

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DONNA DIPALMA	:	
800 Junction Rd.	:	
Brown Mills, NJ 08015	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No.:
	:	
PEMBERTON TOWNSHIP	:	JURY TRIAL DEMANDED
500 Pemberton Browns Mills Rd.	:	
Pemberton, NJ 08068	:	
	:	
Defendant.	:	
	:	

CIVIL ACTION COMPLAINT

Plaintiff, Donna DiPalma (*hereinafter* referred to as “Plaintiff”), by and through her undersigned counsel, hereby avers as follows:

I. Introduction

1. Plaintiff has initiated this action to redress violations by Pemberton Township (*hereinafter* “Defendant”) of the New Jersey Law Against Discrimination (“NJ LAD”), the Americans with Disabilities Act (“ADA” - 42 USC §§ 12101 *et. seq.*), and the Family and Medical Leave Act (“FMLA” - 29 U.S.C. §§2601 *et. seq.*). Plaintiff was unlawfully terminated by Defendant, and she suffered damages more fully described/sought herein.

II. Parties

2. The foregoing paragraphs are incorporated herein their entirety as if set forth in full.

3. Plaintiff is an adult who resides at the above-captioned address.

4. Defendant is a township in Burlington County, New Jersey.

5. At all times relevant herein, Defendant acted through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

III. Jurisdiction and Venue

6. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws.

7. There lies supplemental jurisdiction over Plaintiff's future state-law claims because they arise out of the same common nucleus of operative facts as Plaintiff's federal claims asserted herein.

8. This Court may properly assert personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny.

9. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendant is deemed to reside where it is subjected to personal jurisdiction, rendering Defendant a resident of the District of New Jersey.

10. Plaintiff is proceeding herein under the ADA and has properly exhausted her administrative remedies with respect to such claims by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant lawsuit within ninety (90) days of receiving a Notice of Right to Sue letter from the EEOC.

IV. Factual Background

11. The foregoing paragraphs are incorporated herein their entirety as if set forth in full.

12. Plaintiff was hired by Defendant on or about September 20, 2006, and she remained employed with Defendant in different capacities until her unlawful termination on or about September 27, 2023.

13. At all relevant times herein, Plaintiff was employed with Defendant in the position of Keyboarding 2/Planning Board Secretary and Zoning Board of Adjustment Business Secretary within Defendant's Community Development Department.

14. In Plaintiff's position with Defendant, she provided administrative support to each of the aforesaid Boards, its members, professionals and applicants, including reviewing applications, maintaining all of the Boards' records, attending and creating record of all meetings, agendas and yearly re-organization of both Boards.

15. In addition to the foregoing, Plaintiff also handled purchasing for various Boards, assisted the public and Defendant's employees regarding processing grading plans, construction applications, zoning applications, zoning board applications, planning board applications, rental applications, and vacant property registrations, and provided zoning information as it applied to different areas of the Township and application types.

16. After Defendant created the Community Development Department, Plaintiff also assisted the Community Development Director[s] as needed.

17. The foregoing is just a few examples of the voluminous list of duties and responsibilities that Plaintiff was tasked with in her position with Defendant; and throughout her

employment, various staff members sought out Plaintiff for advice and guidance to assist them in performing the functions of their jobs as needed due to her experience and skill set.

18. Plaintiff has and continues to suffer from disabilities, including but not limited to ulcerative colitis and depression, in addition to other associated complications.

19. Plaintiff's aforesaid disabilities (at times) limit her ability to perform some daily life activities, including but not limited to working, engaging in social interaction, sleeping, focusing and eating.

20. Despite her aforesaid disabilities and limitations, Plaintiff was still able to perform the essential functions of her job; however, she did require reasonable medical accommodations.

21. For example, as a result of Plaintiff's ulcerative colitis, she would occasionally need to be a few minutes late to work when experiencing a sudden flare up of the same and requested a flexible schedule to accommodate her needs.

22. Plaintiff also requested intermittent time off from work to care for and treat her disabilities (such as attending doctor's appointments).

