

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

FILED

2015 MAY -5 A 10:15

BERNICE MANKER,

1613 Chester Street,
Savannah, GA 31415,

PLAINTIFF,

v.

KAISER FOUNDATION HEALTH PLAN
OF THE MID-ATLANTIC STATES, INC.,

201 N. Washington St.,
Falls Church, VA 22046,

SERVE:

Corporation Service Company,
Bank of America Center, 16th Floor,
1111 East Main Street,
Richmond, VA 23219,

and

KAISER FOUNDATION HEALTH PLAN, INC.,

201 N. Washington St.,
Falls Church, VA 22046,

SERVE:

Corporation Service Company,
Bank of America Center, 16th Floor,
1111 East Main Street,
Richmond, VA 23219,

DEFENDANTS.

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Civil Action No.

1:15cv582
LMB/IDD

COMPLAINT

COMES NOW Bernice Manker ("Plaintiff"), by counsel, and brings this Complaint against Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Kaiser Foundation Health Plan, Inc. ("Defendants"), on the following grounds:

NATURE OF ACTION

1. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, because Defendants discriminated against Plaintiff on basis of her race.

JURISDICTION

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and because this action arises under federal law.

VENUE

3. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(b) and Section 706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3), because a substantial part of the unlawful employment discrimination giving rise to Plaintiff's claims occurred in this District.

PARTIES

4. Plaintiff is a female who now resides in the State of Georgia, but at times relevant to this suit resided in the Commonwealth of Virginia. At all times relevant to this lawsuit, until her termination on December 1, 2011, she was employed by Defendants, doing business as Kaiser Permanente, at 201 North Washington Street, Falls Church, Virginia 22046.

5. Defendants are corporations authorized to conduct business in the Commonwealth of Virginia, where they operate health care facilities, including the one where Plaintiff was employed in Falls Church, Virginia.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

6. Plaintiff has exhausted her administrative remedies. She timely filed administrative charges of race discrimination and retaliation against Defendants with the U.S. Equal Employment Opportunity Commission (EEOC), Cleveland Field Office, EEOC Charge No. 570-2012-02063.

7. On February 7, 2015, Plaintiff received notice of the EEOC's closing the file on her charge and her suit rights.

STATEMENT OF FACTS

8. Plaintiff is a black woman.

9. Plaintiff was hired by Defendants on or about October 11, 2009 and began working at their Falls Church Medical Center. Plaintiff first worked as a GI Technician and then a Surgical Instrument Technician.

10. Plaintiff and her only other black coworker, Edward Ames ("Mr. Ames"), were repeatedly told by their supervisor, Betty Ann Axline ("Ms. Axline"), who is white, that Plaintiff and Mr. Ames could not wear jewelry at work.

11. Ms. Axline reprimanded Plaintiff and her black coworker for wearing jewelry even though another coworker, Brenda Turley ("Ms. Turley"), who was white, was allowed to wear jewelry at work.

12. In March 2011, Plaintiff began having repeated problems with her car, which caused her to be late to work on some days.

13. Ms. Axline responded to Plaintiff's car-related delays by calling a meeting on or about May 31, 2011 with Plaintiff, her union representative Jamila Deanda ("Ms. Deanda"), and Janet Nagy ("Ms. Nagy"), a department director for Kaiser Permanente.

14. At the May 31, 2011 meeting, Ms. Axline attempted to add a negative evaluation, or “write-up,” to Plaintiff’s personnel file, but Ms. Nagy prevented Ms. Axline from doing so because Plaintiff had bought a new car and had not been tardy to work again.

15. However, when Ms. Turley missed work due to car trouble in June 2011, Ms. Axline took no adverse action against Ms. Turley.

16. Also at the May 31, 2011 meeting, Ms. Axline attempted to add a negative evaluation to Plaintiff’s personnel file because Plaintiff had broken a biological indicator testing strip before putting it in the incubator.

17. Originally, Ms. Axline had believed that Ms. Turley had broken the biological indicator test, but sought to take no adverse action on the incident until another coworker, Rosa Mathews (“Ms. Mathews”) informed Ms. Axline that it was Plaintiff who had broken the biological indicator test.

18. Ms. Mathews stated to Ms. Axline that if no adverse action was sought against Ms. Turley, then it should not be sought against Plaintiff.

19. Due to the minor nature of the broken biological indicator test, Ms. Nagy took no adverse action against Plaintiff at the May 31, 2011 meeting.

