

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICOLE SUMMERS,

Plaintiff,

vs.

PLANNED PARENTHOOD OF THE
GREAT NORTHWEST, a Washington
Corporation,

Defendant.

NO.

COMPLAINT FOR DAMAGES

JURY DEMAND

I. NATURE OF ACTION

1.1 Plaintiff, Nicole Summers, requests damages, double damages, emotional distress damages and attorneys’ fees and costs for violations of the Family Medical Leave Act, 29 U.S.C. §2601 *et seq.* and 29 C.F.R. §825.100 *et seq.*, and Washington’s Law Against Discrimination, RCW 49.60 *et seq.*, by her former employer and Defendant, Planned Parenthood of the Great Northwest. Plaintiff also requests additional damages for Defendant’s failure to provide her with notice pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) and Section 502(c)(1) of the Employee Retirement Income Security Act of 1974 (“ERISA”).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

II. PARTIES

2.1 Plaintiff, Nicole Summers, resides in western Washington.

2.2 Defendant, Planned Parenthood of the Great Northwest, is a duly registered and licensed Washington corporation that transacts business in western Washington, and has its principal place of business in western Washington.

III. JURISDICTION AND VENUE

3.1 Jurisdiction All or a significant portion of the acts and omissions alleged herein occurred in western Washington.

3.2 At all times material to this action, Defendant conducted business within western Washington.

3.3 This action has been filed within the applicable statutory time periods.

3.4 Venue is proper in this Court.

3.5 This Court has subject matter jurisdiction over the federal claims asserted by Plaintiff pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over her state law claims pursuant to 28 U.S.C. § 1367.

IV. FACTS

4.1 Plaintiff was hired by Defendant in April 2008 as a Medical Billing Assistant. One year later, due to a serious medical condition, Defendant approved Plaintiff for Family Medical Leave Act (“FMLA”) leave from April 27 through May 26, 2009. Subsequently, Defendant approved FMLA leave extensions for Plaintiff through June 29, 2009.

4.2 On Monday, June 22, 2009, Defendant’s Human Resources representative, Ms. Amy Etelamaki, emailed Plaintiff and told her that Lincoln Financial, Plaintiff’s short term disability benefits provider, needed additional medical documentation to continue her

1 benefits. Ms. Etelamaki also inquired if Plaintiff would be returning to work on June 29,
2 2009.
3

4 4.3 Plaintiff responded the same day and explained to Ms. Etelamaki that her
5 doctor had already provided Lincoln Financial with documentation regarding her medical
6 condition. Plaintiff also told Ms. Etelamaki that she would not be returning to work on
7 June 29, 2009: “The dr. (sic) wrote a note saying that I cannot return to work due to adverse
8 recations (sic) to medications he has perscribed (sic). We are trying to get meds and
9 dosages correct that is layed out in the documentation.”
10

11 4.4 In a June 25, 2009 email Ms. Etelamaki casually asked Plaintiff: “My records
12 show you are returning on 6/29 and just need to know if that’s still accurate. ***It’s OK if it’s***
13 ***not, but we need to know.***” Ms. Etelamaki did not request that Plaintiff recertify her FMLA
14 leave nor warn her about negative employment implications if she did not provide
15 recertification.
16

17 4.5 On June 28, 2009, Plaintiff again expressly informed Ms. Etelamaki that she
18 would not be returning to work on June 29, and also that she would provide “further
19 clearance” as soon as practical:
20

21 Hi Amy, sorry it took me so long to write back Friday wasn’t a good day for
22 me. ***I am waiting for some paperwork in the mail from Dr. Rosenthol’s***
23 ***office for further clearance.*** I thought I was ready to return but there has
24 been some serious issues with getting my meds right. I have been
25 experiencing some pretty intense side effects. ***I will follow up with you as***
26 ***soon as they send the paperwork to me.*** Thanks for your understanding and
27 patience while I’m going through this very rough time.
28
29
30
31
32

