

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
AT LEXINGTON

CIVIL ACTION No. 05-393-JMH

ELECTRONICALLY FILED

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PLAINTIFF

AND

MELINDA COCHRAN

INTERVENING PLAINTIFF

v.

PHYSICIANS SERVICES, P.S.C.

DEFENDANT

INTERVENING COMPLAINT

Comes Intervening Plaintiff, Melinda Cochran, by counsel, and for her Intervening Complaint against Defendant, Physicians Services, P.S.C., states as follows:

NATURE OF ACTION

1. This action is brought by Intervening Plaintiff, Melinda Cochran, against Defendant, Physicians Services, P.S.C. ("Physicians Services"), to obtain relief for sexual discrimination and harassment under Title VII and the Kentucky Civil Rights Act, disability discrimination and harassment under the Americans With Disabilities Act and the Kentucky Civil Rights Act, retaliation under Title VII, the Americans With Disabilities Act and the Kentucky Civil Rights Act, breach of contract, wrongful and constructive discharge, and outrage, and to recover compensatory and punitive damages, including, without limitation, damages for pecuniary and non-pecuniary losses, both past and future, and to recover her costs, expenses and attorneys' fees incurred.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over this matter pursuant to 42 U.S.C. §1331 in that claims asserted herein arise under the laws of the United States, to-wit: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.*, and the Americans With Disabilities Act of 1990, 42 U.S.C. §12111, *et seq.* This Court also has supplemental jurisdiction over state law claims asserted herein pursuant to 28 U.S.C. §1367 because they are so related to the claims arising under the laws of the United States that they form a part of the same case or controversy.

3. The Defendant corporation has its principal place of business within the Lexington Jury Division of the Eastern District of Kentucky and, therefore, is a resident of the Lexington Jury Division, where venue is proper pursuant to LR 3.2(a) and (c).

PARTIES

4. Intervening Plaintiff adopts and incorporates the allegations contained in the Complaint filed by the Equal Employment Opportunity Commission (“EEOC”) herein with regard to identification of the EEOC as a party, and identification of Defendant, Physicians Services, both a corporation and an employer, all as identified in paragraphs 3, 4 and 5 of the Complaint filed herein and which for purposes of incorporation by reference and convenience are set forth below:

a. Plaintiff, the Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and the ADA, and is expressly authorized to bring this action by §§ 107(a) and 503(a) of the ADA, 42 U.S.C. §§ 12117(a) and 12203(a), and §§ 704(a) and 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-3(a) and 2000e-5(f)(1) and (3).

b. Defendant, Physicians Services, is a corporation and at all relevant times has continuously been a corporation doing business in the Commonwealth of Kentucky and the City of Lexington, and has continuously had at least 15 employees.

c. At all relevant times, Physicians Services has been an employer engaged in an industry affecting commerce within the meaning of § 101(5) of the ADA, 42 U.S.C. § 12111(5), §101(7) of the ADA, 42 U.S.C. § 12111(7), and §§ 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

5. Intervening Plaintiff is and was at the time of the allegations set forth in the Complaint and herein, a resident of Lexington, Fayette County, Kentucky, and an adult female over the age of 18 years.

CONDITIONS PRECEDENT

6. Intervening Plaintiff filed timely charges of discrimination with the EEOC and otherwise fulfilled all prerequisites to bringing this action. A certified copy of the Charge of Discrimination is attached hereto.

7. The EEOC has determined that reasonable cause exists to believe unlawful employment practices occurred with respect to Intervening Plaintiff and initiated this action.

FACTUAL ALLEGATIONS

8. Intervening Plaintiff is a female and was born without a left hand, left wrist, or left forearm, her left arm ending at approximately her left elbow.

9. The physical impairment described in the preceding paragraph substantially limits one or more of the major life activities of Intervening Plaintiff.

10. Intervening Plaintiff is and was able to perform the essential functions of her job during her employment by Physicians Services, with or without reasonable accommodation.

11. Intervening Plaintiff began employment with Physicians Services in August, 2002, as an MRI Technician.

12. In the spring of 2003, Intervening Plaintiff was assigned to work in the London, Kentucky offices of Physician Services as an MRI Technologist.

