

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG**

REBECCA WOLFINGER,

Plaintiff,

v.

Case No.:

WAL-MART STORES, INC.,

Defendant.

COMPLAINT

AND NOW, comes the plaintiff, Rebecca Wolfinger, by and through her attorney, Gregory G. Paul, and Morgan & Paul, PLLC, and files the following Complaint under Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000 et seq. and the Americans With Disabilities Act, as amended, 42 U.S.C. section 12101 et seq.

PARTIES

1. Rebecca Wolfinger is an adult individual, residing in Shippensburg, Pennsylvania, who is a member of a protected class, female, and a qualified individual with a disability as defined by the above statutes.

2. The Defendant, Wal-Mart Stores, Inc. is a corporation engaged in interstate commerce employing more than 15 persons primarily engaged interstate commerce. Defendant maintains its corporate headquarters in Bentonville, Arkansas and does business within the Middle District of Pennsylvania including Franklin County.

JURISDICTION AND VENUE

3. This is an action under Title VII and the ADA. Plaintiff seeks back pay, front pay, interest, declaratory, injunctive and compensatory and punitive relief for the termination of

employment on the basis of gender, retaliation and disability as defined by the applicable statutes.

4. Venue is properly laid in this district pursuant to 28 U.S.C. §1391(b) because the defendant resides within this district and a substantial part of the events giving rise to the claim occurred in this district.

5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and 1343. Plaintiff has exhausted administrative prerequisites as evidenced by a right to sue letter dated September 30, 2015.

6. Defendant is a covered employer within the meaning of the Title VII and the ADA because, among other things, they employed the requisite number of employees during the relevant time period.

STATEMENT OF FACTS

7. Ms. Wolfinger was employed by Wal-Mart for ten years, most recently as a shift manager in Chamberburg, Pennsylvania at Store #1850.

8. Bill Graham, store manager, required that Ms. Wolfinger work seven days a week, stating to her approximately two weeks before her termination that she needs to choose between her career and her kids.

9. Male employees were not threatened with the above statement to choose between a career and children. Similarly, male employees who worked in similar positions were not required to work many of the duties required of Ms. Wolfinger. For example, Clarence "Lee" Clark was not required to work seven days a week due to another business venture.

10. Ms. Wolfinger reported this threatening statement to Mindy Sheehan, Market Human Resource Manager.

11. Two weeks later, Ms. Wolfinger was terminated on February 24, 2012.

12. Defendant's articulated reason for termination was Ms. Wolfinger sales of Pampered Chef products and refusal to cooperate in an investigation related to the sales of Pampered Chef, which is pretext for discrimination and retaliation.

13. Not only did Ms. Wolfinger disclose and seek approval of her involvement with the sales of Pampered Chef products from her supervisors including Mindy Sheehan who asked for a catalog for a beer bread mix, other similarly situated employees engaged in similar conduct including but not limited to Silpada jewelry, Acai Berry drinks, and "31" bags.

14. When Ms. Wolfinger was called into a meeting regarding her sales of Pampered Chef, and Bill Graham and Mindy Sheehan denied prior knowledge of her sales of Pampered Chef, Ms. Wolfinger suffered a panic attack, a condition for which she has treated since 2007.

15. Since 2007, Ms. Wolfinger has received treatment for depression, anxiety and panic attacks. During the above referenced meeting, Ms. Wolfinger began to experience hyperventilation, racing heart rate, and other symptoms of anxiety and panic attack. She took her prescription Xanax in front of both Mr. Graham and Ms. Sheehan.

16. Mr. Graham, store manager, was aware of these conditions and even referred to them indirectly in a 2007-2008 performance evaluation as "composure" issues. When Ms. Wolfinger objected to such references to her medical conditions, the verbiage of her performance evaluation was changed.

17. In an email dated February 21, 2012 to Ms. Sheehan, Ms. Wolfinger referenced her anti-depressant medications; the response was that Mr. Graham would address her questions in a meeting the following day when she was terminated rather than engaging in the interactive process for reasonable accommodations such as providing a break or rescheduling the meeting.

18. Ms. Wolfinger was discriminated against because of sex/gender in violation of Title VII of the Civil Rights Act of 1964, as amended, retaliated against for making complaints about discriminatory comments from Mr. Graham, and for violations of the Americans With Disabilities Act including denial of reasonable accommodations and on the basis of disability including actual disability, regarded as and record of disability.

