

Agreement.¹ Notices of the Conciliation Agreement were scheduled to issue on October 16, 2017, seventy-five days from the date of the agreement.

On August 30, 2017, Ford presented its motion to deny class certification, which is based primarily on Ford's argument that the Conciliation Agreement moots much of the relief sought by plaintiffs. This Court entered a long briefing schedule to provide plaintiffs with an opportunity, albeit truncated, to present their arguments in favor of certifying a class. The Conciliation Agreement notice timing and procedures were never presented to the Court, though, they were including in the agreement that is an exhibit to Ford's motion to deny class certification.

Plaintiffs now request this Court enter an Order staying the issuance of the notices under the Conciliation Agreement. Although plaintiffs state in their motion that "[t]his Court should enjoin Ford from issuing notices to class members until this Court resolves the class certification issue[.]" they do not argue that they have met all the requirements for injunctive relief, referencing only the balance of harms. Dkt. 157 at ¶ 10.

Courts rarely issue a stay of any administrative decision pending judicial review because such an order "depends on a demonstration that the administrative process has misfired." *Busboom Grain Co. v. I.C.C.*, 830 F.2d 74, 75 (7th Cir. 1987) (citing *Coleman v. PACCAR, Inc.*, 424 U.S. 1301, 96 S.Ct. 845, 47 L.Ed.2d 67 (1976)). Further, the issuance of a stay of an administrative decision requires fulfillment of the same requirements as a preliminary injunction. *See id.*; *see also Associated Sec. Corp. v. Sec. & Exch. Comm'n*, 283 F.2d 773, 774–75 (10th Cir. 1960). In order to obtain a preliminary injunction, plaintiffs must show that (1) they have some likelihood of success on the merits; (2) there is no adequate remedy at law; and (3) they will suffer irreparable harm if the Court denies the request. *See Stuller, Inc. v. Steak N Shake Enters., Inc.*, 695 F.3d 676, 678 (7th Cir. 2012). If plaintiffs meet these requirements, the Court weighs the harms plaintiffs will suffer if the Court denies the injunction against the harms Ford will suffer if it grants the injunction, and also considers the public interest. *See id.*

This Court acknowledges the seriousness of the allegations at issue in this case, which, if true, demonstrate that Ford has allowed the ongoing sexual harassment and discrimination of its

¹ This is not the first time that Ford has been investigated by the EEOC concerning charges of gender and racial discrimination, hostile work environment, and sexual harassment at its facilities in this district. *See Rivera v. Ford Motor Co.*, No 95 C 2990, and *Warnell v. Ford Motor Co.*, No. 98 C 1503, 98 C 5287. In September 1999, Ford and the EEOC entered a Conciliation Agreement, which was to run for three years and involved the creation of new policies to prevent and remedy sexual harassment and retaliation. Under the agreement, Ford also was to make good faith efforts to promote more women to supervisory positions and establish a fund to compensate women plant employees affected by the discrimination and harassment.

women employees for decades despite prior Conciliation Agreements with the EEOC. The seriousness of the allegations however does not obviate plaintiffs' burden of showing that they meet the requirements for injunctive relief. The Court also recognizes that Ford seems to be engaging in what might be considered gamesmanship, seeking to limit their own liability and undercut the certification of a class. At the same time, however, plaintiffs' experienced counsel should have been on notice of the timing and procedures that follow a Conciliation Agreement. Plaintiffs here have failed to satisfy the requirements of injunctive relief beyond minimally asserting that a balance of harms weighs in favor an injunction.

Conclusion

Accordingly, the motion to stay is denied.

IT IS SO ORDERED.

ENTERED:

Dated: October 18, 2017



SHARON JOHNSON COLEMAN
United States District Judge