

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	
)	
JOHN DOE,)	
)	
Plaintiff-Intervenor,)	
v.)	Case No. 3:06-0900
)	Judge Trauger
FORD MOTOR CREDIT COMPANY,)	Magistrate Judge Griffin
)	
Defendant.)	

COMPLAINT IN INTERVENTION

Comes now John Doe (“Plaintiff-Intervenor”) in this cause and, as his Complaint In Intervention against Ford Motor Credit Company (“Ford” or “Defendant”), alleges as follows:

1. This Complaint in Intervention is an action for damages based upon the laws of the United States, namely Title I of the Civil Rights Act of 1991, asserting unlawful disability discrimination, as well as the laws of the State of Tennessee.

2. Plaintiff-Intervenor intervenes in this action pursuant to Fed. R. Civ. P. §24(a)(1) and §2000 e-5(f)(1), Title VII.

3. At all relevant times, Defendant has been a covered entity under Section 102(2) of the ADA, 42 U.S.C. §12111(2).

4. This Court has pendant and/or ancillary jurisdiction over Plaintiff-Intervenor’s state law claims and also pursuant to 28 U.S.C. § 1332 based on the diversity of citizenship of the parties. The amount in controversy exceeds the jurisdictional minimum of \$75,000. Venue in

this Court is appropriate pursuant to 28 U.S.C. §1391, because the injuries took place within this district.

5. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345.

6. This action is authorized and instituted pursuant to Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§2000 e-5(f)(1) and (3), and §1977(A) of the Civil Rights Act of 1991, 42 U.S.C. §1981(a).

7. The unlawful employment practices alleged below were committed in Franklin, Tennessee, within the jurisdiction of the United States District Court for the Middle District of Tennessee, Nashville Division.

8. Plaintiff-Intervenor has met all conditions precedent to filing this action under Title VII.

9. Plaintiff-Intervenor timely filed his charges of disability discrimination with the EEOC within 300 days of the discriminatory treatment.

10. Plaintiff-Intervenor is a citizen and resident of the State of Tennessee.

11. Defendant is incorporated and has its principal place of business outside the State of Tennessee, but has been continuously doing business in the State of Tennessee and the City of Franklin.

12. At all relevant times, Defendant has been an employer within the meaning of Title VII.

General Allegations

13. In March 2001, John Doe became employed with Defendant as a regular full-time employee at its Franklin, Tennessee location.

14. In February 2002, John Doe was diagnosed with HIV, the treatment of which would require him to miss several hours of work each week.

15. To seek approval for this time off, John Doe approached his manager and, without disclosing the specific diagnosis, advised the manager that he would need time off from work for medical treatment.

16. The manager inquired as to the specific medical reason why John Doe would need this time off. Mr. Doe then provided the information at the insistence of the manager. The manager did not advise John Doe that he was entitled to keep this information to himself nor did he advise Mr. Doe that it was inappropriate for a manager to make this demand for information.

17. The manager then referred John Doe to Defendant's medical department. The medical department required John Doe to provide information about his diagnosis and anticipated medical treatments, then approved him for intermittent leave under the Family and Medical Leave Act ("FMLA").

18. The medical department advised John Doe to provide notes to the medical department after each time he took FMLA leave.

19. John Doe's manager called John Doe into his office and advised Mr. Doe that his immediate supervisor was inquiring as to why he was taking FMLA leave. The manager told Mr. Doe that the immediate supervisor was upset about not knowing.

20. John Doe told his manager that he did not want his direct supervisor informed because he did not trust her to keep the information confidential.

21. Later, the manager again called John Doe into his office and communicated to him that the company considered it important for his immediate supervisor to know the precise medical reason for his FMLA leave. The manager reiterated to John Doe that the supervisor remained upset about not being fully informed.

22. The manager, acting in his official capacity as such, told John Doe that John Doe's supervisor should be told about his HIV status.

23. Again, John Doe told his manager that he did not want his supervisor to know about his HIV status.

24. Despite John Doe's objections, the manager informed John Doe's supervisor of John Doe's HIV-positive status.

25. Over the course of the next two years, John Doe's co-workers' treatment of him changed. Whereas they had formerly been friendly and included him in daily group lunches, he was no longer welcome to go to lunch with them. None of his co-workers sat in chairs close to him, and co-workers who had previously been friendly to him would no longer speak to him.

26. In April 2005, John Doe was advised that his supervisor had told his co-workers that he had AIDS. This information was spread to employees throughout Defendant's Franklin, Tennessee facility.

27. Also in April 2005, John Doe complained to Defendant that his supervisor had divulged his medical information to his co-workers. Defendant conducted an investigation into the complaint, which confirmed that Mr. Doe's supervisor had indeed disseminated confidential information about his medical condition to other employees.

28. The realization that his supervisor had divulged his HIV status and that this information was why his co-workers shunned him, caused severe mental and emotional injuries,

compromised his physical well being, and visited financial losses upon him, including lost past and future earnings.

29. Defendant's inquiry into and disclosure of John Doe's medical information violated Sections 102(d)(3)(B), (d)(3)(C), and (d)(4)(C) of the ADA, 42 U.S.C. §12112(d)(3)(B), (d)(3)(C), and (d)(4)(C).

