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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MARGARET J. WILSON, an individual,

Plaintiff,

v.

**KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST**, an Oregon
corporation, d.b.a., **KAISER PERMANENTE**,

Defendant.

Case No.

COMPLAINT

Violation of 29 U.S.C. §§ 621-634 (Age
Discrimination in Employment Act); 42
U.S.C. §§ 12101-12213 (Americans
With Disabilities Act); ORS 659A.030;
ORS 659A.103 *et seq.*

DEMAND FOR JURY TRIAL

SUMMARY STATEMENT

1. Plaintiff seeks monetary relief and attorney fees to redress Defendant's
discrimination in employment on the basis of her disability and age.

JURISDICTION AND VENUE

2. Jurisdiction lies pursuant to 28 U.S.C. § 1331 because this matter involves a civil action arising under the laws of the United States and pertaining to federal questions.

3. Supplemental jurisdiction of all state law claims lies pursuant to 28 U.S.C. § 1367 because the state law claims alleged in this complaint arise out of the same nucleus of operative facts as the federal law claims. The state law claims are so related to the federal law claims that they form part of the same controversy and would ordinarily be expected to be tried in one judicial proceeding.

4. Venue is proper pursuant to 28 U.S.C. § 1391 because the claims alleged in this complaint are based upon events and omissions that have substantially occurred in this District.

PARTIES

5. Margaret Wilson (“Plaintiff”) was at all material times herein, and is now, a citizen of the United States and a resident of the State of Oregon.

6. Kaiser Foundation Health Plan of the Northwest (“Defendant”) is a nonprofit corporation incorporated under the laws of the State of Oregon, with its principal place of business at One Kaiser Plaza, City of Oakland, County of Alameda, State of California. Defendant, doing business as Kaiser Permanente, operates Kaiser Permanente Westside Medical Center (“Westside Medical Center”) at 2875 NW Stucki Avenue, City of Hillsboro, County of Washington, State of Oregon.

ADMINISTRATIVE PREREQUISITES

7. On or about June 30, 2014, Plaintiff filed a complaint with the Oregon Bureau of Labor and Industries (“BOLI”) in which she alleged that Defendant violated state and federal laws as alleged herein.

8. On or about August 15, 2014, BOLI notified Plaintiff of her right to sue Defendant

for the allegations contained in her complaint, and this complaint is timely filed within 90 days of BOLI's right-to-sue notice.

FACTS COMMON TO ALL CLAIMS

9. On or about March 24, 1997, Defendant hired Plaintiff as a care coordinator.
10. Around 2012, Plaintiff began experiencing plantar fasciitis symptoms that caused fatigue, limited her concentration, and made it difficult for her to stand or walk for extended periods. Plaintiff shared information about her pain with colleagues.
11. Prior to 2013, Plaintiff received consistently positive evaluations from Defendant and was rated as having exceptional performance in several job categories.
12. On or about May 16, 2013, Defendant transferred Plaintiff under the direction of Mary Hosack with the intent of transferring her to work at the Westside Medical Center that was set to be opened for the first time in or around early August 2013.
13. Soon after Plaintiff transferred under the direction of Mary Hosack, Plaintiff told Hosack that she had plantar fasciitis and the pain in her foot was interfering with her ability to complete some of her work. Hosack did not engage in reasonable accommodation discussions with Plaintiff.
14. Defendant told Plaintiff to complete online trainings by July 8, 2013. Plaintiff was required to carry a full case load at the St. Vincent location while completing her online trainings. In contrast, at least three other employees did not have any caseload during the time required to complete the online trainings.
15. On or about June 19, 2013, Hosack emailed Plaintiff to tell her that she must complete her online trainings by June 27, 2013 rather than the original deadline of July 8, 2013. Due to the email transition related to the new hospital, Plaintiff did not receive this email until June 28, 2013. On or about June 27, 2013, Hosack used the June 19, 2013 email as the basis of a Level

1 Disciplinary Action and described the email as a “discussion” and “meeting” despite never having spoken to Plaintiff about the email. Hosack first provided Plaintiff with the Level 1 Disciplinary Action on or around July 8, 2013.

