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VALERIE ARAKAKI

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2014 FEB 12 AM 8:51

F. OTAKE
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

VALERIE ARAKAKI,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS;
JOSIE IDICA, individually; JOHN
DOES 1-10; JANE DOES 1-10; and
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 14-1-0392-02 JHC
(Other Non Vehicle Tort)

**COMPLAINT; JURY DEMAND;
SUMMONS**

COMPLAINT

Plaintiff VALERIE ARAKAKI (hereinafter referred to as "Plaintiff"), by and through her attorney, complains against the above-named Defendants, KAISER FOUNDATION HOSPITALS ("Kaiser "Employer" or the "Hospital"), and JOSIE

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alleges and avers as follows:

PARTIES

1. At all relevant times, Plaintiff is and was a citizen of Honolulu, Hawaii.

2. At all relevant times, Defendant Employer has employed at least one employee and had its main operations in the City and County of Honolulu.

3. At all relevant times, Defendant Employer has been a covered entity under HRS Chapter 378.

4. Defendant Idica (Filipino Ancestry) is a senior supervisor/manager in Human Resources. In this capacity Defendant Idica exercises administrative control of and has responsibility for ensuring compliance with employment practices laws governing the Hospital. Upon information and belief, Defendant Idica is a citizen of the United States and a resident of the State of Hawaii.

5. Defendant Idica repeatedly subjected Plaintiff to discriminatory and unlawful acts. Defendant was responsible for ensuring compliance with employment practices laws. Yet, Idica took adverse action against Plaintiff, ultimately terminating and/or effectively recommending the termination of Plaintiff due to her protected classes and for Plaintiff's protected activity/whistleblowing. Defendant Idica also made decisions affecting Plaintiff's employment and ability to continue working with Defendant, and/or aided, abetted, compelled, and/or coerced other persons' actions towards Plaintiff. Defendant Idica is sued individually.

6. Defendants JOHN DOES 1-10, JANE DOES 1-10, and DOE ENTITIES 1-10 (collectively "DOE Defendants") are being sued under fictitious names because, despite diligent and good faith efforts, their true names and identities are presently unknown to Plaintiff, except that they are or were connected in some manner with the above-named Defendants and/or agents, principal partners, officers, directors, servants, employees, employers, representatives, co-venturers, associates, consultants, vendors, suppliers, manufacturers, subcontractors, contractors, sureties, insurers, owners, lessees, sublessees, lessors, sublessors, guarantors, assignees, assignors, licensees, and/or licensors of the above-named Defendants, or in some manner presently unknown to Plaintiff, are or were engaged in the activities alleged and/or were in some manner responsible for the injuries and/or damage to Plaintiff and/or in some manner are or may be related to and jointly liable with the above-named Defendants.

JURISDICTION AND VENUE

7. The Court has jurisdiction over the matter pursuant to HRS § 603-21.5(3) and § 634-35.

8. Pursuant to HRS § 603-36(5) venue is proper in this circuit. The Defendant employer has its main operations and is based in Honolulu, Hawai'i.

9. Acts complained of, including but not limited to discriminatory/retaliatory treatment, and the decision and/or approval of the termination of Plaintiff, occurred in the City and County of Honolulu.

10. The Court has jurisdiction over Defendants pursuant to HRS § 634-35.

11. Defendants engaged in acts in the City and County of Honolulu that resulted in damages and/or injury to Plaintiff.

FACTS

12. Defendants hired Plaintiff on or around June 24, 2003, as a “Lab Assistant II.” Plaintiff is of Portuguese and Puerto Rican ancestry.

13. Around September 2003, Plaintiff transitioned into the temporary position of “Lab Assistant I.” Subsequently, Plaintiff transitioned into a permanent position at Kaiser Nanaikeola Clinic where she worked from December 2003 to March 2010.

14. Around January/February 2010, Plaintiff applied for a full-time “Lab Assistant I” position at the Kaiser Waipio Lab.

15. Defendant Hospital and Plaintiff’s supervisor, Clinton Seatriz (Filipino Ancestry), selected another employee (of Filipino Ancestry) with lesser qualifications and seniority for the position.

16. Plaintiff complained about the decision to Human Resources. Plaintiff’s supervisor, Seatriz (Filipino ancestry), had explained that Plaintiff would be better off servicing “Nanaikeola” and the employee selected for the position, who was Filipino, “was a better fit for Waipio,” where there were “more Filipinos.”

17. Defendant Hospital reviewed Plaintiff’s complaint and admitted

that she, instead of the applicant (Filipino ancestry) selected for the open position, should have been given the position at the Waipio Lab, that Plaintiff was the most qualified applicant for the job, and that Seatriz's decision was "wrong."

18. While Defendant Hospital reversed its decision after Plaintiff's complaint, the incident engendered such hostility towards Plaintiff that she was forced to undergo counseling to deal with the stress.

19. Subsequently, and through her termination from Defendant Hospital, Defendants initiated investigations into Plaintiff and took adverse action against her, despite having knowledge that allegations made against Plaintiff were false and without any basis whatsoever.

