

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-7118

September Term, 2024

1:22-cv-00472-APM

Filed On: November 7, 2024

Monique C. Wallace,

Appellant

v.

Aramark at Capital One Arena,

Appellee

BEFORE: Henderson, Pillard, and Walker, Circuit Judges

ORDER

Upon consideration of the order to show cause entered August 15, 2024, and the response thereto, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the appeal be dismissed as untimely. Appellant's August 12, 2024 notice of appeal of the district court's January 21, 2023 dismissal order was filed beyond the 30-day period established in Federal Rule of Appellate Procedure 4(a)(1)(A), and the timely filing of a notice of appeal in a civil case is a jurisdictional requirement. See Bowles v. Russell, 551 U.S. 205, 209 (2007). Moreover, appellant did not file a motion to extend or reopen the deadline to file the notice of appeal, nor would she be eligible for such relief. See Fed. R. App. P. 4(a)(5), (6).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-7118

September Term, 2024

1:22-cv-00472-APM

Filed On: December 20, 2024

Monique C. Wallace,

Appellant

v.

Aramark at Capital One Arena,

Appellee

BEFORE: Henderson, Pillard, and Walker, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

defendant can prepare a responsive answer and adequate defense. *See Butler v. Cal. St. Disbursement Unit*, 990 F. Supp. 2d 8, 9 (D.D.C. 2013). While pleadings filed by pro se litigants are held to less stringent standards than those drafted by lawyers, pro se litigants “must plead ‘factual matter’ that permits the court to infer ‘more than the mere possibility of misconduct.’” *Atherton v. D.C. Office of Mayor*, 567 F.3d 672, 681–82 (D.C. Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678–679).

III.

In her Complaint, Plaintiff alleges, in relevant part, the following:

I am looking to sue Aramark for negligence (work negligence) and two/three counts of racism/racist acts against me! This is unbelievable as to what has happened to me. It has been very much triggering to my mental health diagnosis of PTSD and anxiety! No employer should commit such acts and they should not allow it in the workplace. I hope that someone will give me what I am owed.

Notice of Removal, ECF No. 1, Ex. A, ECF No. 1-1 [hereinafter Compl.], at 2.²

Read liberally, the court construes the Complaint as alleging four claims: (1) racial discrimination; (2) hostile work environment; (3) intentional infliction of emotional distress (“IIED”); and (4) negligence. Interpreting the Complaint in the light most favorable to the pro se Plaintiff, the court finds that the Complaint fails to state a claim.

A.

First, Plaintiff alleges “racist acts” but makes no factual allegations that could support a theory of racial discrimination. Instead, Plaintiff makes only the conclusory allegation that she “experienced racism” while “working in the other lounge area.” Compl. at 1. “[L]egal conclusions cast in the form of factual allegations” are not sufficient to satisfy Rule 8(a). *City of Harper Woods Employees’ Ret. Sys. v. Olver*, 589 F.3d 1292, 1298 (D.C. Cir. 2009). Moreover, to the extent

² The court uses PDF pagination for all references to this exhibit.

Plaintiff intends to bring a racial discrimination claim under Title VII, the federal statute prohibiting workplace discrimination, any such claim would fail because Plaintiff has not pleaded the exhaustion of administrative remedies. *See Payne v. Salazar*, 619 F.3d 56, 65 (D.C. Cir. 2010).

B.

A hostile work environment claim fails for similar reasons. To state a plausible hostile work environment claim, a plaintiff must allege facts showing that “the workplace [was] permeated with discriminatory intimidation, ridicule, and insult . . . sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal quotations omitted).

Plaintiff has alleged that, after she was “sexually assaulted by a male employee,” she was moved “to another lounge area to work.” Compl. at 1. Plaintiff has not alleged any factual details to establish a hostile working environment based on sexual abuse, racism, or any other basis. Instead, she has asserted that, after she suffered a sexual assault, the situation was addressed by her employer, and that she later suffered unspecified “racism” but had “no one to talk to” about it. *Id.* Such summary allegations, and an affirmative indication that Defendant took corrective action about the complaint, are together insufficient to state a claim. *See, e.g., Roof v. Howard Univ.*, 501 F. Supp. 2d 108, 115 (D.D.C. 2007) (holding that the plaintiff failed to state a hostile work environment claim where employer took prompt, corrective action in response to alleged wrongdoing).

C.

To the extent Plaintiff’s Complaint can be read to raise an IIED claim, the Complaint also fails to satisfy the minimal pleading requirements of Rule 8. To establish a prima facie claim of IIED, “a plaintiff must show (1) extreme and outrageous conduct on the part of the defendant

which (2) intentionally or recklessly (3) causes the plaintiff severe emotional distress.” *Smith v. Clinton*, 886 F.3d 122, 129 (D.C. Cir. 2018) (quoting *Armstrong v. Thompson*, 80 A.3d 177, 189 (D.C. 2013)). The Complaint again fails to make out the necessary factual allegations to state a claim, such as what extreme or outrageous conduct was committed against her “on the part of the defendant.” *Id.* Thus, Plaintiff has failed to state a claim for IIED.

D.

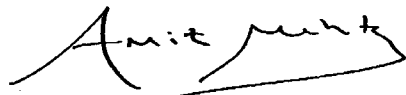
Finally, Plaintiff’s negligence claim also fails. Setting aside the issue of whether such a claim would be barred by worker’s compensation law, *see* D.C. CODE § 32-1503, Plaintiff has again failed to allege any factual basis to demonstrate how Defendant breached a duty that was owed to her.

IV.

In sum, Plaintiff’s Complaint does not, at this juncture, contain a “short and plain statement” of material facts sufficient to convey the nature of the dispute and permit Defendant to adequately respond. Nothing in this opinion, however, should be read to foreclose Plaintiff from amending her Complaint to provide sufficient factual allegations to support her claims. If Plaintiff wishes to file an amended complaint, she shall do so by January 3, 2023. If she does not, the court will dismiss this action.

For the foregoing reasons, the court grants Defendant’s Motion to Dismiss, ECF No. 3, without prejudice.

Date: December 7, 2022



 Amit P. Mehta
 United States District Court Judge

**Additional material
from this filing is
available in the
Clerk's Office.**