16. Plaintiff was having difficulty with internet and computer access necessary to complete the trainings. On or about June 28, 2013, Plaintiff went to the Westside site to complete the trainings. On or about June 28, 2013, Hosack met with Plaintiff and discussed with Plaintiff the June 19, 2013 email for the first time. Hosack did not mention that the meeting was a Level 2 Disciplinary Action. Hosack first provided Plaintiff with the Level 2 Disciplinary Action on or around July 8, 2013. At the meeting, Hosack stated that the physicians reported concerns about Plaintiff’s ability to carry a full caseload. Plaintiff was unaware of any physician concerns and Hosack refused to provide any names or specifics. Plaintiff spoke to all physicians and not one physician stated any concern.

17. Throughout Plaintiff’s time working under the direction of Mary Hosack from June 2013 until February 2014, Hosack repeatedly made remarks about Plaintiff’s ability to keep up with younger, “energetic” coworkers. Hosack also questioned Plaintiff’s ability to learn new skills.

18. In or around June 2013, Hosack cut Plaintiff’s hours back from eighty (80) hours per pay period to fifty-six (56) hours per pay period.

19. Plaintiff was isolated from her new co-workers, preventing her from developing rapport with the cohort. For example, on or around July 30, 2013, Hosack told Plaintiff that she would not start work with the other employees at the new site on August 6, 2013, the day that the new site was set to open. Plaintiff did not start working at the new site until or around August 13, 2013.

20. Hosack assigned Plaintiff a mentor, who stated by email on August 9, 2013 that

Plaintiff was “performing satisfactorily given the high and heavy caseload”, that she was “well-versed and knowledgeable about her role”, that her assessments were “thorough, appropriate, and reflected well by her concise documentation”, and that she “communicates well with both family members and the health care team.”

21. Hosack continued to subject Plaintiff to disparate treatment over the remainder of her employment with Defendant, including requiring Plaintiff to carry a full patient load at Westside Medical Center despite having significantly less training than coworkers.

22. Hosack pressured Plaintiff to quit her position because of her age and disability, such as asking her “are you sure you want to keep doing this?” Hosack also told Plaintiff, “I know you like your job but you can’t do it here.” In or around November 2013, Hosack gave Plaintiff a number of job listings for which Hosack expected Plaintiff apply.

23. On or about February 10, 2014, Hosack and Hosack’s supervisor, Suzanne Symons, met with Plaintiff to place her on leave and told her that she would not be allowed to continue working at her current position because it was not a “good match.” Defendant allowed Plaintiff time to look for another position within the Kaiser system.

24. Defendant hired an employee substantially younger than Plaintiff to fill Plaintiff’s position.

25. On or about June 6, 2014, Defendant terminated Plaintiff’s employment. Plaintiff was 60-years-old at the time of her termination.

FIRST CLAIM FOR RELIEF

(29 U.S.C. § 623 – Age Discrimination – Federal)

26. Plaintiff realleges and incorporates paragraphs 1 through 26 above.

27. All actions by Defendant’s agents set forth above were carried out in a supervisory

capacity with actual or apparent authority from Defendant.

28. At all material times herein, Defendant was aware of Plaintiff's age.

29. Defendant discriminated against Plaintiff on the basis of her age by treating Plaintiff less favorably than those similarly-situated, subjecting Plaintiff to greater scrutiny, providing Plaintiff less time for training, providing Plaintiff less training overall, issuing corrective actions (including duplicative corrective actions), failing to provide adequate Plaintiff time to improve, failing to timely notify Plaintiff of corrective actions, placing Plaintiff on leave, and ultimately terminating Plaintiff's employment.

30. Defendant hired a substantially younger employee to assume Plaintiff's job responsibilities after Plaintiff was placed on leave and ultimately terminated.

