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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY	:	
COMMISSION,	:	
	:	05 Civ. 2769 (NGG) (MDG)
Plaintiff,	:	
	:	
and JOHN DOE,	:	PLAINTIFF-INTERVENOR’S
	:	COMPLAINT AND
Intervenor,	:	<u>DEMAND FOR JURY TRIAL</u>
	:	
	:	
- against -	:	
	:	
NORTH SHORE-LONG ISLAND JEWISH	:	
HEALTH SYSTEM, INC.,	:	
	:	
Defendants.	:	
-----	X	

Plaintiff-intervenor John Doe (hereinafter “Doe”), by his attorneys, Levy Davis & Maher, LLP, complaining of defendant North Shore-Long Island Jewish Health System, Inc. (hereinafter “NSLIJ”) alleges:

NATURE OF THE ACTION

1. This is an action brought pursuant to Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. (“Title I” or “ADA”) and the Family and Medical Leave Act, 29 U.S.C. §§ 2601 et seq., (“FMLA”) to correct unlawful employment practices on the basis of Mr. Doe’s disability and medical leave status.

2. Mr. Doe is employed by NSLIJ as a security officer. He availed himself of medical leave pursuant to the ADA, the FMLA and a collective bargaining agreement. NSLIJ obtained sensitive and confidential medical information, as was its right under those statutes, which statutes also restrict dissemination of such information to persons with a business-related need to know. NSLIJ nevertheless disclosed that medical information to persons who had no such need to know. NSLIJ thereafter retaliated against Mr. Doe on account of his complaints that such disclosure was unlawful. Defendant's actions are unlawful, and plaintiff brings this action for injunctive and declaratory relief, lost earnings, liquidated damages, compensatory and punitive damages, and other appropriate equitable and legal relief.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this action pursuant to (i) 28 U.S.C. § 1343(4), which confers original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights, (ii) 29 U.S.C. § 2617; (iii) 28 U.S.C. § 2201 and (iv) 28 U.S.C. § 1331.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), inasmuch as the defendants have offices, conduct business and can be found in the Eastern District of New York, and the cause of action arose and occurred in the Eastern District of New York. Venue is also proper in this Court pursuant to § 107(a) of the ADA, 42 U.S.C. § 12117, inasmuch as the unlawful employment practices complained of herein occurred within the Eastern District of New York.

PARTIES

5. Plaintiff John Doe is a natural person who resides in the County of Queens, City and State of New York.

6. At all relevant times, Mr. Doe has been an employee within the meaning of 42 U.S.C. § 12111(4) and an eligible employee as that term is defined by 26 U.S.C. § 2612(2)(A). He therefore has standing to bring this action under 42 U.S.C. § 12112(d)(4) and 29 C.F.R. § 825.500(g).

7. Alternatively, at all relevant times, Doe was and still is able to perform the essential functions of his job, with or without reasonable accommodation, and therefore has been a “qualified individual with a disability” within the meaning of 42 U.S.C. § 12111(8) and/or has been “regarded as” such within the meaning of 42 U.S.C. § 12102(2)(C) and/or has a “record of a disability” within the meaning of 42 U.S.C. § 12102(2)(B) and had a “serious health condition” within the meaning of 29 U.S.C. § 2611(11).

8. Mr. Doe is authorized to intervene in this action pursuant to 42 U.S.C. § 12117(a) and 2000e-5(f)(1).

9. Upon information and belief, NSLIJ is, and has been, at all relevant times, a domestic corporation that maintains its principal place of business in the County of Nassau, State of New York.

10. At all relevant times, NSLIJ has been an employer within the meaning of 42 U.S.C. § 12111(5) and 29 U.S.C. § 2611(4)(A)(ii)(I).

PROCEDURAL REQUIREMENTS

11. Plaintiff-intervenor incorporates by reference Paragraphs 1 through 10 of this Complaint as though the same were set forth fully herein.

12. Doe timely filed a Charge of Discrimination on or about September 4, 2003, with the United States Equal Employment Opportunity Commission (“EEOC”).

13. On or about August 20, 2004, the EEOC issued a determination that there was reasonable cause to believe that NSLIJ “discriminated against [Mr. Doe] because of his anxiety and depression ... failed to discuss [Mr. Doe’s] medical information privately and discreetly to managerial personnel only [and] retaliated against [him] for having made a complaint about the disclosure.”

14. On or about September 23, 2005, this Court permitted Mr. Doe to intervene in this action.

STATEMENT OF THE CLAIM

15. Plaintiff-intervenor incorporates by reference Paragraphs 1 through 14 of this Complaint as though the same were set forth fully herein.

16. Mr. Doe has worked for NSLIJ as a security officer since March 2000. He is currently assigned to NSLIJ’s Glen Oaks facility.

17. John Doe has been diagnosed with and treated for bipolar disorder and generalized anxiety disorder with panic. In or about January 2003, he sought medical leave for treatment.

18. Mr. Doe, having first duly supplied appropriate documentation to his supervisor, thereafter availed himself of sick leave pursuant to the Collective Bargaining Agreement between NSLIJ and the Special and Superior Officers Benevolent Association.

