

FILED

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

2016 JUN -8 AM 11:02
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

DARLENE WALKER,

Plaintiff,

v.

Case No.: 3:16-cv-702-J-32PDB

KAITI LENHART AS SUPERVISOR OF
ELECTIONS OF FLAGLER COUNTY,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

DARLENE WALKER, (hereinafter Plaintiff), sues the Defendant, KAITI LENHART, AS SUPERVISOR OF ELECTIONS OF FLAGLER COUNTY (hereinafter Defendant), and alleges:

1. This is an action that exceeds the sum of Fifteen Thousand Dollars (\$15,000.00), exclusive of interests, costs and attorney's fees.
2. At all times material, Plaintiff was and remains a resident of Clay County, Florida.
3. At all times material, the Supervisor of Elections of Flagler County, operated in Flagler County.
4. All facts material to this action occurred in Flagler County, Florida.

GENERAL ALLEGATIONS

5. During her employment with Defendant, Plaintiff suffered two on the job injuries,

notifying her supervisor at the time, Kimberle Weeks, Supervisor of Elections, of each injury at or near the time the injury occurred.

6. Each time Ms. Weeks was notified of an on the job injury by Plaintiff, Ms. Weeks refused to report the injury as is required by Defendant's policies and procedures, and in violation of Chapter 440, *Florida Statutes*.
7. Following Plaintiff sustaining work place injuries, Ms. Weeks would coerce and/or threaten Plaintiff and badger Plaintiff into working beyond the physical restrictions set forth by her authorized treating physician; requiring Plaintiff to lift objects which weighed in excess of the 10lb lifting restriction; made verbal attacks towards Plaintiff; and minimized the extent of Plaintiff's injuries first by saying all Plaintiff needed was to get a massage and she, Plaintiff "would be fine," then by telling Plaintiff that all she, Plaintiff, needed was physical therapy and no other treatment.
8. Ms. Weeks also, following Plaintiff reporting her injuries, told Plaintiff that she, Ms. Weeks, did just as much work and did not get injured.
9. From September through October, 2014, Plaintiff repeatedly requested FMLA paperwork from Ms. Weeks. In each instance Plaintiff's requests were ignored.
10. On October 7, 2014, Plaintiff gave Ms. Weeks a written request for FMLA paperwork and was again put off.
11. Plaintiff finally went on line to see if she could find the paperwork and ultimately did.
12. On or about October 15, 2014, Plaintiff overheard her Ms. Weeks sharing Plaintiff's medical information as well as medical information of another employee with a county security guard.

13. Plaintiff confronted Ms. Weeks about this breach of the HIPPA law, to which Ms. Weeks feigned ignorance.
14. On October 20, 2014, Plaintiff provided completed FMLA forms to Ms. Weeks providing that she, Plaintiff, would be off from November 19, 2014 - February 16, 2015.
15. Thereafter Plaintiff inquired of Ms. Weeks if she, Ms. Weeks, had looked at the forms to which each time Ms. Weeks indicated that when she had time she would review the forms.
16. Plaintiff was out of work until February 16, 2015, at which time she was released to return to work.
17. Ms. Weeks repeatedly advised Plaintiff that she had not received updated medical information from Plaintiff during the time Plaintiff was off from work due to a serious health condition, in spite of the existence of documented evidence to the contrary.
18. On or about January, 2015, Ms. Weeks resigned her position as Supervisor of Elections.
19. Just prior to announcing her resignation, Ms. Weeks promoted Kaiti Lenhart to a position that had not previously been a recognized position in the Supervisor of Elections office. By placing Ms. Lenhart in this position, Ms. Weeks was able to put Ms. Lenhart in a position so as to be named to the Supervisor position instead of Plaintiff, upon Ms. Weeks' resignation.
20. Through all times material Plaintiff had held the position of Chief Deputy, Supervisor of Elections, and should have been next in line to be Supervisor following

Ms. Weeks' resignation.

21. Not only was Plaintiff far more qualified, with superior experience, as well as tenure, than Ms. Lenhart, but Ms. Lenhart is also substantially younger than Plaintiff.
22. On or about January 15, 2015, Plaintiff presented at the office of the Supervisor of Elections, who at that time was Ms. Lenhart, to discuss Plaintiff's return to work in February.
23. During a conversation which ensued in the meeting referred to in the immediately preceding paragraph, Ms. Lenhart asked Plaintiff if she, Plaintiff, was going to "come back to work or retire?"
24. During the same conversation as alleged in paragraph 23, Plaintiff advised Ms. Lenhart that she was coming back to work on February 16, 2015, and reminded Ms. Lenhart that she, Ms. Lenhart, already knew that Plaintiff was returning to work on that date. Plaintiff then inquired as to what she, Plaintiff, would be doing when she returned to work and Ms. Lenhart said "everything that you were doing before."
25. On February 16, 2015, Plaintiff returned to work where she was immediately notified that her employment was terminated without cause.
26. Individuals, all substantially younger than Plaintiff, were hired to perform Plaintiff's job duties after Plaintiff was terminated.
27. Prior to the termination of her employment with Defendant, Plaintiff had not received any discipline related to the performance of her job duties.