33 4.6 Defendant allegedly mailed Plaintiff a letter dated July 2, 2009. In the alleged
34 letter, Defendant said that Plaintiff must provide a statement from her health care provider
35
36
37
38
39
40
41
42
43
44
45
46
47

1 requesting additional FMLA leave. *The letter gave Plaintiff until July 10—only eight*
2 *days—to do so.*
3

4
5 4.7 Plaintiff never received the alleged July 2, 2009 letter and Defendant admits
6 that it did not send the letter via priority, registered, or certified mail. Plaintiff, therefore,
7 never received 15-days notice to provide recertification nor did she receive notice of the
8 anticipated consequences of failing to provide recertification.
9
10

11
12
13 4.8 Even if Plaintiff had received the July 2 letter it would have failed to provide
14 her with the FMLA required 15-days notice to recertify. In fact, if the letter was mailed on
15 July 2, 2009, it means that the Defendant intended to give Plaintiff less than eight days to
16 provide FMLA recertification; five days if using the three-day mailing rule.
17
18

19
20
21 4.9 Even though the Defendant did not give Plaintiff at least 15 days notice to
22 provide recertification and had not even been in contact with her at all since it allegedly
23 mailed the July 2 letter, it terminated her employment effective July 14, 2009. And even
24 though from its email contact with Plaintiff the Defendant was aware she was in the process
25 of obtaining recertification, it terminated her employment regardless.
26
27

28
29
30
31 4.10 Defendant challenged Plaintiff's unemployment benefits application by
32 misrepresenting to the Employment Security Department that Plaintiff "quit." Furthermore,
33 in an apparent attempt to conceal its FMLA violations, the Defendant also misrepresented
34 the time it gave Plaintiff to provide FMLA recertification from her health care provider.
35 Even though Plaintiff was terminated by letter dated July 21, 2009, with an effective date of
36 July 14, 2002, the Defendant informed the ESD that Plaintiff was terminated on August 5,
37 2009, with an effective date of July 22.
38
39
40
41
42
43
44
45
46
47

1 4.11 Defendant made no effort to engage in any interactive process regarding the
2 extent of Plaintiff's medical condition, her abilities in light of her conditions, or whether
3 any reasonable accommodations might be available.
4

5
6 4.12 After Plaintiff was terminated the Defendant failed to give her notice of her
7 rights pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly
8 known as COBRA.
9
10

11
12 **V. CAUSES OF ACTION**
13

14
15 **A. First Cause of Action – Willful Violations of the Family Medical Leave Act 29**
16 **U.S.C. §2601 *et seq.* and §825.100 *et seq.***
17

18 5.1 Plaintiff realleges paragraphs 1.1 through 4.10 of her Complaint and hereby
19 incorporates the same by reference.
20

21
22 5.2 Defendant's termination of Plaintiff constitutes willful violations of the
23 Family Medical Leave Act as set forth in 29 U.S.C. §2601 *et seq.* and 29 C.F.R. §825.100
24 *et seq.* thereby entitling her to damages for wages, salary, employment benefits, or other
25 compensation denied or lost because of the violation; or the actual monetary losses because
26 of the violation; interest on the damages or monetary losses described above, calculated at
27 the prevailing rate; an additional amount as liquidated damages equal to the sum of the
28 amounts described above; other types of equitable relief from the court; and attorneys' fees
29 and costs.
30
31

32
33 **B. Second Cause of Action – Disparate Treatment/Disability Discrimination in**
34 **Violation of the Washington Law Against Discrimination, RCW 49.60**
35

36 6.1 Plaintiff realleges paragraphs 1.1 through 5.2 of her Complaint and hereby
37 incorporates the same by reference.
38

39 6.2 Defendant terminated Plaintiff's employment because she was disabled.
40 Defendant's actions were in violation of the Washington Law Against Discrimination,
41
42
43
44
45
46
47