13. Beginning in approximately September or October, 2003, Intervening Plaintiff was subjected to unwelcome, uninvited, offensive, abusive and disparaging comments and conduct of an outrageous nature directed to her by a physician employed in the London, Kentucky office of Physicians Services. Specifically, such comments and conduct were directed at Intervening Plaintiff's physical disability and/or gender, and included demeaning and derogatory statements of a sexual content.

14. The conduct and comments of the physician were subjectively offensive to Intervening Plaintiff and were likewise objectively offensive.

15. The conduct and comments of the physician were severe and pervasive and substantially and negatively affected the terms and conditions of Intervening Plaintiff's employment, interfered with her work performance, significantly affected her psychological well being and created a hostile, abusive and offensive work environment.

16. The physician was Intervening Plaintiff's supervisor, in that he had the authority to control and direct the manner in which she performed her job duties.

17. Intervening Plaintiff complained to her immediate supervisor, Karen Reese, on numerous occasions, and Ms. Reese either made excuses for the physician and/or did nothing to cause the harassment to cease.

18. In spite of Intervening Plaintiff's complaints to Ms. Reese, the unwelcome comments, conduct and harassment by the physician continued.

19. On February 7, 2004, Intervening Plaintiff wrote an anonymous complaint describing the harassment by the physician and sent same to Sretta Reese, the individual identified by Physicians Services as the person who should receive such information.

20. Shortly thereafter, on or about February 16, 2004, Intervening Plaintiff was contacted by Ms. Sretta Reese and Mr. Bill Graves, Practice Manager of Physicians Services. Ms. Sretta Reese and Mr. Graves assured Intervening Plaintiff that they would investigate her complaint, and advised Intervening Plaintiff that they took her complaint very seriously.

21. Upon information and belief, Ms. Sretta Reese and Mr. Bill Graves in fact conducted an investigation which determined that the harassment had occurred and Ms. Sretta Reese recommended that the employment of the harassing physician be terminated.

22. Physicians Services intentionally and maliciously ignored and refused to act upon the results of the investigation conducted by Ms. Sretta Reese and Mr. Bill Graves, thereby permitting the unlawful employment practices to continue, and further retaliated against Intervening Plaintiff for complaining of and opposing same.

23. Approximately two weeks after submission of her anonymous complaint, Intervening Plaintiff was advised by Ms. Karen Reese that Physicians Services had issued a memorandum requiring lab coats to be worn by all employees, no dresses or skirts were to be worn under the lab coats, and threatening termination if complaints deemed untrue or not factual were filed.

24. Intervening Plaintiff was told by Karen Reese that the issuance of the memorandum regarding lab coats and complaints was in response to the anonymous complaint. Intervening Plaintiff then told Ms. Karen Reese that she was the complainant.

25. The memorandum did not correct the unlawful employment practices, was not an appropriate remedial measure and constituted further retaliation in the form of punishment and threat against Intervening Plaintiff for complaining of the unlawful employment practices.

26. On or about March 24, 2004, Intervening Plaintiff was asked to and did attend a meeting with attorneys for Physicians Services at which Intervening Plaintiff was advised that a new investigation was being conducted by them.

27. Beginning on or about March 19, 2004, and for a period of time extending over the next several weeks, various employees of Physicians Services were interviewed outside of the presence of Intervening Plaintiff and away from the premises of Physicians Services. Intervening Plaintiff later learned these interviews were an “investigation” being conducted by an attorney retained by Physicians Services. Intervening Plaintiff was not interviewed, nor was an interview of Intervening Plaintiff requested by Physicians Services.

28. As a result of the interviews and other retaliatory conduct on the part of Physicians Services, Intervening Plaintiff was excluded and isolated, made the object of unfair and unwarranted attention, and suffered a substantial and negative effect upon the terms and conditions of her employment, all as a result of her having complained in good faith of the harassment she had experienced.

29. The “investigation” by the attorney, acting as an agent of Physicians Services, was untimely, was not performed in good faith, was not intended to discover the truth of Intervening Plaintiff’s allegations, did not correct the unlawful employment practices, did not result in any remedial measures and was retaliatory.