**COUNT I: HANDICAP DISCRIMINATION IN VIOLATION OF THE FLORIDA
CIVIL RIGHTS ACT, AS AMENDED**

Plaintiff realleges paragraphs 1 - 27 as if fully set forth herein and further alleges:

28. This is an action brought against Defendant on the basis of an unlawful discriminatory practice relating to the Plaintiff's handicap, record of a handicap and/or perceived handicap.
29. Section 760.10(1)(a), Florida Statutes, states that it is an unlawful employment practice for an employer.... to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individuals...handicap.
30. On or about March, 2015, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) which charge was dual filed with the Florida Commission on Human Relations (FCHR).
31. All statutory pre-requisites have been complied with prior to the filing of the original charge of discrimination.
32. The Charge of Discrimination referred to in paragraph 30 was filed within Three Hundred and Sixty-five (365) days from the date of the last discriminatory act in accord with Chapter 760, Florida Statutes.
33. Over One Hundred Eighty (180) days have passed from the date of the filing of the charge of discrimination without a determination being made by the FCHR, therefore, no determination of reasonable cause is necessary for the Plaintiff to proceed with this action.
34. At all times material hereto, the Plaintiff is and has been a member of a protected class in that she is handicapped or perceived as handicapped and/or

had a record of handicap.

35. The Plaintiff's handicap, perceived handicap and/ or record of handicap, was the sole or motivating factor which contributed to the discriminatory treatment in the terms and conditions of Plaintiff's employment with Defendant.
36. As a direct an proximate result of the actions of its agents and/or employees, while acting in the course and scope of their employment, Plaintiff has suffered mental anguish, pain and suffering and loss of dignity, and lost wages, all past, present and future.
37. Plaintiff has obligated herself to pay a reasonable attorneys fee with the bringing of this action. Section 760.11(5) Florida Statutes provides that a reasonable attorneys fee may be awarded to the prevailing party.

WHEREFORE, the Plaintiff demands judgment against Defendant for compensatory damages, costs, attorneys fee, and any further relief that this Court deems just and proper, and demands a trial by jury for all issues so triable.

COUNT II: AGE DISCRIMINATION IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT, AS AMENDED

Plaintiff realleges paragraphs 1 - 27 as if fully set forth herein and further alleges:

38. This is an action brought against Defendant on the basis of an unlawful discriminatory practice relating to the Plaintiff's age.
39. Section 760.10(1)(a), Florida Statutes, states that it is an unlawful employment practice for an employer.... to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of

such individuals...age.

40. On or about March, 2015, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) which charge was dual filed with the Florida Commission on Human Relations (FCHR).
41. All statutory pre-requisites have been complied with prior to the filing of the original charge of discrimination.
42. The Charge of Discrimination referred to in paragraph 40 was filed within Three Hundred and Sixty-five (365) days from the date of the last discriminatory act in accord with Chapter 760, Florida Statutes.
43. Over One Hundred Eighty (180) days have passed from the date of the filing of the charge of discrimination without a determination being made by the FCHR, therefore, no determination of reasonable cause is necessary for the Plaintiff to proceed with this action.
44. At all times material hereto, the Plaintiff is and has been a member of a protected class in that she is over the age of Forty (40).
45. The Plaintiff's age was the sole or motivating factor which contributed to the discriminatory treatment in the terms and conditions of Plaintiff's employment with Defendant.
46. As a direct and proximate result of the actions of its agents and/or employees, while acting in the course and scope of their employment, Plaintiff has suffered mental anguish, pain and suffering and loss of dignity, and lost wages,

all past, present and future.

47. Plaintiff has obligated herself to pay a reasonable attorneys fee with the bringing of this action. Section 760.11(5) Florida Statutes provides that a reasonable attorneys fee may be awarded to the prevailing party.

WHEREFORE, the Plaintiff demands judgment against Defendant for compensatory damages, costs, attorneys fee, and any further relief that this Court deems just and proper, and demands a trial by jury for all issues so triable.

COUNT III: FAMILY MEDICAL LEAVE ACT

Plaintiff realleges paragraphs 1 - 27 as if fully set forth herein and further alleges:

48. This is an action for damages and injunctive relief caused by the Defendant's interference with Plaintiff's efforts to take FMLA job protective leave and failure to allow Plaintiff to resume her position of employment with Defendant, and/or subsequent discharge of Plaintiff from employment in violation of §102 of the Family and Medical Leave Act (hereinafter FMLA) of 1993, 29 U.S.C. §2615 et seq.
49. The jurisdiction of this Court over this controversy is invoked pursuant to 29 U.S.C. §2617.
50. Plaintiff was an "employee" of Defendant within the meaning of 29 U.S.C. §2611(2)(A), during all times material hereto.
51. Defendant was an "employer" of Plaintiff within the meaning of 29 U.S.C. §2611(4)(A) at all times relevant hereto.
52. During all times material, Plaintiff suffered from a serious health condition as defined by the FMLA in that Plaintiff required continuing treatment by a health care

provider, which resulted in her expected absence from work for more than three (3) consecutive calendar days, along with further treatment by a health care provider, and/or the need for intermittent medical leave.