20. Also at the May 31, 2011 meeting, Ms. Axline attempted to add a negative evaluation to Plaintiff’s personnel file because Plaintiff had worked overtime hours.

21. However, Ms. Nagy took no adverse action against Plaintiff because it was Ms. Axline herself who had approved the overtime.

22. From March to August 2011, Ms. Axline repeatedly stated to Plaintiff that Ms. Turley was full-time. However, when Ms. Axline was required to fill a full-time position with

difficult hours, Ms. Axline told Plaintiff that Ms. Turley was part-time and therefore ineligible for the shift, leaving Plaintiff to take the shift against Plaintiff's desires.

23. When Plaintiff caused Ms. Deanda to investigate the matter, Plaintiff learned that Ms. Turley was indeed full-time, and therefore company policy dictated that Ms. Turley should have taken the new, difficult shift instead of Plaintiff. Ms. Axline had misrepresented Ms. Turley's status in order to force Plaintiff into an inconvenient shift instead of Ms. Turley.

24. Beginning in June 2011, Ms. Axline rearranged the work schedules of Plaintiff, Mr. Ames, and Ms. Turley so that Plaintiff and Mr. Ames were working more rotations in difficult and disfavored tasks than Ms. Turley.

25. When Plaintiff and Ms. Deanda confronted Ms. Axline about this practice on or about June 8, 2011, Ms. Axline began to yell at Ms. Deanda, calling Plaintiff "that woman" instead of by her name, and referring to Plaintiff and Mr. Ames as "these people."

26. On or about September 9, 2011, Plaintiff filed a Charge of Discrimination with the EEOC against Defendants due to Ms. Axline's actions.

27. On or about September 30, 2011, the EEOC informed Plaintiff that it was "unable to conclude that the information obtained establishes violations of the statutes" by Defendants, and closed her case.

28. On or about December 1, 2011, Ms. Axline informed Plaintiff by letter that Plaintiff's employment with Kaiser Permanente had been terminated.

29. Ms. Axline's letter stated that Plaintiff was terminated due to "the making of [sic] publishing of false, vicious, or malicious statements concerning any employee, supervisor, the organization or any other conduct detrimental to the organization, its employees or the

employee/employer,” which Ms. Axline quoted from Defendants’ Collective Bargaining Agreement with Plaintiff’s union.

30. The only conduct by Plaintiff which could be construed as “false, vicious, or malicious statements” was Plaintiff’s EEOC Charge of Discrimination and information related to racial discrimination by Defendants.

CLAIM FOR RELIEF

Racial Discrimination in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2

31. Plaintiff realleges the preceding paragraphs as though fully set forth herein.

32. Defendant discriminated against Plaintiff because of her race intentionally, willfully or with reckless indifference to her federally protected rights.

33. Defendant’s conduct violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), which makes it unlawful for an employer to discriminate against its employees on the basis of their race.

34. Defendants discriminated against Plaintiff in violation of Title VII when it allowed Plaintiff’s supervisors to treat her in an adverse manner on the basis of her race.

35. As a result of Defendants’ discriminatory actions, Plaintiff has suffered lost compensation, diminished earning capacity, humiliation, mental anguish and emotional distress.

36. For the damages arising from her suffering, Plaintiff requests relief in the Prayer for Relief below.

Count II

Retaliation in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-3(a)

37. Plaintiff realleges the preceding paragraphs as though fully set forth herein.

38. Defendants' conduct violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), which makes it unlawful to discriminate or take adverse actions against employees who oppose any practice that is unlawful under Title VII.

39. Defendants retaliated against Plaintiff in violation of Title VII when they terminated her for reporting racial discrimination by Defendants to the EEOC.

40. As a result of Defendants' discriminatory actions, Plaintiff has suffered lost compensation, diminished earning capacity, humiliation, mental anguish and emotional distress.

41. For the damages arising from her suffering, Plaintiff requests relief in the Prayer for Relief below.

Prayer for Relief

WHEREFORE, Plaintiff requests that this Court award Plaintiff:

- a. \$300,000 in compensatory damages for Defendant's unlawful practices against her, including but not limited to compensation for emotional distress, back and front pay, benefits and all other emoluments of her position;
- b. Punitive damages;
- c. Attorneys' fees and costs of this action, including pre- and post- judgment interest at the legal rate on damages as appropriate; and
- d. Any further relief that this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: May 1, 2015

Respectfully submitted,
BERNICE MANKER
By counsel

FIRSTPOINT LAW GROUP, P.C.

A handwritten signature in black ink, appearing to read 'K Martell', is written over a horizontal line.

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