31. Defendant's actions were intentional and constituted unlawful discrimination in violation of 29 U.S.C. § 623 with reckless disregard for the requirement of the statute.

32. As a direct result of Defendant's age discrimination, Plaintiff suffered economic damages, including but not limited to lost income and benefits.

33. As a direct and proximate result of Defendant's age discrimination, Plaintiff suffered noneconomic damages, including but not limited to emotional distress, damage to her professional reputation, and loss of enjoyment of life for which plaintiff seeks compensation.

34. Pursuant to 29 U.S.C. § 626(b), Plaintiff is entitled to an award of economic damages, including back pay reflecting any wrongfully withheld promotions, raises, bonuses and merit pay, and any and all benefits, plus an award of future earnings, in an amount to be determined at trial and pre- and post-judgment interest at the maximum rate on all amounts recoverable.

35. Pursuant to 29 U.S.C. § 626(b), Plaintiff is entitled to an award of liquidated damages equal to the amount of her economic damages.

36. Plaintiff is entitled to a declaration that Defendant violated her statutory right to be free from discrimination.

37. Pursuant to 29 U.S.C. § 626(b), Plaintiff is entitled to all equitable and injunctive relief, including but not limited to reinstatement.

38. Pursuant to 29 U.S.C. § 626(b), Plaintiff is entitled to an award of reasonable attorney fees and costs incurred in the exercise of this action.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 12112 – Disability Discrimination – Federal)

39. Plaintiff realleges and incorporates paragraphs 1 through 26 above.

40. All actions by Defendant's agents set forth above were carried out in a supervisory capacity with actual or apparent authority from Defendant.

41. Plaintiff's plantar fasciitis constituted a physical impairment that substantially limited one or more major life activities.

42. At all material times herein, Defendant was aware of Plaintiff's disability.

43. Defendant discriminated against Plaintiff on the basis of her disability and request for accommodation by treating Plaintiff less favorably than those similarly-situated, subjecting Plaintiff to greater scrutiny, providing Plaintiff less time for training, providing Plaintiff less training overall, issuing corrective actions (including duplicative corrective actions), failing to provide adequate Plaintiff time to improve, failing to timely notify Plaintiff of corrective actions, placing Plaintiff on leave, and ultimately terminating Plaintiff's employment.

44. Defendant further discriminated against Plaintiff by failing to engage an interactive process to provide an appropriate reasonable accommodation to Plaintiff's disability.

45. Defendant's actions were intentional and constituted unlawful discrimination in violation of 42 U.S.C. § 12112.

46. As a direct and proximate result of Defendant's disability discrimination, Plaintiff suffered economic damages, including but not limited to lost income and benefits.

47. As a direct and proximate result of Defendant's disability discrimination, Plaintiff suffered noneconomic damages, including but not limited to emotional distress, damage to her professional reputation, and loss of enjoyment of life for which plaintiff seeks compensation.

48. Pursuant to 42 U.S.C. § 12117(a), Plaintiff is entitled to an award of noneconomic and economic damages, including back pay reflecting any wrongfully withheld promotions, raises, bonuses and merit pay, and any and all benefits, plus an award of future earnings, in an amount to be determined at trial and pre- and post-judgment interest at the maximum rate on all amounts recoverable.

49. Pursuant to 42 U.S.C. § 12117, Plaintiff is entitled to a declaration that Defendant violated her statutory right to be free from discrimination.

50. Pursuant to 42 U.S.C. § 12117, Plaintiff is entitled to all injunctive relief, including but not limited to reinstatement.

51. Pursuant to 42 U.S.C. § 12205, Plaintiff is entitled to an award of reasonable attorney fees and costs incurred in the exercise of this action.

THIRD CLAIM FOR RELIEF

(ORS 659A.030 – Age Discrimination- Oregon)

52. Plaintiff realleges and incorporates paragraphs 1 through 26 above.

53. All actions by Defendant's agents set forth above were carried out in a supervisory capacity with actual or apparent authority from Defendant.