23. Prior to January of 2023, Plaintiff had no issues with her aforesaid requests for reasonable accommodations and was not disciplined for her attendance – as her absences and latenesses were disability-related (discussed *supra*).

24. However, in or about January of 2023, there was a change to Defendant's administration and the Director of Community Development (*i.e.* Plaintiff's then Supervisor) resigned in or about December of 2022.

25. While Defendant was in the process of hiring a new Director of Community Development, Plaintiff reported to Daniel Hornickel (“Hornickel”), the Business Administrator for Defendant.

26. In January of 2023, Plaintiff had a discussion with Hornickel, wherein she informed him that she suffered from disabilities, including ulcerative colitis, and that she needed medical accommodations for the same.

27. Specifically, Plaintiff informed Hornickel that her ulcerative colitis diagnosis can have an impact on her start time and that she required a flexible schedule for days in which she would be late to work due to her disability.

28. Plaintiff also informed Hornickel that she would require intermittent time off to care for and treat for her disabilities, including but not limited to time off to attend doctor’s appointments related to the same.

29. Hornickel initially informed Plaintiff that her aforesaid requested accommodations would be fine so long as as she notified him of when she needed to be late or absent and she got her work done.

30. However, Hornickel’s attitude towards Plaintiff completely changed as she began to utilize said accommodations.

31. For example, Plaintiff was reprimanded for her attendance in January and February of 2023 (even though her attendance issues during these months were primarily, if not all, related to her aforesaid ulcerative colitis). Such reprimanding was done without ever trying to engage in the interactive process with Plaintiff (including requesting additional medical documentation to support her prior requests – discussed *supra*).

32. In or about March of 2023, Rosemary Flaherty (“Flaherty”) was appointed and began working as Defendant’s new Community Development Director.

33. While under the supervision of Flaherty, Plaintiff still indirectly reported to Hornickel, as Hornickel was Flaherty’s supervisor.

34. The hostile treatment exhibited towards Plaintiff in relation to her disability and need for accommodations did not cease when Flaherty became Plaintiff’s supervisor, instead, it only grew worse.

35. When Flaherty was first appointed Plaintiff’s supervisor (in or about early March of 2023), Plaintiff had a discussion with Flaherty wherein she disclosed that she had ulcerative colitis and informed Flaherty that she needed accommodations.

36. The accommodations that Plaintiff informed Flaherty she needed for her disability were the same accommodations that Plaintiff apprised Hornickel of in January of 2023 – discussed in Paragraphs 21-23 of the instant Civil Action Complaint.

37. In or about early March of 2023, after becoming supervised by Flaherty, Plaintiff took time off from work (approximately one day) to undergo surgery.

38. Following the disclosure of her disability and need for accommodations to Flaherty and after returning from medical leave, Plaintiff continued to be subjected to ongoing animosity and hostility, including but not limited to:

- a. Flaherty began creating false narratives to make it appear that Plaintiff was not doing her job;
- b. Plaintiff was accused of not providing certain things to Flaherty when she clearly did;

- c. Plaintiff was accused of not performing certain tasks that she was never instructed to perform;
- d. Plaintiff was given an overwhelming amount of work and assigned menial tasks to distract from completing more important assignments;
- e. On or about March 20, 2023, Plaintiff had a meeting with Flaherty wherein Flaherty informed Plaintiff that she believed Plaintiff's performance was unsatisfactory. When Plaintiff reminded Flaherty about her disability and need for accommodations, Flaherty again ignored Plaintiff, did not escalate her requests for medical accommodations, and never even attempted to engage in the interactive process to determine if Plaintiff could be accommodated;
- f. Plaintiff began to be issued pretextual written discipline – which was a clear attempt by Defendant to create a paper trail before ultimately terminating Plaintiff's employment (discussed further *infra*). By way of specific example, on or about April 4, 2023, Flaherty filed charges against Plaintiff (ending in a suspension), claiming that Plaintiff was insubordinate and incompetent; and
- g. Plaintiff was treated in a nasty and demeaning manner by Defendant's management on a consistent basis.

39. As a result of the aforesaid hostile work environment, Plaintiff's ulcerative colitis began to flare up and her mental health was negatively affected.

