

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

TAMMIE M. FOSTER,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN OF  
THE NORTHWEST, dba KAISER  
PERMANENTE, and NW PERMANENTE PC.

Defendant(s).

CASE NO.

COMPLAINT

(Disability Discrimination ORS 659A.112;  
FMLA/OFLA Retaliation ORS 659A.171;  
Declaratory Action)

Filing Fee: \$531  
(ORS 21.160(1)(c))

JURY REQUESTED

DEMAND: \$750,000

NOT SUBJECT TO MANDATORY  
ARBITRATION

Plaintiff, TAMMIE M. FOSTER, brings this complaint against Defendant(s) Kaiser Foundation Health Plan of the Northwest *et al.*, by and through her attorney, William J. Macke & Associates, 4411 NE Tillamook St., Portland, OR 97213.

**FIRST CLAIM FOR RELIEF – DISABILITY DISCRIMINATION**

1.

At all times relevant to this complaint, Plaintiff, was a resident of the state of Oregon, county of Multnomah.

2.

From 2007 to May 19, 2016, DEFENDANT Kaiser Foundation Health Plan of the Northwest (hereinafter, "Kaiser") employed Plaintiff as a Certified Nursing Assistant (CNA) at its Sunnyside campus.

3.

Beginning in April 2014, Plaintiff began taking approved Family Medical Leave Act (FMLA) and Oregon Family Medical Act (OFLA) leave, for depression, a disabling condition.

4.

In December 2015, Plaintiff again applied for FMLA and OFLA leave related to her depression illness and was approved by Defendant.

5.

In January and February 2016, Plaintiff's supervisor Heather Dennison began questioning Plaintiff about her attendance, related to Plaintiff's approved leave, and pressuring her to work more consistent hours. Plaintiff explained that she was taking approved leave related to her depression.

6.

Over the next several months Ms. Dennison continued to threaten Plaintiff with a disciplinary meeting related to her attendance.

7.

Ms. Dennison made offensive comments related to Plaintiff's disability in Plaintiff's presence, including "It's hard to keep shifts covered with people out for *depression* or whatever."

///

1 8.

2 In early May 2016, Plaintiff told Ms. Dennison that she was considering further reducing  
3 her hours to engage in intensive outpatient therapy related to her anxiety and depression.

4 9.

5 The following Monday, Defendant required Plaintiff to take a drug test, indicating in the  
6 related Alcohol & Drug checklist, such observations as “unusual tardiness”, “frequent  
7 unscheduled absences”, “unusual or questionable excuses for absences”, and “appears to be  
8 depressed or extremely anxious all the time”. All of which are symptoms, signs, or  
9 manifestations of depression and anxiety.

10 10.

11 On May 19, 2016, Plaintiff was forced into a meeting with Defendant human resources  
12 officers wherein for four hours Defendant badgered Plaintiff to sign a settlement and release of  
13 claims related to termination of Plaintiff’s employment for failing the drug test. Defendant  
14 threatened to destroy Plaintiff’s career by going after her CNA license if she did not sign the  
15 agreement and promised not to challenge Plaintiff’s application for unemployment benefits and  
16 to continue Plaintiff’s health coverage through August 2016.

17 11.

18 Plaintiff became exhausted and distraught and finally relented and signed the settlement  
19 and release agreement. Bruce Fries, a union representative was present, but was new to the  
20 position, offered Plaintiff no assistance acting instead as a puppet of Defendant’s human  
21 resources officers. After Plaintiff signed the agreement, Defendant offered to escort plaintiff to  
22 Brookside Center, Defendant’s mental health facility at its Sunnyside campus, for inpatient

1 treatment.

2 12.

3 Plaintiff indicated she would rather go home, and Defendant insisted that someone else  
4 drive her home because of the obvious impairments of Plaintiff's mental faculties after four  
5 hours of intense pressure from Defendant human resources personnel.

6 13.

7 Defendant failed to engage in the interactive process and terminated Plaintiff's  
8 employment because of and related to Plaintiff's disabling condition in violation of ORS  
9 659A.112, *et seq.*

10 14.

11 As a result of Defendant's failure to accommodate Plaintiff's disabling condition and  
12 discriminatory conduct, Plaintiff suffered economic damages alleged at \$250,000, including lost  
13 wages and medical costs for additional treatment, including future treatment, for exacerbation of  
14 her anxiety and depression.

15 15.

16 Additionally, Plaintiff suffered noneconomic damages including depression, anxiety,  
17 alleged at \$500,000.

18 **SECOND CLAIM FOR RELIEF – RETALIATION FOR TAKING PROTECTED**  
19 **LEAVE**

20 16.

21 Plaintiff incorporates all previous paragraphs as though set forth fully herein.

22 ///

17.

Defendant retaliated against Plaintiff for requesting and taking approved FMLA and OFLA leave in violation of ORS 659A.171.

18.

As a result of Defendant's failure to accommodate Plaintiff's disabling condition and discriminatory conduct, Plaintiff suffered economic damages alleged at \$250,000, including lost wages and medical costs for additional treatment, including future treatment, for exacerbation of her anxiety and depression.

19.

Additionally, Plaintiff suffered noneconomic damages including depression, anxiety, alleged at \$500,000.

**THIRD CLAIM FOR RELIEF – DECLARATORY ACTION**

20.

Plaintiff seeks declaratory relief to the extent that the Settlement Agreement referenced above is void and unenforceable because:

- (a) Plaintiff lacked the capacity to enter into the agreement;
- (b) Defendant coerced Plaintiff to enter into the agreement;
- (c) Defendant failed to uphold fundamental conditions of the agreement, rendering the entire agreement void.

21.

Plaintiff reserves the right to amend her complaint seeking punitive damages on the basis that Defendants' conduct, as described above, was intentional or in reckless indifference to the

relevant statutes prohibiting discrimination and retaliation.

**WHEREFORE plaintiff prays as follows:**

- 1) For all claims, economic damages an amount not to exceed \$250,000 and noneconomic damages in an amount not to exceed \$500,000;
- 2) For prevailing party fees, reasonable attorney fees (ORS 659A.885) and costs;
- 3) For a declaration that the Settlement Agreement referenced above is void and unenforceable; and
- 4) That this Court grant Plaintiff whatever other relief it deems just and equitable.

DATED this 17th day of May, 2017.

WILLIAM J. MACKE & ASSOCIATES

/s/ William J. Macke

William J. Macke, OSB #091793

Of Attorneys for Plaintiff

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