54. Defendant discriminated against Plaintiff on the basis of her age by treating Plaintiff less favorably than those similarly-situated, subjecting Plaintiff to greater scrutiny,

providing Plaintiff less time for training, providing Plaintiff less training overall, issuing corrective actions (including duplicative corrective actions), failing to provide adequate Plaintiff time to improve, failing to timely notify Plaintiff of corrective actions, placing Plaintiff on leave, and ultimately terminating Plaintiff's employment.

55. Defendant hired a substantially younger employee to assume Plaintiff's job responsibilities after Plaintiff was placed on leave and ultimately terminated.

56. Defendant's actions were intentional and constituted unlawful discrimination in violation of ORS 659A.030.

57. As a direct result of Defendant's age discrimination, Plaintiff suffered economic damages, including but not limited to lost income and benefits.

58. As a direct and proximate result of Defendant's age discrimination, Plaintiff suffered noneconomic damages, including but not limited to emotional distress, damage to her professional reputation, and loss of enjoyment of life for which plaintiff seeks compensation.

59. Plaintiff is entitled to a declaration that Defendant violated her statutory right to be free from discrimination.

60. Pursuant to ORS 659A.885, Plaintiff is entitled to all injunctive relief, including but not limited to reinstatement.

61. Pursuant to ORS 659A.885(1), Plaintiff is entitled to an award of noneconomic and economic damages, including back pay reflecting any wrongfully withheld promotions, raises, bonuses and merit pay, and any and all benefits, plus an award of future earnings, in an amount to be determined at trial and pre- and post-judgment interest at the maximum rate on all amounts recoverable.

62. Pursuant to ORS 659A.885(1) and ORS 20.107, Plaintiff is entitled to an award of reasonable attorney fees and costs incurred in the exercise of this action.

FOURTH CLAIM FOR RELIEF

(ORS 659A.103 *et seq.* – Disability Discrimination – Oregon)

63. Plaintiff realleges and incorporates paragraphs 1 through 26 above.

64. All actions by Defendant's agents set forth above were carried out in a supervisory capacity with actual or apparent authority from Defendant.

65. Plaintiff's plantar fasciitis constituted a physical impairment that substantially limited one or more major life activities.

66. At all material times herein, Defendant was aware of Plaintiff's disability.

67. Defendant discriminated against Plaintiff on the basis of her disability and request for accommodation by treating Plaintiff less favorably than those similarly-situated, subjecting Plaintiff to greater scrutiny, providing Plaintiff less time for training, providing Plaintiff less training overall, issuing corrective actions (including duplicative corrective actions), failing to provide adequate Plaintiff time to improve, failing to timely notify Plaintiff of corrective actions, placing Plaintiff on leave, and ultimately terminating Plaintiff's employment.

68. Defendant further discriminated against Plaintiff by failing to engage an interactive process to provide an appropriate reasonable accommodation to Plaintiff's disability.

69. Defendant's actions were intentional and constituted unlawful discrimination in violation of ORS 659A.109 and ORS 659A.112.

70. As a direct and proximate result of Defendant's disability discrimination, Plaintiff suffered economic damages, including but not limited to lost income and benefits.

71. As a direct and proximate result of Defendant's disability discrimination, Plaintiff suffered noneconomic damages, including but not limited to emotional distress, damage to her professional reputation, and loss of enjoyment of life for which plaintiff seeks compensation.

72. Pursuant to ORS 659A.885, Plaintiff is entitled to an award of noneconomic and

economic damages, including back pay reflecting any wrongfully withheld promotions, raises, bonuses and merit pay, and any and all benefits, plus an award of future earnings, in an amount to be determined at trial and pre- and post-judgment interest at the maximum rate on all amounts recoverable.

73. Plaintiff is entitled to a declaration that Defendant violated her statutory right to be free from discrimination.

74. Pursuant to ORS 659A.885, Plaintiff is entitled to all injunctive relief, including but not limited to reinstatement.

75. Pursuant to ORS 659A.885(1) and ORS 20.107, Plaintiff is entitled to an award of reasonable attorney fees and costs incurred in the exercise of this action.

