

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

DARLENE WALKER,

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

Plaintiff,

v.

KAITI LENHART AS SUPERVISOR
OF ELECTIONS OF FLAGLER
COUNTY,

Defendant.

_____ /

ANSWER AND AFFIRMATIVE DEFENSES

The Defendant, KAITI LENHART, AS SUPERVISOR OF ELECTIONS OF FLAGLER COUNTY, by her undersigned counsel, hereby serves her, its Answer and Affirmative Defenses to the Plaintiff's Complaint, and states the following:

1. Admitted for jurisdictional purposes only.
2. On information and belief, admitted.
3. Admitted.
4. Admitted.
5. Without knowledge, therefore denied.
6. Without knowledge, therefore denied.
7. Without knowledge, therefore denied.
8. Without knowledge, therefore denied.
9. Without knowledge, therefore denied.
10. Without knowledge, therefore denied.

11. Without knowledge, therefore denied.

12. Without knowledge, therefore denied.

13. Without knowledge, therefore denied.

14. On information and belief, admitted.

15. Without knowledge, therefore denied.

16. Admitted.

17. Without knowledge, therefore denied.

18. Admitted.

19. Admitted that Ms. Weeks in her resignation letter identified Kaiti Lenhart as the Assistant Supervisor of Elections for Flagler County, and that had not previously been a recognized position. Otherwise, denied. The Plaintiff as a resident of Clay County was not eligible to be the Flagler County Supervisor of Elections.

20. Denied.

21. Denied that the Plaintiff was more qualified and possessed superior experience than Ms. Lenhart. Admitted she had more tenure than Ms. Lenhart and that Ms. Lenhart was younger than Plaintiff.

22. Admitted.

23. Admitted that Ms. Lenhart inquired of the Plaintiff if she was going to retire; a possibility that the Plaintiff had previously raised; or come back to work.

24. Admitted that the Plaintiff advised Ms. Lenhart that she was coming back to work from FMLA leave on February 16, 2015. Otherwise, denied.

25. Admitted that the Plaintiff returned to work and her employment was terminated. Admitted that she was advised that there was no need for her termination to be based on cause. Otherwise, denied.

26. Denied.

27. Admitted that the Plaintiff never received any formal discipline related to her performance of job duties.

The Defendant incorporates its responses to paragraphs 1 through 27 as set forth above.

28. Admitted that this is an action alleging handicap discrimination. Denied that the action has merit.

29. Denied that the Defendant is an employer under the Florida Civil Rights Act. Otherwise, admitted.

30. Admitted.

31. On information and belief, admitted.

32. Admitted that the charge was filed within 365 days of the last alleged discriminatory act.

33. Admitted.

34. Without knowledge, therefore denied.

35. Denied.

36. Denied.

37. Without knowledge, therefore denied.

The Defendant incorporates her responses to paragraphs 1 through 27 as set forth above.

38. Admitted that this is an action alleging age discrimination. Denied that the action has merit.

39. Denied that the Defendant is an employer under the Florida Civil Rights Act. Otherwise, admitted.

40. Admitted.

41. On information and belief, admitted.

42. Admitted that the charge was filed within 365 days of the last alleged discriminatory act.

43. Admitted.

44. Admitted.

45. Denied.

46. Denied.

47. Without knowledge, therefore denied.

The Defendant incorporates her responses to paragraphs 1 through 27 as set forth above.

48. Admitted that this is an action alleging violation of the FMLA. Denied that the action has any merit.

49. Admitted for jurisdictional purposes.

50. Admitted.

51. Admitted.

52. Without knowledge, therefore denied.

53. Without knowledge therefore denied.

54. Denied.

55. Without knowledge, therefore denied.

56. Denied.

57. Denied.

The Defendant incorporates its responses to paragraphs 1 through 27 as set forth above.

58. Denied.

59. Denied.

Affirmative Defenses

60. The Defendant, Flagler County Supervisor of Elections is not an employer as defined by the Florida Civil Rights Act in that she does not employ 15 or more employees for each working day in each of 20 or more calendar weeks the current or preceding calendar year. Thus, Counts I and II of the Plaintiff's Complaint are subject to dismissal.

61. Defendant affirmatively alleges that the Plaintiff has failed to mitigate her damages as required by the applicable law.

62. Defendant affirmatively allege that the Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by the Defendant.

63. Defendant affirmatively alleges that any and all adverse employment actions taken against the Plaintiff were based upon legitimate non-discriminatory reasons.

64. Defendant affirmatively alleges that all actions challenged by the Plaintiff were taken in good faith and with reasonable grounds for believing that the actions did not violate the FMLA.

65. Defendant affirmatively alleges that the decision to terminate the Plaintiff was in no way motivated by any FMLA request or right.

66. The Defendant affirmatively alleges that this Court lacks jurisdiction over the subject matter of any claim or allegation to the extent Plaintiffs claims concern events alleged to have occurred more than the requisite 365 days before the filing of her charge of discrimination or concern events not made the subject of charges of discrimination filed with the appropriate administrative agencies, such claims are time-barred, and Plaintiff is precluded from raising issues and claims regarding those allegations because Plaintiff failed to exhaust administrative remedies and satisfy conditions precedent before filing the lawsuit.

67. The Defendant affirmatively alleges that the Plaintiff is not a qualified individual with a disability or handicap within the meaning of the ADA or the FCRA.

68. The Defendant affirmatively alleges that the Plaintiff is not substantially limited in any major life activity within the meaning of the ADA or the FCRA.

69. The Defendant affirmatively alleges that it would have terminated Plaintiffs employment even if she had not taken or sought to take FMLA leave.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of July, 2016 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that a copy of the foregoing and Notice of Electronic Filing has been furnished by CMECF system to: David B. Sacks, Esquire, Law Office of David B. Sacks, 4494 Southside Blvd., # 101, Jacksonville, Florida 32216 (david@sackslegal.com).

/s/Michael H. Bowling, Esquire

Michael H. Bowling, Esquire

Florida Bar No.: 333026

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