1 RCW 49.60 *et seq.*, thereby entitling Plaintiff to compensatory damages including damages
2
3 for lost pay and benefits, emotional distress, and attorneys' fees and costs.
4

5 **C. Third Cause of Action – Failure to Accommodate/Disability Discrimination in**
6 **Violation of the Washington Law Against Discrimination, Ch. 49.60 RCW**
7

8 7.1 Plaintiff realleges paragraphs 1.1 through 6.2 of her Complaint and hereby
9
10 incorporates the same by reference.
11

12 7.2 Defendant failed to accommodate Plaintiff's disability. Defendant's actions
13
14 were in violation of the Washington Law Against Discrimination RCW 49.60 *et seq.*,
15
16 thereby entitling Plaintiff to compensatory damages including damages for lost pay and
17
18 benefits, emotional distress, and attorneys' fees and costs.
19

20 **D. Fourth Cause of Action – Wrongful Discharge in Violation of Public Policy**
21

22 8.1 Plaintiff realleges paragraphs 1.1 through 7.2 of her Complaint and hereby
23
24 incorporates the same by reference.
25

26 8.2 Defendant's termination of Plaintiff's employment was wrongful and in
27
28 violation of Washington public policies thereby entitling her to compensatory damages
29
30 including damages for lost pay and benefits, emotional distress, and attorneys' fees and
31
32 costs damages.
33

34 **E. Fifth Cause of Action – Intentional Infliction of Emotional Distress**
35

36 9.1 Plaintiff realleges paragraphs 1.1 through 8.2 of her Complaint and hereby
37
38 incorporates the same by reference.
39

40 9.2 Defendant's actions intentionally inflicted emotional distress upon Plaintiff
41
42 for which she is entitled to damages.
43

44 **F. Sixth Cause of Action – Negligent Infliction of Emotional Distress**
45

46 10.1 Plaintiff realleges paragraphs 1.1 through 9.2 of her Complaint and hereby
47
incorporates the same by reference.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

10.2 Defendant’s actions negligently inflicted emotional distress upon Plaintiff for which she is entitled to damages.

G. Seventh Cause of Action – Violation of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

11.1 Plaintiff realleges paragraphs 1.1 through 10.2 of her Complaint and hereby incorporates the same by reference.

11.2 Defendant failed to provide Plaintiff with notice pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) thereby entitling Plaintiff to damages of up to \$110 per day for each affected plan participant for the period of noncompliance (Section 502(c)(1) of the Employee Retirement Income Security Act of 1974 (“ERISA”)); damages for failure to provide the medical coverage mandated by COBRA; and attorney’s fees and court costs expended to enforce her rights under COBRA.

H. Jury Demand

12.1 Plaintiff demands a jury trial.

VI. PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for relief as follows:

- A. Damages for past and future wage loss;
- B. Double damages for willful violations of the FMLA;
- C. Damages for COBRA violations;
- D. Damages for pain and suffering;
- E. Emotional distress damages;
- F. An upward adjustment of Plaintiff’s damages to account for the taxation of her damages;
- E. Prejudgment and post judgment interest at the statutory rate;

1 F. Reasonable attorneys' fees and costs; and

2
3 G. Whatever further and additional relief the court shall deem just and equitable.
4

5
6 DATED this 24th day of September, 2009
7
8
9

10 /s/ Donald W. Heyrich, WSBA #23091

11 /s/ Patrick L. McGuigan, WSBA #28897

12 **HEYRICH KALISH MCGUIGAN PLLC**

13 1325 Fourth Avenue, Suite 540

14 Seattle, WA 98101

15 Tel: (206) 838-2504

16 Fax: (206) 838-2505

17 Email: dheyrich@heyrichlaw.com

18 plmcguigan@heyrichlaw.com
19
20
21

22 *Attorneys for Plaintiff Nicole Summers*
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47