

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TERRY A. MOORE,)	
)	
<i>Plaintiff</i>)	
)	
v.)	<i>Docket No. 03-229-P-H</i>
)	
YOUTH PROMISE, et al.,)	
)	
<i>Defendants</i>)	

MEMORANDUM DECISION ON MOTION TO AMEND ANSWER

The defendants, Youth Promise and Mary Trescott, move for leave to amend their answer to add four affirmative defenses. Defendants’ Motion to Amend Their Answer, etc. (“Motion”) (Docket No. 9) at 1. The plaintiffs oppose the motion, pointing out that it was filed 20 days after the deadline imposed by the court’s scheduling order (Docket No. 5) for amendment of the pleadings and contending that two of the proposed defenses would be futile amendments. Plaintiff’s Opposition to Defendants’ Motion to Amend Their Answer (“Opposition”) (Docket No. 11) at 1-3. I grant the motion, although that action should not be interpreted in any way as an endorsement of defense counsel’s inexplicable failure to perform an adequate analysis of her client’s case in a timely fashion.

Defense counsel’s proffered explanation for the delay in adding the proposed affirmative defenses is that “discovery and research undertaken in preparation for the Plaintiff’s deposition and summary judgment revealed that the . . . additional defenses are available and appropriate.” Motion at 2. Counsel are

expected to make such determinations before filing an answer and certainly within the two months thereafter that were allowed by the scheduling order. Rule 15(a) of the Federal Rules of Civil Procedure does not require that leave to amend a pleading should be freely given “when justice so requires.” *See also Foman v. Davis*, 371 U.S. 178, 182 (1962). Proposed amendments need not be allowed where they would be futile. *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 59 (1st Cir. 1990). Undue delay may also result in denial of a motion to amend. *Larocca v. Borden, Inc.*, 276 F.3d 22, 32 (1st Cir. 2002).

The plaintiff contends that two of the proposed defenses, numbers 22 and 25, “are fruitless and irrelevant” and leave to add them should accordingly be denied. Opposition at 3. The proposed Twenty-Second Defense provides: “Plaintiff’s claims are barred, in whole or in part, by the workers’ compensation exclusivity provision.” Motion at 1. The plaintiff asserts that he “is not claiming any physical or psychological injury . . . and he does not allege any injury that would be covered by the Workers’ Compensation Act.” Opposition at 3. The defendants respond that the proposed defense “is a merited [sic] bar to some of Plaintiff’s claims (i.e. tort claims) because Plaintiff has not limited his requested damages to economic damages” and because the plaintiff stated in discovery that he seeks damages for humiliation and punitive damages and “would not confirm or stipulate that his claims otherwise subject to the workers’ compensation exclusivity bar would be limited to economic damages.” Defendants’ Reply Brief in Support of Their Motion to Amend Their Answer, etc. (“Reply”) (Docket No. 11) at 2. The defendants cite *Cole v. Chandler*, 752 A.2d 1189 (Me. 2000), in support of their position, *id.*, which reveals that they apparently rely on 39-A M.R.S.A. § 104 in asserting this defense. In that case, the Law Court held that “mental injuries constitute personal injuries within the meaning of the exclusivity provision of the Workers’ Compensation Act and thus an independent claim is barred.” 752 A.2d at 1196. Claims for damages arising out of economic injuries, however, are not precluded. *Id.* The complaint does seek “compensatory

damages for pain and suffering, psychological upset [and] interference with the enjoyment of life, Complaint (included in Docket No. 1) at 14, so there is a theoretical basis for the proposed affirmative defense, as this action arises out of an employment relationship. I will not find the proposed amendment futile based on representations to the contrary contained in the plaintiff's memorandum of law submitted in opposition to the motion for leave to amend.

The proposed Twenty-Fifth Defense provides: "Plaintiff's claims are barred, in whole or in part, because Defendants acted at all times with reasonable grounds to believe that their acts were not in violation of the law." Motion at 2. The defendants characterizes this as an assertion of "ignorance of the law as a defense to liability," which is "fruitless and should be denied." Opposition at 3. The plaintiff responds that the proposed defense is based on 29 C.F.R. § 790.22¹ and asserts a defense to any claim for liquidated damages under the Equal Pay Act. Reply at 2. The complaint does assert a claim under the Fair Labor Standards Act, specifically 29 U.S.C. § 206, Complaint ¶¶ 45-50, and the regulation applies by its terms to such claims. 29 U.S.C. § 790.22(a). The regulation provides that a court may decline to award liquidated damages under the Act if the employer shows that the act or omission giving rise to the action was in good faith and that he had reasonable grounds for believing that the act or omission was not in violation of the Act. 29 U.S.C. § 790.22(b). This proposed defense is not futile on its face.

The plaintiff does not attempt to show that he would be prejudiced in any way by the proposed amendments. There is no showing that he was not aware of the operative facts giving rise to the defenses. *See McSorley v. Town of Richmond*, 2002 WL 31106427 (D. Me. Sept. 20, 2002), at *3. While I do so reluctantly under the circumstances, I grant the motion for leave to amend. *See Johnson v. Spencer*

¹ Counsel for the defendants' citation of this regulation as "26 C.F.R. § 790.22," Reply at 2, caused the court unnecessary (continued on next page)

Press of Maine, Inc., 211 F.R.D. 27, 28 (D. Me. 2002); *Allendale Mut. Ins. Co. v. Rutherford*, 178 F.R.D. 1, 3 (D. Me. 1998).

Dated this 15th day of January 2004.

/s/ David M. Cohen
David M. Cohen
United States Magistrate Judge

Plaintiff

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