

Simmons v City of New York
2023 NY Slip Op 31171(U)
April 13, 2023
Supreme Court, New York County
Docket Number: Index No. 162152/2019
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART 05RCP**

Justice

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ARLENE SIMMONS,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY FIRE
DEPARTMENT,

Defendants.

-----X

INDEX NO. 162152/2019

MOTION DATE 10/31/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion for DISCOVERY.

Plaintiff brings this action against defendants the New York City Fire Department (“FDNY”) and the City of New York (collectively the “City”), asserting claims for discrimination, hostile work environment, and retaliation under Administrative Code §8-107. Specifically, plaintiff alleges that, while employed in the FDNY’s Office of Recruitment and Retention, her supervisor, Brandon Mahon, and others discriminated against her based on her age and sex (See NYSCEF Doc. No. 9 [Compl.]).

Plaintiff now moves for an order, pursuant to CPLR §3124, compelling the City to produce documents and information responsive to plaintiff’s August 19, 2021 First Set of Combined Demands (NYSCEF Doc. No. 29 [Demands]). Although the City responded to these demands (See NYCEF Doc. No. 30 [Response]), plaintiff contends that defendants’ objections to Document Requests 4-10 and 12, 14, 18, 19, and 22 set out in its Discovery Demands were improper. The City opposes the motion. For the reasons set forth below, plaintiff’s motion is denied as to

Document Requests 8, 9, and 10 and otherwise granted with certain temporal limitations set forth below.

DISCUSSION

Plaintiff's motion as to Document Requests 4, 5, and 6 is granted, in part. These Document Requests seeks the production of Brandon Mahon's employment records, including all his performance evaluations, disciplinary records, and all FDNY Bureau of Investigation and Trials records related to him. As plaintiff alleges that Mahon, as her supervisor, engaged in discriminatory conduct towards her, these documents are relevant to her claims (See Junmei Zhang v City of New York, 198 AD3d 504, 505 [1st Dept 2021] [Court did not abuse its discretion in inter alia granting motion to compel production of NYPD officer's personnel file without first requiring an in camera review in light of repeal of Civil Rights Law §50-a]; see also Weingard v City of NY, 9 Misc 3d 891, 894 [Sup Ct, NY County 2003] ["[G]enerally, personnel records of nonlaw enforcement city employees do not constitute policy-making materials and therefore are not protected by the public interest privilege"]). The cases defendants rely upon do not support a contrary conclusion, as none involve the Administrative Code §8-107 claims at issue here but involved negligence actions in which the City was sued on a theory of respondeat superior (See e.g., Lane v City of New York, 210 AD3d 502 [1st Dept 2022]; Hui-Lin Wu v City of New York, 183 AD3d 411 [1st Dept 2020]). However, while the Court grants this branch of plaintiff's motion, it limits the scope of defendants' response to the period in which plaintiff worked in the FDNY's Office of Recruitment and Retention¹.

¹ The privacy concerns raised by the City are alleviated by the parties' previously entered Stipulation and Protective Order barring the dissemination of confidential material (See NYSCEF Doc. No. 33). Moreover, "any references to an individual's social security number or other personal information of such nature should be redacted" prior to production (Weingard v City of New York, 9 Misc 3d 891, 894 [Sup Ct, NY County 2003]).

Plaintiff's motion to compel responses to Document Request 7, seeking all Equal Employment Opportunity ("EEO") complaints concerning Mahon, is also granted.

Plaintiff's motion to compel responses to Document Requests 8, 9, and 10, which seek all correspondence from Mahon concerning Simmons, all correspondence between Mahon and Simmons, and all records related to Simmons' participation in, or exclusion from, FDNY Recruitment events (NYSCEF Doc. No. 29 [Demands at ¶¶8, 9, and 10]) is denied. It is undisputed that the City is performing a search of all correspondence relevant to these demands based upon parameters agreed upon by all parties, after which it will produce the results of this search.

Plaintiff's motion to compel responses to Document Requests 12 and 14, seeking all FDNY vehicle requests made by members of the Recruitment Office from 2015 through the present and all documents or communications concerning the denial of FDNY vehicle requests made by members of the Recruitment Office during that period, is granted in part. These documents are material and relevant to plaintiff's allegations that her vehicle requests were denied while other employees were granted access to such vehicles (NYSCEF Doc. No. 25 [Compl. at ¶25]; Diaz v Minhas Constr. Corp., LLC, 188 AD3d 812, 814 [2d Dept 2020]). However, defendants' production is to be limited to the period of time in which plaintiff worked in the FDNY's Office of Recruitment and Retention.

Plaintiff's motion to compel responses to Document Request 18, seeking the production of recruitment materials containing the image or likeness of FDNY members that the FDNY has used in its recruitment efforts from 2011 through the present is granted in part. Defendants are directed to produce all FDNY recruitment material in which plaintiff appeared as well as the first FDNY recruitment material produced thereafter which did not feature plaintiff.

Plaintiff's motion to compel responses to Document Request 19, seeking the production of all overtime records of Recruitment Officers from 2015 to present, is granted in part. These documents are relevant to plaintiff's claims that other male employees were granted more overtime than she was from April 2017 to December 2017 (NYSCEF Doc. No. 41 [Simmons EBT at pp. 39-41]; Diaz v Minhas Constr. Corp., LLC, 188 AD3d 812, 814 [2d Dept 2020]). Plaintiff is directed to provide any responsive documents to this demand limited to the time period in which plaintiff alleges that this overtime discrepancy occurred, i.e., April 2017 to December 2017 (NYSCEF Doc. No. 9 [Compl. at ¶28]).

Finally, plaintiff's motion to compel responses to Document Request No. 22, which seeks all of defendants' written personnel policies from 2015 to present, including policies regarding performance evaluations, equal employment opportunity policies, and decision-making processes for determining performance evaluations, promotions, reassignments, and terminations (NYSCEF Doc. No. 29 [Demands at ¶22]) is granted to the extent that the City shall produce all EEO policies, employee policies, and employee manuals or handbooks for both the FDNY and the City that were in effect during the period in which plaintiff was assigned to the FDNY's Office of Recruitment and Retention up to and including the date of plaintiff's reassignment from that office.

Accordingly, it is

ORDERED that plaintiff's motion to compel is granted to the extent set forth above; and it is further

ORDERED that defendants are directed to produce documents responsive to Document Request Numbers 4-6, 12, 14, 18, 19, and 22, as limited above, within sixty days from the date of this decision and order; and it is further

ORDERED that plaintiff is directed to serve a copy of this decision and order, with notice of entry, upon defendants within fifteen days of the date of this decision and order; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "EFiling" page on this court's website at the address www.nycourts.gov/supctmanh).

ORDERED that the Clerk of the Court is directed to set this matter down for a status conference in the Differentiated Case Management Part on July 11, 2023 at 2:30 pm.

This constitutes the decision and order of the Court.

4/13/2023

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

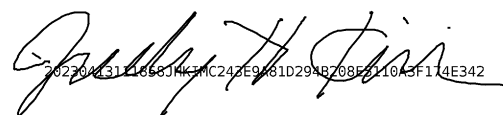
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SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN



HON. JUDY H. KIM, J.S.C.

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NON-FINAL DISPOSITION

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GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

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REFERENCE