

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LINDA PIPPEN, et. al,

Plaintiffs,

v.

THE STATE OF IOWA, et. al,

Defendants.

CASE NO. CL 107038

(consolidated with
Case Nos. CL 103856 & 103122)

**ORDER DENYING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Hearing in the above-captioned case came before the Court on September 8, 2009. All parties were represented by their attorneys of record. After reviewing the file, various briefs, pleadings, exhibits, and appendices, and hearing arguments of counsel, the Court hereby enters the following order.

The Defendants seek summary judgment to limit the Court's consideration in this case to hiring and promotion decisions occurring on or after July 8, 2000. The Plaintiffs resist.

FACTUAL BACKGROUND

The named Plaintiffs are twenty-three African Americans who allege that they have been denied employment and/or promotions to positions in state government. Plaintiffs each filed charges of discrimination challenging systemic discrimination with respect to terms and conditions of employment as well as hiring or promotion. Based on their administrative charges, it appears that Plaintiffs assert claims under Title VII and the Iowa Civil Rights Act, including under the pattern-or-practice and disparate impact theories. Plaintiffs claim that Defendants' continued operation of discriminatory systems and/or the evidence of a pattern and practice of discrimination toward a significant number of African Americans using the State personnel

system have resulted in significant denials of equal employment opportunities for African-Americans over the last twenty years in a manner that allows them to challenge that pattern or system, if not for 20 years, for a period of time going back well beyond the 300 day limit requested by the State.

Defendants allege that Plaintiffs' claims prior to July 8, 2005 are time-barred. An aggrieved party has 300 days¹ from the date of the last discriminatory act to file a complaint with the Iowa Civil Rights Commission and/or the Equal Employment Opportunity Commission as a prerequisite for filing a lawsuit for discrimination in state or federal court. It is the Defendants' position that the Plaintiffs cannot recover for any alleged acts of discrimination prior to July 8, 2005, because the first civil rights complaint alleging discrimination on a class-wide basis was filed on May 4, 2006, and 300 days prior to that date is July 8, 2005. The Plaintiffs allege that an exception to the administrative filing requirement applies. Specifically, they claim that they can challenge all discrimination resulting from operation of allegedly discriminatory systems because they were victims of a pattern of violations resulting from the discriminatory system, or a continuing violation, because they filed administrative charges within 300 days of being subjected to the discriminatory systems.

STATEMENT OF THE LAW

Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter

¹ Prior to July 1, 2008, an aggrieved party had 180 days from the date of the last discriminatory act to file a complaint with the Iowa Civil Rights Commission. For discriminatory acts occurring after July 1, 2008, aggrieved parties now have 300 days to do so. Plaintiffs had 300 days prior to filing a charge under Title VII that would take the claims back to July 8, 2005. However, for the purposes of the Motion for Summary Judgment, it appears that Defendants agree to a 300 day administrative filing requirement.

of law.” Iowa R. Civ. P. 1.981(3). If reasonable minds can disagree regarding the resolution of an issue, a fact issue is generated. *Schlueter v. Grinnell Mut. Reinsurance Co.*, 553 N.W.2d 614, 616 (Iowa 1996). The party making the motion for summary judgment has the burden to establish the non-existence of any genuine and material fact issue and that he is entitled to judgment as a matter of law. *Farm Bureau Mutual Insurance Co. v. Milney*, 424 N.W.2d 422, 423 (Iowa 1988 “Every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved.” *Williams v. Davenport Communications Limited Partnership*, 438 N.W.2d 855, 856 (Iowa Ct. App. 1989).

ANALYSIS

The Court initially notes that neither party has asked it to decide at this time how far back in time the plaintiffs may challenge alleged discrimination within the State’s Personnel System. The only question before this Court now is whether either as a matter of law or whether the State has shown that there is no question of fact, that a pattern of discrimination or system that allows discrimination within the State Executive branch could not extend back beyond July 8, 2005.

While there are clearly disputes regarding the law on this issue, during oral argument it became clear that both sides have a different view of the facts. The evidence will either show there is **no** pattern or discriminatory system or that there **is** such a pattern and system. Factual issues that would decide the question of how far back in time the Plaintiffs may challenge the State’s employment practices exist.

The law clearly allows challenges to patterns of discrimination or systems beyond the 300 day administrative filing deadlines under certain circumstances and this Court does not

believe this case so clearly falls outside of those exceptions to warrant summary judgment at this time.

In pattern-or-practice cases or disparate impact cases – cases challenging systemic discrimination – courts frequently apply the continuing violation doctrine. *See, e.g., The Committee Concerning Community Improvement v. City of Modesto*, No. CV F 04 6121 LJO DLB, 2007 WL 145612, *15 n.8 (E.D. Cal. May 16, 2007) (acknowledging that “a case involving a ‘discriminatory system’ may establish a continuing violation”).

There are questions of fact regarding Plaintiff’s claim of a pattern and practice or system-wide discrimination occurring based on a charge in 2006 and going back beyond 300 days.

Bearing in mind the applicable standard of review at summary judgment, the CPS report reviewing State hiring and promotion system, when combined with the other facts Plaintiffs present in support of their resistance, Plaintiff appears to create a fact issue as to whether or not the State’s actions are due to discrimination. Thus, questions of material fact preclude deciding – at this point - whether to cut off the claims of African Americans as of July 8, 2005.

In conclusions questions of material fact allows Plaintiffs’ claim of a pattern of unlawful behavior beginning prior to July 8, 2005 to be challenged through their lawsuit. The parties seem to agree that a decision on “how far back” beyond that date the class may go to allege damages will be evaluated by this Court in conjunction with determining whether class certification is appropriate and the parameters of any class. Thus, the Court is not required to decide, at this time, just how far back prior to July 8, 2005, (if at all) Plaintiffs’ claims may reach, and declines to do so.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

The Defendants' Motion for Partial Summary Judgment is **DENIED**.

IT IS SO ORDERED this ____ day of _____, 2009.

DONNA L. PAULSEN, JUDGE
Fifth Judicial District of Iowa

Original filed.

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