19. Mr. Doe's supervisor disclosed plaintiff-intervenor's confidential information to other employees of the Security office by announcing to Mr. Doe's co-workers that he suffers from "head problems" and "has psychiatric issues".

20. Another security officer further redisclosed this confidential information. Mr. Doe's "psychiatric issues" soon became common knowledge among security officers at NSLIJ.

21. These disclosures caused plaintiff-intervenor to be publicly embarrassed, which embarrassment caused him to relapse into a severe depression. He remained in a severe depression for approximately two months. Following these disclosures and the resulting embarrassment, his condition deteriorated, further delaying his return to work by several months.

22. Following his return from medical leave in July 2003, Mr. Doe was subjected to frequent ridicule by co-workers and petty harassment by supervisors. Mr. Doe complained, through counsel, of such harassment, both directly to defendant and to the EEOC. Ultimately, NSLIJ suspended plaintiff-intervenor as punishment for trifling or non-existent disciplinary infractions.

COUNT I - VIOLATION OF TITLE I OF THE ADA

23. Plaintiff incorporates by reference Paragraphs 1 through 22 of this Complaint as though the same were fully set forth herein.

24. NSLIJ discriminated against plaintiff-intervenor by failing to treat his medical information as a confidential record and by disclosing such information to persons with no lawful privilege to receive such information.

25. The effect of the practices complained of herein has been to deprive Doe of equal employment opportunities and otherwise to limit, segregate or classify him because of his disability and/or his record of such disability.

26. The unlawful employment practices complained of herein were and are malicious, intentional and in reckless disregard of plaintiff-intervenor's health and well being. As a result of defendant's acts, plaintiff has suffered grievous, extensive and continuing damages, including but not limited to pain and suffering, humiliation, emotional distress, lost wages and benefits, punitive damages and attorneys' fees.

COUNT II - VIOLATION OF TITLE I OF THE ADA

27. Plaintiff-intervenor incorporates by reference Paragraphs 1 through 26 of this Complaint as though the same were fully set forth herein.

28. Defendant retaliated against plaintiff-intervenor in violation of the ADA.

29. The unlawful employment practices complained of herein were and are malicious, intentional and in reckless disregard of plaintiff-intervenor's health and well being. As a result of defendants' acts, plaintiff has suffered grievous, extensive and continuing damages, including but not limited to pain and suffering, humiliation, emotional distress, lost wages and benefits, punitive damages and attorneys' fees.

COUNT III - VIOLATION OF THE FMLA

30. Plaintiff-intervenor incorporates by reference Paragraphs 1 through 29 of this Complaint as though the same were fully set forth fully herein.

31. NSLIJ discriminated against plaintiff-intervenor by failing to treat his medical information as a confidential record and by disclosing such information to persons with no lawful privilege to receive such information in violation of 29 C.F.R. § 825.500(g).

32. Defendant's actions were intentional and in reckless disregard of the health and well being of the plaintiff-intervenor. As a result of these acts, the plaintiff has suffered grievous, extensive and continuing damages, including, but not limited to, lost wages and benefits, liquidated damages, attorney's fees and the costs of this action.

COUNT IV - VIOLATION OF THE FMLA

33. Plaintiff-intervenor incorporates by reference Paragraphs 1 through 32 of this Complaint as though the same were fully set forth fully herein.

34. NSLIJ retaliated against plaintiff-intervenor for opposing practices made unlawful by the FMLA.

35. Defendant's actions were intentional and in reckless disregard of the health and well being of the plaintiff-intervenor. As a result of these acts, the plaintiff has suffered grievous, extensive and continuing damages, including, but not limited to, lost wages and benefits, liquidated damages, attorney's fees and the costs of this action.

COUNT V - VIOLATION OF THE FMLA

36. Plaintiff-intervenor incorporates by reference Paragraphs 1 through 35 of this Complaint as though the same were fully set forth fully herein.

37. Defendant's acts complained of herein were willful.

PRAYER FOR RELIEF

WHEREFORE, Doe respectfully prays that this Court:

A. Declare defendant's acts and practices complained of herein to be in violation of Doe's rights as secured by the ADA and the FMLA;

B. Grant a permanent injunction enjoining the Defendant and its officers, management personnel, employees, agents, attorneys, successors and assigns and those acting in concert therewith from any conduct violating Doe's rights as secured by the ADA and/or the FMLA;

C. Order defendant to make Doe whole by providing him appropriate lost earnings and benefits, with pre-judgment interest, and other affirmative relief including but not limited to front pay;

D. Award Doe liquidated damages in an equal amount as provided in 29 U.S.C. § 2617;

E. Award Doe compensatory damages to be determined at the time of trial by the jury;

F. Award Doe punitive damages to be determined at the time of trial by the jury;

G. Award Doe reasonable attorneys' fees and costs incurred in prosecuting this action; and

H. Grant such further relief as the Court deems necessary and proper.

JURY TRIAL DEMANDED

The plaintiff-intervenor requests a jury trial on all questions of fact raised by the Complaint.

Dated: New York, New York
September 26, 2005

Respectfully submitted,

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