

SAMPLE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

John White,

Case No. 14 CV 1234

Plaintiff,

DEFENDANT'S REQUEST TO  
FILE FOR SUMMARY JUDGMENT

-vs-

JUDGE JACK ZOUHARY

XYZ University,

Defendant.

Pursuant to this Court's Case Management Conference Order (Doc. 10) and Rule 56(c) of the Federal Rules of Civil Procedure, Defendant requests approval to file a Motion for Summary Judgment against all claims asserted by Plaintiff. A two-page Memorandum in Support of this Request is attached. Defendant conferred with Plaintiff prior to this filing.

Respectfully submitted,

s/ Mary Red

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## MEMORANDUM IN SUPPORT

Plaintiff is a former professor at XYZ University (the “University”). Plaintiff was suspended and eventually discharged as a result of two sexual harassment complaints. Plaintiff had not one, but two, administrative hearings prior to his discharge. Both hearing panels determined that Plaintiff violated the University’s sexual harassment policy and found the misconduct warranted Plaintiff’s separation.

Despite the two administrative hearings, Plaintiff now asserts nine claims against the University. Plaintiff has been deposed and his deposition firmly supports summary judgment in favor of the University on all claims. Each of the claims will be briefly addressed:

Breach of Implied Covenant. “Ohio law does not recognize a standalone claim for breach of the implied covenant of good faith and fair dealing.” *Wendy’s Int’l, Inc. v. Saverin*, 337 F. App’x 471, 476 (6th Cir. 2009).

Discrimination Claims. Plaintiff’s claims for age and sex discrimination fail. Initially, Plaintiff admits that he has no direct evidence of age or sex discrimination (Tr. 14), so he must prove the prima facie case through circumstantial evidence. However, Plaintiff cannot prove the prima facie case because no other professors have violated the Sexual Harassment policy and, thus, he can point to no similarly-situated employees that have received more favorable treatment (Tr. 28). Further, Plaintiff has no evidence that the legitimate, non-discriminatory reason for his discharge was pretextual. Plaintiff’s deposition testimony shows that he acknowledges the truth of a significant portion of both complainant’s recollections of the events leading to the sexual harassment complaints, and admits that he has no reason to distrust the findings of any individual involved in the administrative proceedings and hearings provided to him prior to his discharge.

ERISA Interference. Plaintiff's ERISA claim fails because he admits he has no specific evidence of a purposeful intent to violate ERISA (Tr. 56). "Unlike with age discrimination and ADA claims, where inferences of discrimination are sufficient to meet the burden at the prima facie state, [a plaintiff] must point to specific evidence that shows that the desire to reduce medical costs to motivate his termination." *Gagliotti v. Levin Group, Inc.*, 508 F. App'x 476, 485 (6th Cir. 2012) (a plaintiff must allege a "specific intent to violate ERISA").

Breach of Contract. Plaintiff's claim for breach of contract fails because the University followed its policies for the suspension and dismissal of Plaintiff. Plaintiff's employment with the University was governed by the University's Faculty Handbook (Tr. 68). Plaintiff understands that the Faculty Handbook policies provided that tenured professors could be discharged for certain conduct (Tr. 80). The clear and unambiguous evidence shows that, following the two complaints of sexual harassment, Plaintiff was provided the full proceedings under the Sexual Harassment policy, (Tr. 88) and, due to the findings of the proceedings under Section 2.25, the policy regarding the Dismissal of Faculty (Tr. 92). The clear and unambiguous evidence shows that there is no breach of contract.

Promissory Estoppel. Plaintiff's claim for promissory estoppel fails because he admits he received no promises outside of the written policies entailing his employment contract (Tr. 96). *See Commerce Benefits Group, Inc. v. McKesson Corp.*, 326 F. App'x 369, 374 (6th Cir. 2009) (promissory estoppel claim requires a clear and unambiguous promise); *O'Neill v. Kemper*, 497 F.3d 578583 (6th Cir. 2007) (cannot assert a promissory estoppel claim when a contract exists).

Respectfully submitted,