20. Defendants were motivated and retaliated against Plaintiff due to several reports she made constituting protected activity, including but not limited to her complaining to Defendant Hospital regarding the selection process for the Waipio Lab position.

21. On several occasions in late 2010 and early 2011, Plaintiff and other employees believed that a coworker was abusing powerful prescription pain medication at work, and that she might be obtaining the medication illegally.

22. Plaintiff, among others, raised their concerns and complained to Defendant Hospital, specifically Seatriz, as the coworkers' activities and behavior at work raised serious issues of workplace and patient safety.

Plaintiff complained directly to Seatriz (Filipino ancestry), whose previous selection for the Waipio Lab position was overturned only after Plaintiff complained of potential national origin/ancestry bias in the selection process.

23. Only after several months of ignoring Plaintiff's complaints into possible illegal drug use, which forced Plaintiff to pursue the complaints up the chain of command, did Defendant Hospital commence an investigation and determine Plaintiff and other employees' complaints were valid regarding their coworker's drug use.

24. Subsequently, Plaintiff's supervisor, Seatriz (Filipino ancestry), and Idica (Filipino Ancestry) initiated groundless investigations into Plaintiff.

25. Around April 2012, Defendant Idica opened an investigation into Plaintiff and attempted to discipline her for an incident in which Plaintiff was the victim of Seatriz yelling and unprofessional behavior towards her.

26. Around August 2012, Defendant Idica initiated, was involved in, and furthered another investigation into Plaintiff for "time fraud, waste and abuse" and "other" vaguely worded "compliance" issues.

27. Plaintiff learned that the coworker that had been found to have improperly and/or illegally used prescription pain medication at work claimed to Defendants that Plaintiff ran "tests" on herself.

28. Plaintiff also learned from Defendants that said coworker had recorded Plaintiff and others' private conversations not involving the coworker and without Plaintiff and others' consent.

29. Plaintiff reasonably believed that the coworker's recording of Plaintiff and others' private conversations not involving the coworker and, without consent, constituted illegal behavior under, among other laws, HRS Chapter 803.

30. When Defendant Hospital and Defendant Idica informed Plaintiff the nature of the investigation and that it was based on a potentially illegal recording by the coworker that had been found to have illegally and/improperly used prescription pain medication at work, Plaintiff not only denied

29. Plaintiff reasonably believed that the coworker's recording of Plaintiff and others' private conversations not involving the coworker and, without consent, constituted illegal behavior under, among other laws, HRS Chapter 803.

30. When Defendant Hospital and Defendant Idica informed Plaintiff the nature of the investigation and that it was based on a potentially illegal recording by the coworker that had been found to have illegally and/improperly used prescription pain medication at work, Plaintiff not only denied unequivocally doing anything wrong, she complained that the recording was illegal, that she wanted to hear it, and that Defendant should take remedial action with respect to the recording.

31. During the August 2012 investigation Plaintiff understood that she had been accused of giving herself a "pregnancy" and "urine" test. Plaintiff cooperated fully with the investigation and was "cleared" by "Compliance."

32. Eventually, even though there was no evidence supporting the groundless allegations and Plaintiff unequivocally denied improperly giving herself any lab tests, Defendant Idica insisted that the investigation be continued.

33. By the third week of August 2012, Plaintiff went out on a stress-related leave of absence and filed for workers' compensation and TDI benefits.

34. Plaintiff continued on a stress-related leave of absence through November 20, 2012, and filed a Charge of Discrimination with the Hawaii Civil

Rights Commission alleging national origin/ancestry discrimination.

35. Plaintiff returned to work on a part-time basis around November 20, 2012, supported by her counselor's recommendation.

36. In the first week of December 2012, Defendants informed Plaintiff that Defendant Idica would be continuing and/or reopening her investigation into Plaintiff, even though there was absolutely no evidence supporting her coworker's allegation that Plaintiff had given herself a "pregnancy" and "urine" test, and she had been cleared by "Compliance."

37. Plaintiff had knee surgery scheduled for that week, for which she filed TDI benefits, and informed Defendants that another Leave of Absence in connection with her knee surgery had already been approved.

38. After her surgery Plaintiff returned to work on a part-time basis on or around February 12, 2013. Even though she had been previously cleared of any wrongdoing by "Compliance" Defendant Idica informed Plaintiff that Idica herself could be continuing and/or reopening the investigation.

39. On or around February 15, 2013, Defendants met again with Plaintiff. At that meeting Defendant Idica informed Plaintiff about the recording done by the coworker. Defendant Idica failed/refused to address Plaintiff's requests regarding what she believed to be the illegal recording and/or failed/refused to permit Plaintiff to hear it. Defendant Idica then told Plaintiff she had been terminated for giving herself a "flu test." Plaintiff unequivocally denied improperly giving herself a flu test.

40. There is no evidence supporting Defendants' conclusion that Plaintiff improperly gave herself any flu test.

41. To Plaintiff's knowledge similarly-situated employees outside of Plaintiff's protected classes were not terminated even though Defendants found such employees had given themselves "tests."