40. In fact, due to the discriminatory and retaliatory harassment that Plaintiff was being subjected to at work, she sought the assistance of a medical professional and was diagnosed with depression.

41. Between March and June of 2023, Plaintiff was late to work on a few occasions because the hostile work environment that she was being subjected to triggered flare ups of her disabilities.

42. While Plaintiff had already requested a flexible schedule related to latenesses connected to her ulcerative colitis, Defendant's management never engaged in the interactive process to see if they could accommodate her. As a result, Plaintiff was issued a Notice of Minor Disciplinary Action on or about June 6, 2023 for "tardiness" and given a one-day suspension.

43. Plaintiff objected to the June 6, 2023 Notice of Minor Disciplinary Action (as being unlawful) by speaking to her supervisor (and again reminding her of her health conditions and need for accommodations), speaking to township officials, and through communication between her union president and Hornickel.

44. On or about June 7, 2023, Plaintiff provided a doctor's note to Defendant's management, explaining that she has "Severe Ulcerative Colitis requiring absence/lateness due to severe flares" and "GI follow up appts."

45. Plaintiff's aforesaid June 7, 2023 doctor's note also stated "Pt need needs emotional/clinical accommodation."

46. After providing her June 7, 2023 doctor's note to Defendant, Plaintiff was sent an FMLA form for her physician to complete.

47. Thereafter, Plaintiff took a week vacation to heal from the hostile work environment she was being subjected to (from on or about June 12th through on or about June 16th, 2023).

48. Upon her return to work on June 19, 2023, Plaintiff received a re-issuance of a 1-day suspension for tardiness, an additional 3-day suspension again for tardiness caused by her

disabilities, and a notification of removal from her primary function as Board Secretary – a position she held for the entirety of her employment with Defendant.

49. In response to the unlawful disciplinary actions issued to her on June 19, 2023, Plaintiff, through her union, complained of discrimination and retaliation under the ADA and FMLA to Defendant's management in writing, stating in part:

3. The Township has been put on notice, by medical certification, that Ms. DiPalma is legally and medically entitled to an accommodation in her workplace. This disciplinary action has manifest in violation of her rights to said accommodation.

4. Ms. DiPalma and the GWU assert these actions by the Township, violate DiPalma's rights and may be retaliatory against her for exercising her legal rights and for her complaints about harassment and retaliation by management in the workplace.

50. Plaintiff's aforesaid complaint of discrimination and retaliation was forwarded to Hornickel, Brown, and other members of management within Defendant on June 19, 2023 via email.

51. Plaintiff thereafter applied for FMLA leave, which was granted on a block basis between June of 2023 and September 26, 2023.

52. On or about August 3, 2023, during her aforesaid medical leave of absence, Plaintiff filed a Charge of Discrimination with the EEOC asserting various violations by Defendant of the ADA.

53. When Plaintiff attempted to return to work from FMLA leave on or about September 26, 2023, she was refused entry into Defendant and informed that a Loudermill Hearing would take place on September 27, 2023 regarding a decision to suspend Plaintiff

without pay pending a departmental meeting into the allegations that she purportedly attempted to permanently remove public records from her computer.

54. Plaintiff attended the Loudermill Hearing on September 27, 2023 and was thereafter immediately suspended for the alleged reasons discussed *supra* (despite having zero evidence to support this allegation other than the false and bias hearsay testimony from the same individual who had been discriminating against Plaintiff and subjecting her to a hostile work environment for months) pending a departmental disciplinary hearing.

55. On or about December 14, 2023, Plaintiff was given a final disciplinary action regarding the above alleged conduct and informed that she was officially being terminated from her employment with Defendant for completely false and pretextual reasons.

56. Plaintiff believes and therefore avers that she was terminated from Defendant because of her actual, perceived, record of disability, in retaliation for requesting reasonable accommodations (including FMLA leave), and/or in retaliation for complaining of unlawful discrimination.

First Cause of Action
Violations of the Americans with Disabilities Act, as amended ("ADA")
([1] Actual/Perceived/Record of Disability Discrimination; [2] Retaliation;
[3] Hostile Work Environment; [4] Failure to Accommodate)

57. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

58. Plaintiff suffered from qualifying health conditions under the ADA (as amended), which (at times) affected her ability to perform some daily life activities (as discussed *supra*).

