

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RONALD DROWN,)	
)	
<i>Plaintiff</i>)	
)	
v.)	<i>Docket No. 97-278-P-C</i>
)	
ARAMARK EDUCATIONAL)	
SERVICES, INC.,¹)	
)	
<i>Defendant</i>)	

***RECOMMENDED DECISION ON DEFENDANT’S MOTION
FOR SUMMARY JUDGMENT***

The defendant, Aramark Educational Services, Inc., moves for summary judgment on Counts I, III and IV of the plaintiff’s complaint in this action that was removed to this court from the Maine Superior Court (Cumberland County), and for summary judgment concerning damages on Count II, the only other count in the complaint. I recommend that the court grant the motion for summary judgment on Count I, the only federal claim raised in the complaint, and dismiss the pendent state-law claims.

¹ The complaint names two defendants, Aramark Corporation and Aramark Food Services. The corporate disclosure statement filed by the defendant states that “[t]he correct name of the company is ARAMARK Educational Services, Inc. ARAMARK Educational Services, Inc. is a wholly owned subsidiary of ARAMARK Corporation and is the corporation that employed the Plaintiff.” It further notes that there has never been a corporation known as ARAMARK Food Service and that counsel for the plaintiff has been notified of the correct name and “has indicated that he will amend the Complaint accordingly.” Corporate Disclosure Statement at 1. No request to amend the complaint has been filed. Nonetheless, the court will deem the name represented by the defendant to be correct in the absence of any showing that it is not.

I. Procedural Issue

The defendant filed its motion for summary judgment, accompanied by a statement of material facts not in dispute (“Defendant’s SMF”) (Docket No. 9) and the affidavit of Scott Smith (“Smith Aff.”) (Docket No. 8), on October 17, 1997, in accordance with Fed. R. Civ. P. 56 and this court’s Local Rule 56. The plaintiff filed no objection to the motion or any of the required accompanying papers within the time limit for doing so established by Local Rule 7(b), and must therefore be deemed to have waived objection. This court will not automatically grant a motion for summary judgment to which no timely objection has been filed, but rather will consider the merits of the motion on the basis of the materials filed by the moving party. *Redman v. FDIC*, 794 F. Supp. 20, 22 (D. Me. 1992).²

II. Summary Judgment Standards

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 a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “In this regard, ‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute is resolved favorably to the nonmovant. By like token, ‘genuine’ means that ‘the evidence about the fact is such

² Under Local Rule 56 all material facts set forth in the moving party’s statement of material fact are deemed admitted unless properly controverted by a statement of material fact filed by the nonmoving party. “When the party opposing summary judgment fails to file a statement of material facts, the party has waived objection to the moving party’s statement of material facts to the extent that the movant’s statement is supported by appropriate record citations.” *Cutler v. FDIC*, 796 F. Supp. 598, 600 (D. Me. 1992).

that a reasonable jury could resolve the point in favor of the nonmoving party” *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and “give the party the benefit of all reasonable inferences to be drawn in its favor.” *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, “the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue.” *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995) (citing *Celotex*, 477 U.S. at 324); Fed. R. Civ. P. 56(e). “This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof.” *International Ass’n of Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

III. Factual Background

The following facts are set forth in the Defendant’s SMF and are properly supported by citations to the summary judgment record. The plaintiff became an employee of the defendant, a contractor providing food service at St. Joseph’s College, on July 1, 1995. Smith Aff. ¶¶ 1, 3, 4. The defendant reduced services and eliminated personnel in December 1995 in order to reduce food service costs at St. Joseph’s College. *Id.* ¶ 4. As part of this cost-saving initiative, the defendant eliminated the plaintiff’s job and terminated his employment. *Id.* ¶ 5. The plaintiff did not file an administrative complaint with either the Maine Human Rights Commission or the Equal

Employment Opportunity Commission alleging age discrimination in connection with this termination until January 1997, over two years after his termination. *Id.* ¶ 6.

The plaintiff filed this action in July 1997. Notice of Removal (Docket No. 1) ¶ 1.

IV. Analysis

Count I of the complaint alleges that the termination of the plaintiff's employment violated the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.* Count II alleges that his employment was terminated on the basis of age, in violation of the Maine Human Rights Act ("MHRA"), 5 M.R.S.A. § 4551 *et seq.* Count III alleges intentional infliction of emotional distress at the time of the termination. Count IV alleges negligent infliction of emotional distress at the time of the termination.

A. Count I (ADEA)

The defendant seeks summary judgment on this count on the basis of the plaintiff's failure to file an administrative complaint within 300 days from the date of his termination, as required by 29 U.S.C. § 626(d).

To maintain a private action under the ADEA scheme, an aggrieved party must first file a complaint with the EEOC. This complaint must be filed within 300 days of the alleged act of discrimination or within 180 days in states having no law against age discrimination and no agency that is authorized to investigate such claims.

Kale v. Combined Ins. Co. of Am., 861 F.2d 746, 750 (1st Cir. 1988). The ADEA filing period is akin to a statute of limitations. *Id.* at 751-52. The undisputed factual record establishes that the plaintiff failed to comply with this statutory requirement, filing his administrative charge well over 300 days after the termination, and his ADEA claim is therefore barred. The defendant is entitled

to summary judgment on Count I.

B. Counts II, III and IV

These counts allege state-law claims. When summary judgment is entered against a plaintiff on the party's federal claims, the court has the discretion to dismiss pendent state-law claims against the same defendant. *See* 28 U.S.C. § 1367(c); *Burns v. Loranger*, 907 F.2d 233, 234 n.1 (1st Cir. 1990); *Mladen v. Gunty*, 655 F. Supp. 455, 460-61 (D. Me. 1987); 13B C. Wright, A. Miller and E. Cooper, *Federal Practice and Procedure*, § 3567.1 at 133-37 (1984). I can discern no compelling reason why this court should retain jurisdiction to decide any remaining state-law issues. Accordingly, I conclude that Counts II-IV should be dismissed.

IV. Conclusion

For the foregoing reasons, I recommend that the defendant's motion for summary judgment be **GRANTED** as to Count I, that any pendent state-law claims be dismissed, and that the defendant's motion as to the state-law claims be dismissed as moot.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 26th day of November, 1997.

David M. Cohen
United States Magistrate Judge