a cross-motion. Oral argument was held on December 20th, 2023.

Standard of Review

Rule 4:6-2(e) allows a court to dismiss a complaint for a failure to state a claim upon which relief can be granted. Motions to dismiss are only granted in the “rarest of circumstances.” Sickles v. Cabot Corp., 379 N.J. Super 100, 106 (App. Div. 2005) (quoting Printing-Mart Morristown v. Sharp Electronics Corp., 116 N.J. 739, 771-72 (1989)). A complaint will survive a motion to dismiss if a broad reading gives rise to a mere suggestion of a cause of action. Camden Cty. Energy Recovery Assocs., Ltd. P’ship. v. N.J. Dep’t. of Env’tl. Prot., 320 N.J. Super. 59, 65 (App. Div. 1999).

In addressing any motion to dismiss for failure to state a claim, the court must “accept as true all factual assertions in the complaint.” Smith v. SBC Communications Inc., 178 N.J. 265, 268-69 (2004). Moreover, in doing so, the court must afford the Plaintiff every reasonable inference to be drawn from the factual assertions. Id. at 282. Dismissal is nonetheless required where the complaint’s factual allegations are “palpably insufficient” to support a claim upon which relief can be granted. Rieder v. State Dept. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (citations omitted).

To establish a CEPA violation, a plaintiff is required to show (1) a reasonable belief that the employer’s conduct was violating either a law, rule, regulation, or public policy; (2) that he performed a “whistle blowing” activity; (3) an adverse employment action was taken against the employee; and (4) a causal connection between the whistle blowing and the adverse employment action. See Kolb v. Burns, 320 N.J. Super. 467, 477-78 (App. Div. 1999).

Count Two of Plaintiff’s Complaint asserts a common law, Pierce claim of retaliation in violation of public policy. An employee has a cause of action for wrongful discharge when the discharge is contrary to a clear mandate of public policy. The sources of public policy include

legislation; administrative rules, regulations or decisions; and judicial decisions. Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 57 (1980).

Count 1:

When a defendant in an action brought pursuant to CEPA section prohibiting employers from taking any retaliatory action against employee requests that the trial court determine as a matter of law that a plaintiff's belief was not objectively reasonable, the trial court must make a threshold determination that there is a substantial nexus between the complained-of conduct and a law or public policy identified by the court or the plaintiff; if the trial court so finds, the jury then must determine whether the plaintiff actually held such a belief and, if so, whether that belief was objectively reasonable. N.J.S.A. 34:19–3, subd. C. Dzwonar v. McDevitt, 177 N.J. 451, 464 (2003).

The plaintiff contends that the defendants lacked a specific policy regulating the appropriate staff-to-individual ratio within their group homes. Her awareness of this matter arose when several of her coworkers were compelled to work independently, caring for up to four individuals simultaneously. The plaintiff held a reasonable belief that this policy contravened N.J.A.C. § 10:44A-2.8(b). Furthermore, the plaintiff asserts that the defendants' purported practice of transferring staff from one group home to another to address staffing shortages constituted a clear violation of N.J.A.C. § 10:44A-2.8(b). N.J.A.C. § 10:44A-2.8(b) provides:

Reduction of staff coverage as specified in the Annex A shall be justified in writing and sent to the licensing agency and the appropriate Regional Assistant Director's Office for approval.

1. Documented approval(s) by the Interdisciplinary Team that an individual or individuals can be left alone for specific amounts of time shall be submitted as evidence justifying modification of staff coverage.

2. Reduction of staff coverage shall be jointly reviewed and approved by the Regional Office and the licensing agency prior to implementation by the licensee, based on (b)1 above.

3. A written response shall be provided by the Division within 15 working days, documenting any conditions which must be met as part of the approval of the reduction of staff coverage.

N.J.A.C. § 10:44A-2.8(b) stipulates that any reduction in staff coverage should be accompanied by a written justification and subsequent approval from the relevant authorities. However, the plaintiff's argument does not center on the absence of justifications for these reductions but rather on her belief that maintaining specific staffing levels is mandatory according to this regulation. The plaintiff has cited a regulation that does not establish staffing ratios to substantiate her reasonable belief that the defendants' staffing ratios violated the law. Additionally, she has referred to a regulation that does not address the relocation of employees from one location to another to support her belief that the defendants' staff reassignments amounted to a violation of the law.

In addition, Plaintiff alleges that Direct Support Professionals ("DSPs") at Allies routinely complained about not being properly trained, that the training they receive is limited to watching videos, and that they did not know how to perform tasks such as testing an individual's blood sugar, a task that they are responsible for. These facts, Plaintiff alleges, formed her reasonable belief that Defendants were in violation of N.J.A.C. § 1044 A-2.7(a). N.J.A.C. § 1044 A-2.7(a) provides that:

Basic staff training programs shall either be offered by the Division, or provided by the licensee after obtaining approval from the Division, to ensure staff competency. Within 120 days of employment, each employee shall successfully complete New Jersey Pre-Service Training that shall address, at a minimum:

1. Overview of developmental disabilities;
2. Medication training;

3. Preventing abuse and neglect;
4. American Red Cross Standard First Aid Training (and have a valid certificate on file);
and
5. Cardiopulmonary resuscitation training (and have a valid certificate on file).

Here, the regulation cited by the plaintiff does not comport with the specific facts she presents as the basis for her reasonable belief in the defendants' violation of the law. The plaintiff's claims do not assert that DSPs were inadequately trained in the five specific categories outlined in N.J.A.C. § 10:44A-2.7(a) nor does the regulation explicitly address the suitability of video-based training methods. Furthermore, the plaintiff's allegations lack evidence to show that any of these complaints extended beyond the 120-day limit.

Therefore, the regulation referenced by the plaintiff does not closely correspond to the conduct she describes in her complaint.

Therefore, this Court finds there is no substantial nexus between the complained-of conduct and a law or public policy identified by the plaintiff. Plaintiff does not offer another statute/public policy or additional facts in its proposed Amended Complaint to link the complained of conduct to a law or public policy. Therefore, this Court grants Defendant's motion as to Count 1.

Count 2:

In addition, the plaintiff has not successfully established a clear and well-grounded mandate of public policy. Similar to her CEPA claim, she relies on regulations that are limited to her alleged complaints and do not reasonably express a distinct mandate of public policy. In particular, N.J.A.C. § 10:44A-2.8(b) does not clearly indicate a public policy mandating specific staffing ratios in group homes or prohibiting the relocation of employees between homes. Likewise, N.J.A.C. § 10:44A-2.7(a) does not establish a clear public policy requiring employee training in tasks like blood sugar testing or condemning the use of training videos.

Plaintiff has failed to identify a clear mandate of public policy that would render her termination unlawful.

Plaintiff's proposed Amended Complaint by the plaintiff also lacks allegations demonstrating that her termination violated a clearly defined mandate of public policy. Therefore, this Court grants Defendant's motion as to Count 2.

For the foregoing reasons, the motion to dismiss is granted in its entirety.