COUNT I
DISPARATE TREATMENT UNDER TITLE VII

19. The plaintiff repeats and realleges each and every allegation in the above paragraphs of this complaint with the same force and effect as if fully set forth herein.

20. Ms. Wolfinger was subjected to different standards and schedules than similarly situated male managers who were not required to work seven days straight and informed to choose between work and family.

21. Mr. Graham, Store Manager, was aware of different standards imposed upon Ms. Wolfinger and other male managers and condones such discrimination in the form of disparate treatment described as a “boy’s club” to Mindy Sheehan.

COUNT II
RETALIATION UNDER TITLE VII

22. The plaintiff repeats and realleges each and every allegation in the above paragraphs of this complaint with the same force and effect as if fully set forth herein.

23. Ms. Wolfinger complained to Mindy Sheehan about Mr. Graham’s disparate treatment including the statement that she must choose between her career and her children and the “boy’s club”.

24. As a result of this complaint, Ms. Wolfinger was charged with misconduct for selling Pampered Chef products and refusal to cooperate, then terminated two weeks after her complaint.

25. Temporal proximity and inconsistent application of corporate policies establish a causal connection between her complaint of disparate treatment and discriminatory comments and the adverse employment action of termination.

COUNT III
TERMINATION UNDER THE ADA

27. The plaintiff repeats and realleges each and every allegation in the above paragraphs of this complaint with the same force and effect as if fully set forth herein.

28. Ms. Wolfinger was terminated based upon her actual disabilities, regarded as or because of a record of disability that she has treated for depression, anxiety and panic attacks and defendant's perception that she was substantially limited in one or more major life activities. Mr. Graham referred to her treatment for mental health as "composure" issues in a performance evaluation and since that time called her "weak" at work and not able to control her emotional issues including when a co-worker named Sue Braniff was injured and taken away by ambulance.

29. As a result of this disability discrimination, Ms. Wolfinger has suffered loss of back pay, front pay, compensatory and punitive damages, and other damages recoverable under the ADA.

COUNT IV
DENIAL OF REASONABLE ACCOMODATIONS UNDER THE ADA

30. Ms. Wolfinger incorporates by reference all of the above allegations set forth in this Complaint.

31. Ms. Wolfinger was at all relevant times was a qualified individual with a disability who was capable of performing the essential functions of her shift manager position despite having a disability under the ADA.

32. Ms. Wolfinger was denied reasonable accommodations when she was accused and later terminated for failing to cooperate in an investigation regarding the sales of Pampered Chef products. Specifically, Ms. Wolfinger suffered anxiety and a panic attack during a meeting on February 20, 2012 with Bill Graham and Mindy Sheehan as evidenced by hyperventilation, racing heart rate, and other symptoms of anxiety and panic attack.

33. She took her prescription Xanax in front of both Mr. Graham and Ms. Sheehan.

34. Therefore, it was evident from the circumstances and past knowledge of her medical conditions that a reasonable accommodation was necessary including but not limited to a break or rescheduling the meeting.

35. Instead of engaging in the interactive process, defendant through its supervisors suspended her employment accusing her of failing to cooperate in an investigation. Ms. Wolfinger was terminated on February 24, 2012.

39. As a result of this conduct, Walmart has caused Ms. Wolfinger the loss of wages and other job benefits and emotional and other harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands (1) judgment against defendant in an amount to make her whole for all damages suffered as a result of defendant's violation of Title VII and the ADA including, but not limited to, damages for back pay and benefits, front pay, compensatory damages, punitive damages and all other damages recoverable under these statutes; (2) that this Court enjoin defendants from further discriminatory and retaliatory practices; (3) that this Court order defendants to reinstate plaintiff with all seniority and benefits; (4) that this Court order Defendant to pay all attorney's fees, expert fees and other costs of litigation incurred in this action; (5) that this Court award prejudgment interest; and (6) that this Court grant all other relief entitled to under law and equity.

A JURY TRIAL IS DEMANDED

Respectfully submitted,

MORGAN & PAUL, PLLC

/s/ Gregory G. Paul

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