30. The unlawful employment practices complained of above were intentional.

31. The unlawful employment practices complained of above were done with malice and/or with reckless indifference to the federally protected rights of John Doe.

COUNT ONE

Violation of the ADA

32. Plaintiff-Intervenor realleges, adopts and incorporates herein Paragraphs 1 through 31 above, as if fully set forth herein.

33. Defendants required John Doe to disclose his HIV status as a condition to obtaining FMLA leave. This information was provided to Defendant at the insistence of John Doe's manager when he demanded this information as a precondition to referral of John Doe to a company nurse which Defendant required when an employee applied for FMLA leave. This information was to have been confidential, but was instead disseminated around the workplace.

34. These initial improprieties were compounded by multiple additional violations of confidentiality including, but not necessarily limited to: Defendant's disclosure of John Doe's HIV status to other supervisory personnel; general dissemination of private, confidential medical information against John Doe's wishes and contrary to his express requests; and the keeping of documentation regarding John Doe's medical condition, and treatments thereof, with employment records at his supervisor's desk.

35. Defendant's misconduct in this regard violated Sections 102(d)(3)(B), (d)(3)(C), and (d)(4)(C) of the ADA, 42 U.S.C. §§12112(d)(3)(B), (d)(3)(C), and (d)(4)(C).

COUNT TWO

Violation of the Tennessee Human Rights Act **T.C.A. § 4-21-101, et seq.**

36. Plaintiff-Intervenor realleges, adopts and incorporates herein Paragraphs 1 through 35 above, as if fully set forth herein.

37. Defendant, as an entity employing eight or more persons within the State, qualifies as an employer under the Tennessee Human Rights Act ("THRA").

38. Defendant committed multiple discriminatory practices in violation of the THRA by coercing and/or permitting the disclosure of John Doe's HIV status to his manager, his supervisor and his co-workers.

39. Defendant violated the Tennessee Human Rights Act, when John Doe's manager required disclosure by John Doe of confidential medical information and informed Mr. Doe's supervisor of Mr. Doe's medical condition without Mr. Doe's consent.

40. Defendant is liable for the manager's actions based on agency liability and the doctrine of respondeat superior because the manager was acting in the course of his employment with Defendant and Defendant had a right to control his actions.

41. Defendant failed to protect John Doe's interest, personal dignity and his right to freedom from humiliation, as required by the THRA, when Mr. Doe's supervisor divulged Mr. Doe's medical condition to Mr. Doe's co-workers, causing them to shun Mr. Doe.

42. Defendant is liable for the supervisor's actions based on agency liability and the doctrine of respondeat superior because the supervisor was acting in the course of her employment with Defendant and Defendant had a right to control her actions.

43. When Defendant offered John Doe an incomparable job position upon his return to work, Defendant was in direct violation of the THRA.

44. These and other acts of the Defendant in violation of the THRA have caused John Doe severe mental and emotional damages and financial losses.

45. John Doe is entitled to an award of attorneys' fees and costs as a result of these violations.

COUNT THREE

Invasion of Privacy

46. Plaintiff-Intervenor realleges, adopts and incorporates herein Paragraphs 1 through 45 above, as if fully set forth herein.

47. Defendant invaded John Doe's privacy when Defendant insisted upon disclosure of John Doe's medical condition and then caused John Doe's HIV-positive status, an intensely private fact, to be published throughout Defendant's factory and beyond.

48. John Doe had a right to have his private medical information kept confidential.

49. John Doe's statutorily protected private medical information was statutorily protected under the Health Insurance Portability and Accountability Act (HIPAA).

50. The publication of private medical information in the face of a direct request for confidentiality, and particularly one's HIV status, would be highly objectionable to an average person and amounted in this case to an egregious invasion of privacy which has visited great mental and emotional injury upon John Doe.

COUNT FOUR

Intentional Infliction of Emotional Distress

51. Plaintiff-Intervenor realleges, adopts and incorporates herein Paragraphs 1 through 50 above, as if fully set forth herein.

52. Defendant committed the tort of intentional infliction of emotional distress when it required John Doe to divulge his HIV status and then caused this information to be widely disseminated among his co-workers and throughout Defendant's factory.

53. Defendant, acting by and through its managerial and supervisory staff, intentionally caused John Doe's HIV status to be disclosed to his co-workers.

54. Defendant's employee knew that John Doe would be harmed by the intentional and reckless disclosure of this information.

55. The action of widely disseminating information regarding John Doe's HIV status is so outrageous that it is not tolerated by civilized society.

56. These outrageous actions have resulted in serious mental injury and emotional distress to John Doe.

57. Defendant is liable for the manager's actions and the supervisor's actions based on agency liability and the doctrine of respondeat superior because the manager and supervisor were acting in the scope of their employment with Defendant and Defendant had a right to control their actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor John Doe prays for judgment against Defendant and respectfully seeks the following:

- (a) Judgment in his favor;
- (b) Compensatory damages in an amount sufficient to fairly and fully compensate him for his damages in accordance with the law;
- (c) Punitive damages in an amount to be determined at trial;
- (d) All reasonable costs, attorneys' fees, and expenses of litigation; and
- (e) Such other and further relief as this Court deems just and proper.

Respectfully submitted,

NEAL & HARWELL, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by the Court's electronic service system on the following counsel this the 10th day of January, 2007:

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