30. On or about April 14, 2004, Intervening Plaintiff attended a meeting between her attorneys, attorneys for Physicians Services, Dr. John Gilbert, Rebecca Gilbert and Karen Reese. At that meeting, Intervening Plaintiff was threatened by the Physicians Services attorney that she would be sued if she pursued her claims, that Intervening Plaintiff's attorneys were not knowledgeable in the area of employment law, and that she should retain better attorneys who would tell her that her claims were baseless. The Physicians Services attorney then proceeded to provide the name of an attorney he recommended, who would supposedly inform Intervening Plaintiff that her claims were without merit.

31. The threatening conduct of Physicians Services was designed to intimidate, discriminate and retaliate against Intervening Plaintiff because she had opposed unlawful employment practices.

32. Intervening Plaintiff's work environment became so intolerable that a reasonable person would have been unable to continue to be employed by Physicians Services, and Intervening Plaintiff had no alternative to seeking other employment.

33. Intervening Plaintiff was constructively discharged from employment at Physicians Services in April, 2004, as a result of her opposition to the unlawful employment practices of Physicians Services.

34. The practices and conduct complained of herein by Physicians Services have deprived Intervening Plaintiff of equal employment opportunities and otherwise adversely affected her status as an employee because of her sex, female, because of her disability and because she opposed the unlawful practices described herein.

35. As a result of the practices and conduct of Physicians Services, Intervening Plaintiff has suffered and continues to suffer pecuniary and non-pecuniary losses, both past and future,

including, without limitation, embarrassment, humiliation, mental anguish, emotional pain, suffering and distress, inconvenience, loss of enjoyment of life, medical expenses, and lost wages and benefits.

36. The actions of Physicians Services were in gross disregard of the rights of Intervening Plaintiff, and such actions were intentional, oppressive and malicious.

**COUNT I: SEXUAL DISCRIMINATION AND HARASSMENT
IN VIOLATION OF TITLE VII AND KRS CHAPTER 344**

37. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set out verbatim.

38. Physicians Services is an “employer” under 42 U.S.C. §2000e(b) and KRS 344.030(2); Intervening Plaintiff is an “employee” as that term is defined by 42 U.S.C. §2000e(f) and KRS 344.030(5).

39. The actions of Physicians Services constitute discrimination and harassment against Intervening Plaintiff with respect to the terms, conditions and privileges of employment because of Intervening Plaintiff’s sex, which is female, in violation of 42 U.S.C. §2000e-2(a) and KRS 344.040.

40. Intervening Plaintiff is entitled to recover compensatory and punitive damages pursuant to 42 U.S.C. §1981a and 42 U.S.C. §2000e, *et seq.*, and actual damages pursuant to KRS 344.450.

41. Intervening Plaintiff is entitled to recover her reasonable costs and attorneys’ fees incurred herein pursuant to 42 U.S.C. §1988 and KRS 344.450.

**COUNT II: DISABILITY DISCRIMINATION AND HARASSMENT
IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT AND KRS CHAPTER 344**

42. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set out verbatim.

43. Physicians Services is an “employer” under 42 U.S.C. §12111(5) and KRS 344.030(2); Intervening Plaintiff is an “employee” as that term is defined by 42 U.S.C. §12111(4) and KRS 344.030(5).

44. Intervening Plaintiff has a disability as that term is defined by 42 U.S.C. §12111, *et seq.*, and KRS 344.010(4).

45. Intervening Plaintiff is a qualified individual with a disability under 42 U.S.C. §12111(8) and KRS 344.030(1).

46. The actions of Physicians Services constitute discrimination and harassment against Intervening Plaintiff with respect to the terms, conditions and privileges of employment because of Intervening Plaintiff’s disability, in violation of 42 U.S.C. §12112 and KRS 344.040.

47. Intervening Plaintiff is entitled to recover compensatory and punitive damages pursuant to 42 U.S.C. §12117 and 42 U.S.C. §1981a, and actual damages pursuant to KRS 344.450.

