

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 14-cv-_____

LISA BLAND,

Plaintiff,

vs.

KAISER PERMANENTE INSURANCE CO.,

Defendant

COMPLAINT AND JURY DEMAND

Plaintiff Lisa Bland, by her attorney, Robert M. Liechty, Esq. of CROSS LIECHTY LANE PC, brings her complaint as follows:

1. While plaintiff Lisa Bland worked for defendant, she was a resident of Weld County, Colorado. Defendant Kaiser Permanente Insurance Co. is a California corporation licensed to do business in the State of Colorado. It operates various clinics in Colorado where it treats patients.
2. Jurisdiction and venue are proper in this Court because all of the actions occurred in the District of Colorado and Ms. Bland has brought a claim under the Family Medical Leave Act, 29 U.S.C. §2601 *et seq.*
3. Ms. Bland worked for Kaiser from March, 2009, as a senior manager for Perinatal Hospital and Home Care Services, until she was terminated on December 5, 2013. Her starting salary was \$97,000 per year and her most recent salary was

\$107,000 per year. Prior to her termination, she managed 34 employees at two different locations.

4. She had received the maximum bonus every year she had worked at Kaiser. Her two performance reviews were rated as excellent or successful performance by her supervisor. Her most recent review was given on February 14, 2013.

5. In September, 2012, she was diagnosed with fibromyalgia. She applied for, and received, FMLA intermittent leave from her employer Kaiser on February 27, 2013, for this medical condition. She was not a "key employee" under the statute. Prior to her termination, she had taken approximately six full days and four half days of leave under the FMLA for this condition.

6. On March 14, 2013, she had surgery to insert a gastric sleeve and took an additional five weeks of FMLA leave for this surgery. The surgery was designed to help her fibromyalgia.

7. Her supervisor's supervisor since June, 2013, had been Ms. Fiona Barone. Ms. Barone knew that Ms. Bland had applied for and had taken intermittent FMLA leave.

8. In the spring and summer of 2013, Kaiser went through a restructuring process where a number of promotions became available for Ms. Bland. There were no promotions prior to June, 2013, for which Ms. Bland was qualified and which she desired.

9. On August 26, 2013, she applied for the Clinical Services Director position, but was not granted an interview for this position.

10. Also on August 26, 2013, she applied for the Area Administrator position, but was not granted an interview for that position either.

11. On September 25, 2013, she applied for the Medical Office Administrator, but was not granted an interview for this position.

12. On October 2, 2013, she applied for the Clinical Services Director of Women's Health, but was not granted an interview for that position either.

13. The decisionmaker for deciding who would be interviewed for the above four positions in ¶¶ 9-12 was Ms. Barone.

14. Even though Kaiser internal candidates who qualify for the position would normally be granted an interview, Ms. Bland was not granted an interview. Ms. Bland was qualified for all four positions and should have been interviewed for all four positions.

15. Ms. Bland was more qualified than the new Clinical Services Director of Women's Health, Shannon Martinez, who received the position in ¶ 12. Three people were interviewed, of the eight applicants, for this position. Ms. Martinez had one Masters degree while Ms. Bland has two Masters degrees. Ms. Bland had more experience in women's health than did Ms. Martinez. Ms. Bland had 19 years experience in women's health issues, with 10 years in management, while Ms. Martinez had no such management experience. They were both approximately the same age, in their mid-40s.

16. Toward the end of October, 2013, Ms. Bland brought the facts in ¶ 15 to Ms. Barone's attention. Ms. Barone told Ms. Bland that she was not interviewed because Ms. Barone had received calls from staff members that Ms. Bland had poor performance. This was the first time that Ms. Bland had heard anything about her performance being less than excellent or successful.

17. When Ms. Bland asked what aspects of her performance were poor, Ms. Barone said that she did not know, but that Ms. Bland's present supervisor, Barbara Head, would inform her. In the following weeks, Ms. Head did not inform Ms. Bland of any performance issues raised by staff. In fact, there were no such performance issues and Ms. Barone was simply using this as an excuse to build a case against Ms. Bland.

18. The real reason that Ms. Barone chose not to interview Ms. Bland for any of the four positions was because Ms. Barone did not want to have a person in those positions subject to taking FMLA leave. This constitutes discrimination against Ms. Bland for the exercise of her FMLA rights and violates 29 U.S.C. §2615(a)(1) or (2) or both.

19. In October, 2013, Ms. Bland was assigned an additional department to supervise, increasing to 34 the number of employees that reported directly to her. According to Kaiser's organizational effectiveness Department, 12 direct reports was the maximum that any manager should supervise.

20. Ms. Bland told her then-supervisor, Ms. Head, and Ms. Barone that this additional assignment was too much for her to handle successfully, especially given that it was a 1½ hour drive from her house to supervise the new department. Her

supervisors did not change the assignment because they wanted to overload Ms. Bland with work so that she would fail.

21. Ms. Bland took intermittent FMLA leave from October 15 through October 18, 2013, and returned to work the week of October 21, 2013. Upon her return, she worked approximately 4 half-days upon her doctor's orders.

22. On October 24, 2013, she was presented with an action plan stating that her performance was sub-standard, primarily because she was missing work. This is a direct violation of her FMLA rights. In presenting the plan, Ms. Barone told Ms. Bland that it was time for Ms. Bland to determine if she still wanted to work at Kaiser or if it was time for her to look for work elsewhere. Ms. Barone used the action plan as a pretext to begin the process to terminate Ms. Bland.

23. On the following day, October 25, 2013, Ms. Bland met with an HR consultant, Mike Harold, for advice. He told her that the action plan was not an appropriate action plan and he advised her to develop one of her own.