53. During all times material, Plaintiff provided notice to her employer regarding her need for protected leave under the FMLA, as such notice was practicable, pursuant to the requirements of the Family and Medical Leave Act of 1993.
54. Defendant, failed to comply with all notice requirements pursuant to the FMLA, and is therefore precluded from taking any adverse employment action against Plaintiff for any failure on Plaintiff's part to comply with the FMLA.
55. During all times material, Plaintiff provided medical certification by her health care provider justifying Plaintiff's need for such treatment as well as her medical condition to the extent required by Defendant, its agents and/or employees.

INTERFERENCE WITH FMLA PROTECTED LEAVE

56. During all times material, Defendant interfered with Plaintiff's use of FMLA protected leave by interfering with Plaintiff's attempts to take FMLA leave, and subsequently terminating Plaintiff's employment position in violation of 29 U.S.C. §2615 et seq., when Plaintiff attempted to return to work.

WHEREFORE, Plaintiff prays this Court will:

- a) enter a judgment that Defendant's termination of the Plaintiff as more fully set forth herein above violated Title 29 U.S.C. §2615 of the Family and Medical Leave Act of 1993;
- b) enter a judgment pursuant to 29 U.S.C. §2617(a)(1)(A)(i)(II) against the Defendant and in favor of Plaintiff for monetary losses Plaintiff sustained as a direct result of

Defendant's termination of Plaintiff's employment;

- c) enter a judgment pursuant to 29 U.S.C. §2617 for reinstatement of Plaintiff to her former position of employment with Defendant with all benefits and raises reinstated accordingly;
- d) enter a judgment pursuant to 29 U.S.C. §2617 against the Defendant and in favor of Plaintiff for the reasonable attorney's fees and costs incurred by Plaintiff in connection with the instant action;
- d) enter a judgment pursuant to 29 U.S.C. §2617 (a)(1)(A) in favor of Plaintiff for liquidated damages to be an additional amount equal to the sum of the actual damages plus interest; and
- e) award Plaintiff such further and additional relief as the Court deems just and proper.

FMLA RETALIATION BY DEFENDANT

57. During all times material, Defendant retaliated against Plaintiff because of Plaintiff's use of FMLA protected leave by failing and/or refusing to allow Plaintiff to return to her position of employment following her use of FMLA leave which she held prior to requesting FMLA protected leave without incident, thereby terminating her employment in violation of 29 U.S.C. §2615.

WHEREFORE, Plaintiff prays this Court will:

- a) enter a judgment that Defendant's termination of the Plaintiff as more fully set forth herein above violated Title 29 U.S.C. §2615 of the Family and Medical Leave Act of 1993;
- b) enter a judgment pursuant to 29 U.S.C. §2617(a)(1)(A)(i)(II) against the Defendant and in favor of Plaintiff for monetary losses Plaintiff sustained as a direct result of

- Defendant's termination of Plaintiff's employment;
- c) enter a judgment pursuant to 29 U.S.C. §2617 for reinstatement of Plaintiff to her former position of employment with Defendant with all benefits and raises reinstated accordingly;
 - d) enter a judgment pursuant to 29 U.S.C. §2617 against the Defendant and in favor of Plaintiff for the reasonable attorney's fees and costs incurred by Plaintiff in connection with the instant action;
 - d) enter a judgment pursuant to 29 U.S.C. §2617 (a)(1)(A) in favor of Plaintiff for liquidated damages to be an additional amount equal to the sum of the actual damages plus interest; and
 - e) award Plaintiff such further and additional relief as the Court deems just and proper.

COUNT IV: STATE WORKERS' COMPENSATION RETALIATION

Plaintiff realleges paragraphs 1 - 27 as if fully set forth herein and further alleges:

- 58. The Defendant's desire to retaliate against the Plaintiff by reason of a valid workers' compensation claim was a substantial factor in the decisions made by the Defendant, its agents and/or employees, while acting in the course and scope of their employment, which decisions include, but are not limited to, failing to promote Plaintiff to the position of Supervisor of Elections, to harass, coerce the Plaintiff and ultimately terminate Plaintiff's employment, and which are otherwise outlined in the preceding paragraphs.
- 59. The actions of the Defendant, through its agents and/or employees, are in violation of Section 440.205, Florida Statutes (1999), and as a direct and proximate result of said actions the Plaintiff has suffered humiliation, mental anguish and emotional

distress, and lost wages, past, present and future. These losses are continuing and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff prays this honorable Court to award her damages in excess of \$15,000.00, and any further relief the Court deems just and proper, and demands a trial by jury on all issues.

RESPECTFULLY SUBMITTED,

/s/ David B. Sacks
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