SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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March 27, 2015

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RE: Trina R. Gumbs v. Delaware Department of Labor
C.A. No.: S14C-10-015 RFS

Dear Counsel:

In this case, Plaintiff asserts the Delaware Department of Labor, allegedly, engaged in unemployment discrimination and violated the Equal Pay Act ("EPA").[1] A motion to dismiss was filed, and the parties briefed their legal positions while the Court reserved decision.[2] In the interim, Plaintiff filed an amended complaint removing the cause of action regarding EPA violations, Count

[1] *See generally*, Compl.; *see also*, 42 U.S.C. § 2000e; 29 U.S.C. § 203.
[2] *See generally*, Defs.' Mot. To Dismiss.

II.[3] Subsequently, Plaintiff filed suit in Federal District Court seeking relief under the EPA.[4]

As for the present, I find the broad language of Rule 15(a) permits a party to amend their complaint once, as a matter of course, before a responsive pleading is filed. [5] Upon consideration of *Stoppel v. Henry*, [6] a Superior Court Case directly analyzing this procedural matter, I agree with the conclusion a motion to dismiss is not a responsive pleading.[7] This principle is further bolstered by how parallel Federal Rules of Civil Procedure[8] have been interpreted.[9]

Consequently, the only remaining claim this Court must consider is whether the Defendant engaged in unemployment discrimination, Count I.[10] This cause of

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[3] *See*, Am. Compl.
[4] *Trina R. Gumbs v. State of Del. Dep't. of Labor*, C.A. No. 1:2015cv00190 (D. Del 2015).
[5] Super. Ct. Civ. R. 15(a) (providing "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served").
[6] 2011 WL 55911, at *3 (Del. Super. Jan. 4, 2011).
[7] The point was explored in depth for the first time in the *Stopple* decision. *See generally*, *Stoppel*, 2011 WL 55911. Two earlier Superior Court cases which found to the contrary and are cited in *Stoppel*, *Eaton v. Raven Transport, Inc*. and *Mell v. New Castle Cty*., were driven by more substantial matters and the procedural issues were essentially uncontested. 2010 WL 424458, at *4 (Del. Super. Jan. 26, 2010); 835 A.2d 141, 144 at n.4 (Del. Super. Sept. 9, 2003); *see also*, *Stoppel*, 2011 WL 55911 at *3.
[8] Fed. R. Civ. P. 15.
[9] *See, Stoppel* at n. 7.
[10] *See generally,* Am. Compl.

action turns on whether state merit rules are preempted.[11] As such, Count I presents a question of law.[12]

Although, the motion to dismiss is moot and Defendant must file an answer, Defendant may elect to pursue a judgment on the pleadings.[13] The standard for a motion for judgment on the pleadings is almost identical to the standard for a motion to dismiss.[14] If that course is chosen, the parties should supplement their earlier memoranda.

Lastly, in addition to the cases cited more information is required on the preemption argument. I would suggest the parties confer and submit a stipulated schedule to that end. Thank you.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Hon. Richard F. Stokes

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[11] *See e.g., Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 281 (1987) (stating "in those areas where Congress has not completely displaced state regulation, federal law may nonetheless pre-empt state law to the extent it actually conflicts with federal law") (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

[12] *Id.*

[13] *See e.g., Brisk v. City of Miami Beach, Fla.*, 1989 WL 35597 (S.D. Fla. Apr. 7, 1989).

[14] *See e.g., Velocity Exp., Inc. v. Office Depot, Inc.*, 2009 WL 406807, at *3 (Del. Super. Feb. 4, 2009) (finding when relief is sought through a motion for judgment on the pleadings and the motion is in the form of dismissal the Rule 12(b)(6) standard of review essentially applies).