

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RUTH TRACY,)	
)	
<i>Plaintiff</i>)	
)	
v.)	<i>Docket No. 00-157-P-C</i>
)	
PMC MEDICAL MANAGEMENT, INC.,)	
)	
<i>Defendant</i>)	

RECOMMENDED DECISION ON DEFENDANT’S MOTION TO DISMISS

The defendant, PMC Medical Management, Inc.,¹ moves to dismiss the plaintiff’s claims for compensatory damages. With respect to Count I of the two-count complaint, raising a claim under the federal Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et seq.*, the plaintiff does not oppose the motion, Plaintiff’s Objection to Motion to Dismiss (“Plaintiff’s Objection”) (Docket No. 10) at 1 n.1, and the demand for compensatory damages, Complaint at 7, should be dismissed to the extent that such damages are sought under the ADEA, 29 U.S.C. § 626(b). With respect to the second count of the complaint, which raises a claim of age discrimination under the Maine Human Rights Act (“MHRA”), 5 M.R.S.A. § 4551 *et seq.*, I recommend that the court deny the motion.

I. Applicable Legal Standard

The motion to dismiss invokes Fed. R. Civ. P. 12(b)(6), asserting that the demand for compensatory damages on the state-law claim fails to state a claim upon which relief may be granted. “When evaluating a motion to dismiss under Rule 12(b)(6), [the court] take[s] the well-pleaded facts

as they appear in the complaint, extending the plaintiff every reasonable inference in her favor.” *Pihl v. Massachusetts Dep’t of Educ.*, 9 F.3d 184, 187 (1st Cir. 1993). The defendant is entitled to dismissal for failure to state a claim only if “it appears to a certainty that the plaintiff would be unable to recover under any set of facts.” *Roma Constr. Co. v. aRusso*, 96 F.3d 566, 569 (1st Cir. 1996); see also *Tobin v. University of Maine Sys.*, 59 F.Supp.2d 87, 89 (D. Me. 1999).

II. Discussion

The ADEA limits a plaintiff’s recovery to back pay, punitive damages for willful violations, and equitable relief. 29 U.S.C. § 626(b). The state statute provides, with respect to age, as follows:

It is unlawful employment discrimination, in violation of this Act . . . :

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of . . . age . . . or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment

5 M.R.S.A. § 4572(1). The section of the MHRA governing remedies provides, in relevant part:

If the court finds that unlawful discrimination has occurred, its judgment must specify an appropriate remedy or remedies for that discrimination. The remedies may include, but are not limited to:

* * *

(2) An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;

* * *

(8) In cases of intentional employment discrimination, compensatory and punitive damages as provided in this subparagraph.

* * *

(e) The sum of compensatory damages awarded under this subparagraph for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed for each complaining party [an amount based on the number of persons employed by the defendant].

¹ The other defendants named in the complaint, four individuals, Docket No. 1, have been dismissed by stipulation. Docket No. 6.

5 M.R.S.A. § 4613(2)(B).

Citing case law holding that interpretation of the MHRA should be guided by federal case law interpreting analogous federal statutes, *e.g.*, *Higgins v. New Balance Athletic Shoe, Inc.*, 21 F.Supp.2d 66, 71 (D. Me. 1998); *Winston v. Maine Technical College Sys.*, 631 A.2d 70, 74-75 (Me. 1993), the defendant contends that section 4613(2)(B)(8) must be read to exclude compensatory damages for age discrimination claims, Defendant PMC Medical Management's Motion to Dismiss, etc. ("Motion") (Docket No. 8) at 4-8. The Maine Law Court has noted the similarities between section 4572 of the state statute and the ADEA, stating that

[w]e may conclude that the Maine legislature's ban on discrimination in employment on the basis of age, like the prohibition of discrimination on the basis of race, color, sex, or national origin, was patterned after its federal statutory equivalent. Consequently, federal cases construing the ADEA may aid our interpretation of the provision of the Maine Human Rights Act banning age discrimination in employment.

Wells v. Franklin Broad. Corp., 403 A.2d 771, 773 n.4 (Me. 1979). However, the Law Court has also held that "references to federal provisions and their exegeses in the federal courts as a vehicle by which to illuminate the nature of our local statutes" is appropriate "when the federal and state laws are substantially identical." *Percy v. Allen*, 449 A.2d 337, 342 (Me. 1982).