42. Similarly-situated employees were not treated in the same manner as Plaintiff and were retained, and Plaintiff was terminated due to her national origin/ancestry, and for engaging in protected activity, including but not limited to complaining about national origin/ancestry discrimination, complaining about potential and/or actual illegal drug use at the workplace, complaining about potential and/or actual illegal violations of HRS Chapter 803, among other statutes, and/or her filing for TDI benefits.

CAUSES OF ACTION

COUNT I – VIOLATION OF HRS § 378-2(1)(A)

43. Plaintiff re-alleges and incorporates by reference paragraphs 1-42 above.

44. HRS § 378-2(1)(A) provides:

Discriminatory practices made unlawful; offenses defined. (a) It shall be an unlawful discriminatory practice:

(1) Because of race, sex, including gender identity or expression, sexual orientation, age, religion, color, **ancestry**, disability, marital status, arrest and court record, . . . :

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or

privileges of employment;

HRS § 378-2(1)(A).

45. As set forth above, during the course of Plaintiff's employment with Defendants, Plaintiff was subjected to discriminatory acts, due to her national origin/ancestry, in violation of HRS Chapter 378.

46. In addition, Defendant Idica took adverse action by, among other things, initiating groundless investigations into Plaintiff and Defendant Idica eventually terminated or effectively recommended that Plaintiff be terminated in violation of HRS Chapter 378.

47. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

48. Plaintiff is entitled to damages from Defendants jointly and severally in an amount to be proven at trial.

49. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living and therefore Plaintiff is also entitled to punitive and exemplary damages from Defendants in an amount to be proven at trial.

COUNT II – VIOLATION OF HRS § 378-2(2)

50. Plaintiff re-alleges and incorporates by reference paragraphs 1-49

above.

HRS § 378-2(2) provides:

Discriminatory practices made unlawful; offenses defined. (a) It shall be an unlawful discriminatory practice:

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(2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has ***opposed any practice forbidden by this part or has filed a complaint***, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part.

HRS § 378-2(2).

51. Plaintiff complained about practices forbidden by HRS Chapter 378, Part I, and filed a Charge of Discrimination.

52. In response Defendants took adverse action against Plaintiff, discriminated against Plaintiff, and ultimately terminated Plaintiff's employment.

53. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

54. Plaintiff is entitled to damages from Defendants jointly and severally in an amount to be proven at trial.

55. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living and therefore Plaintiff is also entitled

to punitive and exemplary damages from Defendants in an amount to be proven at trial.

COUNT III – VIOLATION OF HRS § 378-62

56. Plaintiff re-alleges and incorporates by reference paragraphs 1-55 above.

57. HRS § 378-62 provides:

§378-62. Discharge of, threats to, or discrimination against employee for reporting violations of law. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of:

(A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States; or

(B) A contract executed by the State, a political subdivision of the State, or the United States[.]

HRS §378-62.

58. As set forth above, during the course of Plaintiff's employment with Defendants, Plaintiff protested to Defendants and/or their agents about illegal activity in the workplace and/or violations of law by Defendants.

59. Shortly after making such complaints Defendants retaliated against Plaintiff and ultimately terminated Plaintiff's employment on unfounded and unsupported allegations after she had previously been cleared of wrongdoing.

60. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

61. Plaintiff is entitled to damages from Defendants in an amount to be proven at trial.

62. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living and therefore Plaintiff is also entitled to punitive and exemplary damages from Defendants in an amount to be proven at trial.

COUNT IV – TERMINATION IN VIOLATION OF PUBLIC POLICY

63. Plaintiff re-alleges and incorporates by reference paragraphs 1-62 above.

64. The public policy exception to at-will employment prohibits an employer from discharging an employee if the discharge violates a clear mandate of public policy—here, including but not limited to the public policy of protecting the workplace from illegal drug use, unlawful discrimination/retaliation under HRS Chapter 378, illegal eavesdropping and/or recording of private conversations, and the filing for TDI benefits, among other public policies.

65. As a proximate result of Defendants' conduct, Plaintiff has suffered

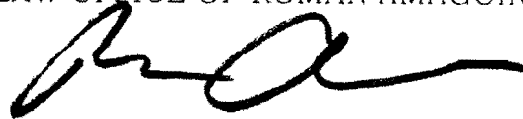
and continues to suffer job insecurity, loss of earnings and benefits, humiliation, emotional distress, and mental and physical anguish all to her damage in an amount to be proven at trial.

66. Defendants' acts and/or omissions were willful, wanton, outrageous and oppressive and were done with callous indifference to Plaintiff's present and future ability to earn a living and therefore Plaintiff is also entitled to punitive and exemplary damages from Defendants in an amount to be proven at trial.

Wherefore, Plaintiff prays this Court grant judgment in her favor over and against Defendants, and award damages to Plaintiff, including special damages, back pay and future loss of earnings, compensatory damages, attorneys' fees, prejudgment interest, and punitive damages in an amount deemed sufficient to punish Defendants for their actions; costs of this action; and such other and further relief as this Court may deem just and proper.

DATED: Honolulu, Hawai'i, February 11, 2014.

LAW OFFICE OF ROMAN AMAGUIN



ROMAN F. AMAGUIN
Attorney for Plaintiff