48. Intervening Plaintiff is entitled to recover her reasonable costs and attorneys’ fees incurred herein pursuant to 42 U.S.C. §1988 and KRS 344.450.

**COUNT III: RETALIATION
IN VIOLATION OF TITLE VII, THE ADA AND KRS CHAPTER 344**

49. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set out verbatim.

50. The actions of Physicians Services subsequent to Intervening Plaintiff's complaints opposing unlawful employment practices were discriminatory and designed to retaliate against Intervening Plaintiff because she had opposed unlawful employment practices.

51. The retaliation by Physicians Services constitutes a violation of 42 U.S.C. §2000e-3, 42 U.S.C. §12203, and KRS 344.280.

52. Intervening Plaintiff is entitled to recover compensatory and punitive damages pursuant to 42 U.S.C. §1981a, 42 U.S.C. §2000e, *et seq.*, and 42 U.S.C. §12117, and actual damages pursuant to KRS 344.450.

53. Intervening Plaintiff is entitled to recover her reasonable costs and attorneys' fees incurred herein pursuant to 42 U.S.C. §1988 and KRS 344.450.

COUNT IV: BREACH OF CONTRACT

54. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set out verbatim.

55. At all times relevant to this action, Physicians Services maintained a written company policy strictly forbidding harassment in the work place.

56. Physicians Services intended that its employees, including Intervening Plaintiff, rely upon this policy in continuing their employment with Physicians Services and Intervening Plaintiff did, in fact, so rely.

57. Physicians Services violated and breached this policy in its actions and inactions, in allowing the harassment to occur, in failing to remedy the harassment once it knew or should have

known of its occurrence, and in the acts of retaliation ultimately resulting in the constructive discharge of Intervening Plaintiff from employment.

58. Intervening Plaintiff is entitled to recover her actual damages suffered as a result of the breach of the policy by Physician Services, which policy constituted a contract of employment and upon which Intervening Plaintiff relied.

COUNT V: WRONGFUL AND CONSTRUCTIVE DISCHARGE

59. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set out verbatim.

60. As a result of Intervening Plaintiff's opposition to the unlawful employment practices of Physicians Services, Physicians Services took actions which caused Intervening Plaintiff's work environment to become so unbearable and intolerable that a reasonable person would have been unable to continue to remain so employed.

61. A reasonable person would consider the retaliation and the failure and refusal of Physicians Services to take meaningful corrective action to be a termination of Intervening Plaintiff's employment.

62. Intervening Plaintiff's discharge was wrongful in that it was against public policy and was due to her opposition to the unlawful employment practices of Physicians Services.

63. Intervening Plaintiff is entitled to recover actual and punitive damages as a result of her wrongful and constructive discharge.

COUNT VI: OUTRAGE

64. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set out verbatim.

65. The actions of Physicians Services, through its employees, supervisors and agents, were so outrageous and intolerable that they offend generally accepted standards of decency and morality.

66. The actions and conduct aforesaid were intentional and calculated to cause emotional distress and mental anguish to Intervening Plaintiff.

67. As a result of the outrageous conduct of Physicians Services, Intervening Plaintiff has suffered and continues to suffer severe emotional distress.

68. Intervening Plaintiff is entitled to recover actual and punitive damages as a result of the outrageous conduct of Physicians Services.

COUNT VII: PUNITIVE DAMAGES

69. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set out verbatim.

70. The actions and conduct of Physicians Services were and are malicious, oppressive and of such a nature as to entitled Intervening Plaintiff to recover punitive damages under both state and federal law.

WHEREFORE, Intervening Plaintiff, Melinda Cochran, demands relief as follows:

1. That she be awarded compensatory damages for pecuniary and non-pecuniary losses, both past and future, including, without limitation, damages for embarrassment, humiliation, mental anguish, emotional pain, suffering and distress, inconvenience, loss of enjoyment of life, medical expenses, lost wages and benefits, front pay and back pay;
2. That she be awarded punitive damages;
3. That she be granted a trial by jury;
4. That she be awarded her costs, expenses and attorneys' fees incurred;
5. That the relief sought by the EEOC be granted in full; and
6. That she be awarded any such other relief to which she may appear to be entitled.

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