24. On November 1, 2013, Ms. Bland's counsel sent to counsel for Kaiser, Mr. Jonathan Saperstein, a copy of a draft complaint in which Ms. Bland claimed retaliatory discrimination based upon the use of FMLA leave, which resulted in the lack of a promotion as reference above.

25. Shortly after October 25, Ms. Bland developed her own action plan and requested to review it with her supervisors. On November 6, 2013, Ms. Bland met with Ms. Head (her then-supervisor), Debbie Zuegue (her former supervisor), Karin Lin

Ranta-Curran (an HR representative), and Ms. Barone. All in attendance stated that it was a good start on an action plan.

26. Ms. Bland said that she believed that the action plan would constitute her verbal warning and, as long as she improved, as a verbal warning it would not go into her formal record. However, Ms. Zuegue said that it would be placed in her permanent file nonetheless. When Ms. Bland asked how this could be since she had not received a prior verbal warning, Ms. Zuegue said that Ms. Bland's January, 2013, evaluation constituted a verbal warning, notwithstanding the fact that it was a successful evaluation.

27. The supervisors were bending the rules in order to build a case upon which to terminate Ms. Bland.

28. From November 6 through December 4, 2013, Ms. Bland met with Ms. Head and Ms. Bland's newest supervisor, Shannon Martinez (the less qualified candidate referenced in ¶ 15 above, who became Ms. Bland's supervisor in early November, 2013), on a weekly basis to discuss Ms. Bland's performance. At no point in any of these meetings did either supervisor tell Ms. Bland that her performance was not acceptable, with the following exception. When Ms. Bland explained how she had set up a phone conference for her team, the supervisors said it was not appropriate to set it up that way. Ms. Bland corrected the mistake that day.

29. On December 3, 2013, Ms. Bland could not come to work because, due to flooding, the roads were closed and she could not drive to work. Because she had worked from home several times in the past, she e-mailed Ms. Martinez that she would

be working from home. Ms. Martinez told her that she would have to take a personal-time-off day, to which Ms. Bland responded that she would like to take it as a “comp” day since she would be working over the weekend at a conference. Ms. Martinez told her that Kaiser did not allow “comp” days, which was not true. In the end, although Ms. Bland worked from home, she recorded that day as a PTO day and was not paid for that day of work.

30. On December 5, 2013, Ms. Bland attended her weekly meeting with Ms. Head and Ms. Martinez. Although the meeting was scheduled to start at four o’clock, the two supervisors did not arrive until 4:45. For the first time, they told Ms. Bland that they had not seen any improvement in her performance and that they were issuing her a performance improvement plan, dated December 5, 2013, which plan is the last step before termination.

31. The performance improvement plan generally contained subjective criteria and said that Ms. Bland would have a formal evaluation at the end of 30 days.

32. The supervisors also told her she would be on administrative leave until three o’clock the next day, Friday, December 6, 2013, at which time Ms. Bland was to bring them a “letter of intent” saying whether she still wanted to work for Kaiser and how she would improve her performance.

33. Because of the late start, the meeting on December 5 ran until 5:30 at which time Ms. Bland had to leave to pick up her daughter at school.

34. At 1 p.m. on Friday, December 6, 2013, Ms. Bland discovered that she no longer had access to the Kaiser e-mail system, that is, she had been terminated as of

that time. She arrived at four o'clock for the meeting with Ms. Martinez, Ms. Head, and Ms. Ranta-Curran. Ms. Martínez told Ms. Bland that she was unprofessional when she left the meeting on the day before, to pick up her daughter at school, and did not return when Ms. Martínez had called for her. Ms. Bland said that she did not hear Ms. Martinez.

35. Ms. Martínez, Ms. Head, and Ms. Ranta-Curran left the room and, upon returning, Ms. Martínez said that due to Ms. Bland's behavior on the day before, they did not feel that Ms. Bland was a "good fit for the position." She terminated Ms. Bland's employment at that time without further explanation.

36. In her termination letter dated December 5, 2013, Ms. Martinez said that Ms. Bland was terminated for walking out of the meeting on December 5, 2013, and for failing to comply with the November 4, 2013, action plan, although there was no example given of her alleged poor performance.

37. Defendant violated 29 U.S.C. §2615(a)(2) when it failed to promote Ms. Bland to one of the above four positions referenced in ¶¶ 9-12 in retaliation for her exercising her rights under the FMLA. Pursuant to 29 U.S.C. §2617(a)(1)(A)(i)(I), she is entitled to any lost wages, salary, and benefits for not having been promoted to one of the above four positions, and an additional amount as liquidated damages pursuant to §2617(a)(1)(A)(iii).

38. Kaiser Permanente also violated 29 U.S.C. §2615(a)(2) or (b)(1) or both when it terminated Ms. Bland's employment because of its retaliation against her for using FMLA leave or for advising counsel for Kaiser that she would bring an FMLA

claim. Because of this violation, Ms. Bland has suffered lost wages and benefits, and an additional amount as liquidated damages, and is entitled to recovery under the provisions referenced above in ¶ 37.

39. Ms. Bland is also entitled to her attorney's fees and costs pursuant to §2617(a)(3).

WHEREFORE, plaintiff Lisa Bland respectfully requests that this Court enter judgment in her favor and for interest, costs, attorney's fees, and such other relief as this Court may deem proper.

Plaintiff requests trial to a jury.

Respectfully submitted August 14, 2014.

CROSS LIECHTY LANE PC

By: s/ Robert M. Liechty

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