59. Plaintiff requested reasonable accommodations from Defendant's management, including but not limited to intermittent leave, block leave, and a flexible schedule.

60. Rather than engage in the interactive process and/or accommodate Plaintiff's disabilities, Defendant instead subjected her to a hostile work environment, issued her pretextual discipline (including suspending her from her job), and ultimately terminated her employment.

61. Plaintiff was subjected to a hostile work environment through disparate treatment, pretextual admonishment, and discriminatory harassment because of her actual/perceived disabilities, in retaliation for requesting reasonable accommodations, and/or in retaliation for complaining of discrimination/retaliation under the ADA.

62. Plaintiff's aforesaid actual, perceived and/or record of disabilities were motivating and/or determinative factors in Defendant's decisions to issue Plaintiff pretextual discipline, suspend her, and/or terminate her employment.

63. Plaintiff believes and also avers that she was issued pretextual discipline, suspended, and/or terminated because of her requests for accommodations and/or because she complained of ADA violations.

64. Plaintiff also believes and avers that Defendant failed to engage in the interactive process with her and/or accommodate her disabilities.

65. These actions as aforesaid constitute violations of the ADA, as amended.

Second Cause of Action
Violations of the New Jersey Law Against Discrimination ("NJ LAD")
([1] Actual/Perceived/Record of Disability Discrimination; [2] Retaliation;
[3] Hostile Work Environment; [4] Failure to Accommodate)

66. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

67. Plaintiff re-asserts and re-alleges each and every allegation as set forth in Plaintiff's First Cause of Action, as such actions constitute identical violations of the NJ LAD.

Third Cause of Action
Violations of the Family and Medical Leave Act ("FMLA")
(Interference & Retaliation)

68. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

69. Plaintiff was an eligible employee under the definitional terms of the FMLA, 29 U.S.C. § 2611(a)(i)(ii).

70. Plaintiff requested leave from Defendant, her employer, with whom she had been employed for at least twelve months pursuant to the requirements of 29 U.S.C.A § 2611(2)(i).

71. Plaintiff had at least 1,250 hours of service with the Defendant during her last full year of employment.

72. Defendant is engaged in an industry affecting commerce and employs fifty (50) or more employees for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year, pursuant to 29 U.S.C.A § 2611(4)(A)(i).

73. Plaintiff was entitled to receive leave pursuant to 29 U.S.C.A § 2612 (a)(1) for a total of Defendant committed interference and retaliation violations of the FMLA by *inter alia*: (1) by taking actions towards her that would dissuade a reasonable person from exercising her rights under the FMLA; (2) considering Plaintiff's FMLA needs in making the decision to issue her discipline, suspend her and/or terminate her employment; (3) issuing Plaintiff discipline, suspending her, and/or ultimately terminating her employment for requesting and/or utilizing FMLA leave; (4) counting FMLA-qualifying time off against Plaintiff in making the decision to issue her discipline, suspend her, and/or terminate her employment; and (5) subjecting Plaintiff to hostility and animosity after returning from FMLA leave.

74. These actions as aforesaid constitute violations of the FMLA.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to be prohibited from continuing to maintain its illegal policy, practice or custom of discriminating/retaliating against employees and are to be ordered to promulgate an effective policy against such unlawful acts and to adhere thereto;

B. Defendant is to compensate Plaintiff, reimburse Plaintiff and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings, future lost earnings, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiff should be accorded those benefits illegally withheld from the date she first suffered discrimination, retaliation, and/or interference at the hands of Defendant until the date of verdict;

C. Plaintiff is to be awarded liquidated/punitive damages, as permitted by applicable law, in an amount determined by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

D. Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper and appropriate, including but not limited to, emotional distress and/or pain and suffering damages (where legally permitted);

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;

F. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to the Plaintiff in light of the caps on certain damages set forth in applicable federal law; and

G. Plaintiff's claims are to receive trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.



By: _____

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Dated: April 10, 2024