

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

LORETTA LEWIS,)
)
 Plaintiff,) CASE NO. CI 16-
)
 v.) COMPLAINT
)
 BELLEVUE UNIVERSITY, a Nebraska)
 Non-Profit Corporation,)
)
 Defendant.)

COMES NOW Loretta Lewis, Plaintiff, and for her complaint against Bellevue University, Defendant, states:

General Allegations

1. Plaintiff Loretta Lewis (“Lewis”) is a resident of Douglas County, Nebraska.
2. Defendant Bellevue University is a Nebraska nonprofit corporation doing business in Sarpy County, Nebraska (“Bellevue”) with its principal place of business at 1000 Galvin Road South, Bellevue, Nebraska 68005.
3. This Court has jurisdiction over the subject matter of this action pursuant to Neb. Rev. Stat. §24-302, as amended, and has jurisdiction over the federal claims alleged pursuant to 29 U.S.C. §2617(a)(2).
4. Venue is proper in Sarpy County, Nebraska pursuant to Neb. Rev. Stat. §25-403.01 because Sarpy County is where events giving rise to the causes of action occurred and because it is where Bellevue has its principal place of business.

**First Cause of Action
Retaliatory Discharge**

5. Lewis was, at all relevant times, an at-will employee of Bellevue.

6. On or about April 4, 2016, Lewis sustained personal injury in an accident arising out of and in the course of her employment with Bellevue. Specifically, while she was on ‘her hands and knees’ doing work assigned to her by a maintenance manager employed by Bellevue, Sam Borer, she suffered an inflamed bursa to her right knee.

7. Following the accident, Lewis tried to continue working, then discontinued work and sought emergency medical treatment. Later in the day, Lewis notified her supervisor, Kim Schendt, of the injury she sustained, that Lewis would need to remain off work for the remainder of the work week, pursuant to a doctor’s note that she presented at that time, and would need to file a claim for benefits under the Nebraska Workers’ Compensation Law.

8. On April 7, 2016, Lewis saw a second medical provider due to her knee injury, who allowed that Lewis should remain off work but could return on Monday, April 11, 2016, and Lewis notified Kim Schendt that she still was under medical care and restricted from work activities by the medical provider because of the work injury.

9. Lewis returned to work at Bellevue on April 11, 2016.

10. On April 22, 2016, Lewis sent an e-mail to Sara Maguire, an employee in Bellevue’s human resource department, containing the incident report for the right knee injury.

11. On April 25, 2016, a Bellevue human resource representative, Dan Bankey, telephoned Lewis and told Lewis that she was terminated for “unreliability” by Bellevue.

12. Bellevue ordinarily does not terminate employees who claim benefits under the Nebraska Workers’ Compensation Act; however. Bellevue terminated Lewis after she claimed workers’ compensation benefits and in retaliation for Lewis’ exercise of her rights under Nebraska worker’s compensation law.

13. The Nebraska Workers' Compensation Act presents a clear mandate of public policy which warrants exception to the at-will employment doctrine, as recognized by the Nebraska Supreme Court in *Jackson v. Morris Communication Corp.*, 265 Neb. 423 (2003), and Lewis' termination constitutes unlawful conduct in violation of Nebraska's public policy.

14. As a direct and proximate result of Bellevue's wrongful termination, Lewis suffered and continues to suffer damages, which damages include including the loss of compensation and employment benefits she was receiving at Bellevue, and in the search for comparable employment Lewis has incurred expenses.

15. As a further direct and proximate result of Bellevue's' retaliatory conduct, Lewis has experienced mental anguish, humiliation, emotional distress, anxiety, inconvenience and annoyance and will continue to do so indefinitely, to Lewis' damage and loss.

WHEREFORE, Plaintiff requests judgment against Bellevue for special damages, including back pay of \$8,190.38, additional wage loss and loss of benefits as proved at trial, for front pay, for compensatory damages, for punitive damages in an amount sufficient to punish Bellevue and to deter others, for interest at the current prevailing rate, for attorneys' fees, for the costs of this action, and for such other relief as may be just.

**Second Cause of Action
Family Medical Leave Act**

16. Lewis re-alleges paragraphs 1-15, above, as if fully set forth herein.

17. Bellevue, at all times, was a private-sector employer with 50 or more employees in 20 or more workweeks in 2016 or the preceding calendar year.

18. Lewis was employed by Bellevue for more than twelve months, had at least 1250 hours of service preceding her termination, worked at a location where Bellevue had at least 50 employees within 75 miles.

19. For purposes of the federal Family Medical and Leave Act of 1993 (FMLA), Bellevue was a 'covered employer' under the FMLA, and Lewis was an 'eligible employee' under that law.