DEMAND FOR JURY TRIAL

76. Plaintiff hereby requests a jury trial on all triable claims and issues herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. On Plaintiff's FIRST CLAIM FOR RELIEF for age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634:
 - a. A finding that Defendant violated 29 U.S.C. § 623;
 - b. Pursuant to 29 U.S.C. § 626(b) and 216(b), equitable relief including reinstatement;
 - c. Pursuant to 29 U.S.C. § 626(b), an award of economic damages, including but not limited to lost income and benefits in an amount to be determined at trial, including lost wages of at least 9 months wages in the approximate amount of \$155,095, plus benefits for that period in an amount to be determined at trial;
 - d. Pursuant to 29 U.S.C. § 626(b) and 216(b), an award of liquidated damages in

an amount equal to Plaintiff's economic damages;

e. Pursuant to 29 U.S.C. § 626(b) and 216(b), an award of reasonable attorney fees and costs; and

f. Pursuant to 28 U.S.C. § 1961(a), an award of interest accruing from the date of entry of judgment on all amounts owed at the highest rate allowable under law.

2. On Plaintiff's SECOND CLAIM FOR RELIEF for disability discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213:

a. A finding that Defendant violated 42 U.S.C. § 12112;

b. Pursuant to 242 U.S.C. § 12117, equitable relief including reinstatement;

g. Pursuant to 42 U.S.C. § 12117, an award of economic damages, including but not limited to lost income and benefits in an amount to be determined at trial, including lost wages of at least 9 months wages in the approximate amount of \$155,095 plus benefits for that period in an amount to be determined at trial;

h. Pursuant to 42 U.S.C. § 12117, an award of noneconomic damages in an amount to be determined at trial but no less than \$250,000;

c. Pursuant to 42 U.S.C. § 12205, an award of reasonable attorney fees and costs; and

d. Pursuant to 28 U.S.C. § 1961(a), an award of interest accruing from the date of entry of judgment on all amounts owed at the highest rate allowable under law.

3. On Plaintiff's THIRD CLAIM FOR RELIEF for age discrimination in violation of ORS 659A.030:

a. A finding that Defendant violated ORS 659A.030;

b. Pursuant to ORS 659A.885(1), equitable relief including reinstatement;

i. Pursuant to ORS 659A.885(1), an award of economic damages, including but

not limited to lost income and benefits in an amount to be determined at trial, including lost wages of at least 9 months wages in the approximate amount of \$155,095 plus benefits for that period in an amount to be determined at trial;

- j. Pursuant to ORS 659A.885(1), an award of noneconomic damages in an amount to be determined at trial but no less than \$250,000;
- c. Pursuant to ORS 659A.885(1), an award of reasonable attorney fees and costs; and
- d. Pursuant to ORS 82.010(1)(a), an award interest of nine percent per annum on all amounts owed accruing from the date they became due.

4. On Plaintiff's FOURTH CLAIM FOR RELIEF for disability discrimination in violation of ORS 659A.103-145:

- a. A finding that Defendant violated ORS 659A.112 and ORS 659A.109;
- b. Pursuant to ORS 659A.885(1), equitable relief including reinstatement;
- c. Pursuant to ORS 659A.885(1), an award of economic damages, including but not limited to lost income and benefits in an amount to be determined at trial, including lost wages of at least 9 months wages in the approximate amount of \$155,095 plus benefits for that period in an amount to be determined at trial;
- d. Pursuant to ORS 659A.885(1), an award of noneconomic damages in an amount to be determined at trial but no less than \$250,000;
- e. Pursuant to ORS 659A.885(1) and ORS 20.107, an award of reasonable attorney fees and costs; and
- f. Pursuant to ORS 82.010(1)(a), an award of interest of nine percent per annum on all amounts owed accruing from the date they became due.

5. Such further relief in favor of Plaintiff as this Court deems appropriate.

DATED this 12th of day of November, 2014.

Respectfully submitted,

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