At least since 1997, when the Maine legislature made compensatory damages available under the MHRA, 1997 Me. Laws c. 400, § 1, the ADEA and the Maine Human Rights Act have not been substantially identical with respect to the types of damages available for age discrimination claims. The Law Court has not addressed the specific issue raised by the defendant here, but both parties argue that its decision in *Maine Human Rights Comm'n v. Kennebec Water Power Co.*, 468 A.2d 307 (Me. 1983), supports their respective positions. In that case, the plaintiff contended that the defendant had engaged in age discrimination when it hired applicants older than the individual on whose behalf the action was brought. *Id.* at 307-08. The trial court entered summary judgment for the defendant

because the individual plaintiff was 34 years old and, while the MHRA did not specifically limit its protection to a particular age group, the ADEA created a protected class composed of persons between the ages of 40 and 65.² *Id.* at 308-09. The Law Court reversed, holding that “in enacting the age discrimination prohibitions, the Legislature intended to supplement the federal ADEA, and we decline to superimpose a limitation which does not appear on the face of the statute.” *Id.* at 310. The Law Court added, in reference to its prior decisions relying on federal case law construing the ADEA to aid in interpretation of similar provisions in the MHRA, “that where the provisions of the Maine statute differ substantively from their federal counterparts, as is the case here, deference to construction of the federal version is unwarranted.” *Id.*

That language is applicable to the instant case. By invoking federal case law, and indeed the language of the ADEA itself, the defendant asks this court to superimpose a limitation on damages that does not appear on the face of section 4613. The difference in the availability of compensatory damages under the two statutes is a substantive difference in statutory language, and accordingly deference to construction of the ADEA language is not warranted. The fact that the explanatory language accompanying the 1997 legislation does not mention the ADEA or age discrimination claims specifically, a point upon which the defendant relies, Motion at 4-5, is not determinative. There are many possible explanations for the absence of such a reference in the legislative record, including the equally possible conclusion that the legislature did in fact intend that state remedies for unlawful discrimination based on age be broader than those available under federal law. Given the fact that the state statute does not limit the age of employees protected from discrimination, a much broader scope than that of the ADEA, the latter explanation appears somewhat more likely. In any event, this court

² The upper age limit has since been removed from the ADEA. 29 U.S.C. § 631(a).

will not speculate about legislative intent based on the absence of a reference such as that noted by the defendant here.

The defendant also relies heavily on *dictum* in this court's recent opinion in *French v. Bath Iron Works Corp.*, 45 F.Supp.2d 69 (D. Me. 1999). In that case, the plaintiffs raised claims under the ADEA; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Rehabilitation Act, 29 U.S.C. § 794; and the MHRA. *Id.* at 69-70. In addressing the question whether a cause of action for disparate impact, not available under the ADEA, is available under the MHRA, the court discussed *Kennebec Water Power* and held that the Law Court's decision in that case "stands for the proposition that, in situations where the ADEA has a delineated limitation that the MHRA does not, the Law Court may choose not to rely on cases interpreting that provision of the ADEA so as to read the same limitation into the MHRA." *Id.* at 73. The phrase upon which the defendant here relies follows upon that statement. "In light of *Kennebec Water Power Co.*, the Court reasons that it is proper to refer to cases interpreting the ADEA when determining the general purpose, substance, and scope of recovery under the MRHA." *Id.* at 74. The defendant essentially argues that "scope of recovery" means "types of damages available." However, "scope of recovery" can also be interpreted to mean "types of claims for which recovery will be provided," a more reasonable interpretation given the matter at issue in *French*. In any event, the availability of compensatory damages was not at issue in *French*, making the phrase, even if interpreted as the defendant suggests, *dictum* and without precedential value. Most important to note is the fact that both the ADEA and the MHRA are silent on the question at issue in *French*, while both contain language addressing — quite differently — the question at issue here.

The MHRA, in section 4913, provides compensatory damages for all claims of intentional employment discrimination. The courts cannot apply a court-made rule of statutory construction to

read into that statutory language a limitation not otherwise present. I note that Judge Hornby has recently held that the MHRA, unlike the ADEA, “permits damages for things like pain and suffering and mental anguish.” *Walton v. Nalco Chem. Co.*, 2000 WL 961379 (D. Me. July 6, 2000), at *1. For the reasons stated above, I agree.

III. Conclusion

For the foregoing reasons, I recommend that the defendant’s motion to dismiss be **GRANTED** as to any claim for compensatory damages on Count I and otherwise **DENIED**.

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.

Date this 19th day of September, 2000.

RUTH TRACY
plaintiff

David M. Cohen
United States Magistrate Judge
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