20. On or about April 17, 2016, Lewis became ill at home and sought emergency medical treatment. Lewis called in to Bellevue's voice mail to advise Kim that Lewis' ailment rendered her unable to perform her job duties at Bellevue the next day, and she needed to see her medical care provider.

21. On April 19, 2016, Lewis returned to work and performed job duties. During the work hours, Lewis told Kim Schendt of her medical condition and ongoing discomfort.

22. Later on April 19, 2016, Lewis symptoms worsened and suspecting she may have an infection, sought emergency treatment that afternoon. Lewis was diagnosed with a respiratory infection, was told to avoid contact with people, and to remain off work until April 25, 2016.

23. At Lewis' direction her spouse called in to Bellevue's voice mail on April 19, 2016, to advise Kim Schendt that Lewis' ailment rendered her unable to perform her job duties at Bellevue the next day, and she was told to remain off work until April 25, 2016.

24. On April 20, 2016, Lewis called in to Bellevue's voice mail to advise Kim Schendt of her situation personally.

25. On April 21, 2016, Lewis called in to Bellevue and spoke with Sam Borer and gave him complete information of her medical ailment and need to remain off work until April 25, 2016.

26. On April 22, 2016, Lewis sent an e-mail to an employee in Bellevue's human resource department, which in addition to the incident report for the right knee injury

aforementioned, also contained documents from the medical provider regarding the respiratory infection.

27. On April 24, 2016, Lewis' medical condition worsened, necessitating emergency treatment that afternoon. The medical provider diagnosed Lewis with an intestinal infection, and instructed Lewis not to return to work on April 25, 2016. Lewis called in to Bellevue's voice mail to advise Kim that Lewis' ailment rendered her unable to perform her job duties at Bellevue the next day.

28. Lewis' illness required her to miss work for three or more days.

29. When Lewis took her medically necessary leaves from her work at Bellevue in April of 2016, she had not taken twelve (12) workweeks of leave within the prior twelve-month period.

Count I – Interference with Substantive FMLA Rights

30. By making phone calls to managers and/or supervisors, by placing messages on the designated message line, and by providing Bellevue with notes from medical providers of reasons Lewis needed to be excused from work, Lewis had provided Bellevue with adequate notice to know that Lewis' leave may be for an FMLA-qualifying purpose.

31. Bellevue knew or should have known that Lewis required FMLA protected medical leave to address symptoms of her medical illness.

32. Bellevue knew or should have known that, within the time required by the FMLA, it was obliged to inform Lewis of her FMLA eligibility status and provide notice to Lewis of her rights and responsibilities under the FMLA; or, if she was not eligible to state one or more reasons why.

33. Bellevue, by and through one or more of its employees acting within the course and scope of his or her employment, directly interfered with Lewis' protected rights under the FMLA and terminated Lewis on April 25, 2016, and as a direct and proximate result, Lewis was denied protection of her FMLA rights and the protections afforded to her under FMLA, has lost compensation and employment benefits.

34. Lewis claims back pay and benefits from the date of her termination to the date of judgment, front pay and benefits following judgment, an award of liquidated damages and an award of attorney's fees, expert witness fees, and costs she incurs in the prosecution of this action..

Count II – Retaliation

35. Lewis participated in a protected activity when she exercised her protected rights under FMLA.

36. Bellevue knew or should have known that Lewis required FMLA protected medical leave to address symptoms of her medical illness.

37. Bellevue does not terminate employees who have exercised their rights under FMLA and are on leave, and it restores employees who have exercised their FMLA rights when returning from leave either to (a) the positions of the employment they held when the leave commenced, or (b) an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

38. Lewis suffered an adverse employment action when Bellevue terminated her employment.

39. Lewis' termination was directly and causally linked to her exercise, or her attempt to exercise, FMLA rights to medically necessary leave, and it was in retaliation for attempting to, or actually exercising, her protected rights under FMLA.

40. As a direct and proximate result Lewis has lost compensation and employment benefits.

41. Lewis claims back pay and benefits from the date of her termination to the date of judgment, front pay and benefits following judgment, an award of liquidated damages and an award of attorney's fees, expert witness fees, and costs she incurs in the prosecution of this action.

WHEREFORE, Lewis seeks judgment against Bellevue in an amount which will fully and fairly compensate her for injuries and damages, including back pay and front pay, liquidated damages, Pre- and post-judgment interest at the prevailing rate, for attorneys' fees, for expert witness fees, the costs of this action, for appropriate equitable relief, and for such other relief as may be just and consistent with the purposes of Family Medical Leave Act.

Loretta Lewis, Plaintiff.

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