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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEVIN PLACE,

Plaintiff - Appellant,

v.

CITY OF EUGENE; RANDALL B.
GROVES; JOE ZALUDEK,

Defendants - Appellees.

No. 08-35219

D.C. No. 06-CV-06160-HO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted June 2, 2009**
Portland, Oregon

Before: O'SCANNLAIN, FERNANDEZ, and FISHER, Circuit Judges.

Kevin Place appeals from the district court's grant of summary judgment to the City of Eugene and the individual officers. The facts are known to the parties and need not be repeated here, except as necessary to explain our decision.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Place has failed to adduce evidence sufficient to establish a genuine issue of material fact as to his claims of disparate impact and retaliation under 42 U.S.C. § 1981, Title VII, and Oregon Revised Statutes section 659A.030. He does not demonstrate that “similarly situated employees not in [his] protected class received more favorable treatment,” *see Moran v. Selig*, 447 F.3d 748, 753 (9th Cir. 2006), nor does he establish a “causal link” between any protected activity on his part and the employment actions in question, *see Manatt v. Bank of Am.*, 339 F.3d 792, 800 (9th Cir. 2003) (internal quotation marks and citation omitted).¹

For similar reasons, Place’s equal protection claim under 42 U.S.C. § 1983 fails. Furthermore, absent a showing of a “legitimate claim of entitlement” in uninterrupted employment with the City, he cannot prevail on his due process claim. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

Place has not presented evidence showing his decisions to take sick leave and file for worker’s compensation in any way impacted the employment actions at issue. Thus, he cannot proceed on his claims under the federal Family and Medical Leave Act, the Oregon Family Leave Act, or Oregon Revised Statutes section

¹ Similar analysis applies under § 1981 and Title VII. *See Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 850 (9th Cir. 2004) (disparate treatment); *Manatt*, 339 F.3d at 800-01 (retaliation). Place relies only on federal authority, thus to the extent the calculus differs under state law, such claims are waived. *See Thomas v. City of Beaverton*, 379 F.3d 802, 812 n.5 (9th Cir. 2004).

659A.040. *See Bachelder v. Am. W. Airlines, Inc.*, 259 F.3d 1112, 1125 (9th Cir. 2001); *Chase v. Vernam*, 110 P.3d 128, 135 (Or. Ct. App. 2005).

Place's intentional infliction of emotional distress claim is without merit.

See McGanty v. Staudenraus, 901 P.2d 841, 849 (Or. 1995).

Accordingly, the judgment of the district court is

AFFIRMED.