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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON  
PORTLAND DIVISION

**JUDY LAMB,**

Plaintiff,

v.

**KAISER FOUNDATION HEALTH  
PLAN NORTHWEST,**

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR UNLAWFUL EMPLOYMENT  
PRACTICES**

**DEMAND FOR JURY TRIAL**

**I. JURISDICTION**

1. This court has jurisdiction of plaintiff's claims for violation of the Age Discrimination in Employment Act under 29 USC §623(a)(1) and (2); 29 USC §626(b) and (c); 29 USC §216 and 29 USC §217.

2. This court maintains jurisdiction of plaintiff's claims for violation of the Americans with Disabilities Act and for violation of Title VII of the Civil Rights Act of 1964 under 42 USC §2000e-5(f).

3. Jurisdiction is proper over each of plaintiff's claims arising under the laws of the United States under 28 USC §1331.

PAGE 1 –COMPLAINT FOR UNLAWFUL EMPLOYMENT PRACTICES

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4. This court has supplemental jurisdiction of plaintiff's state law claims under 28 USC §1367. Both federal and state claims alleged herein arose from a common nucleus of operative facts, and the state claims are so related to the federal claims that they form part of the same case or controversy that the actions would ordinarily be expected to be tried in one judicial proceeding.

## **II. PARTIES.**

5. Plaintiff, Judy Lamb, is a female, born on July 6, 1952. Plaintiff currently and at all times relevant herein, resides in Newberg, Yamhill County, Oregon.

6. Defendant Kaiser Foundation Health Plan of the Northwest ("Kaiser") is a domestic nonprofit corporation registered to do business in the State of Oregon. Defendant is an employer for purposes of 42 USC §2000e-2(a), 42 USC § 12112, 42 USC §12203, 29 USC § 623(a), 29 USC §2611(4), ORS 659A.030(1), ORS 659A.112, and ORS 659A.183.

## **III. FACTUAL ALLEGATIONS**

7. Plaintiff was hired by Defendant Kaiser in March 1985. Plaintiff was employed as a Licensed Practical Nurse and a Patient Access Specialist. Plaintiff worked for Kaiser for 28 years until terminated in June 2013.

8. Plaintiff has been diagnosed with physical and mental impairments which include degenerative osteoarthritis of the knee and hip, diabetes, hypertension, severe obesity and major depression.

9. Due to plaintiff's physical and mental impairments, plaintiff is substantially limited in performing everyday activities such as standing for long periods of time, walking, and climbing stairs.

PAGE 2 –COMPLAINT FOR UNLAWFUL EMPLOYMENT PRACTICES

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10. From 1996 through 2010, plaintiff worked in Kaiser's Occupational Health Department as a Licensed Practical Nurse. During this time period, plaintiff was consistently rated as an excellent or above average employee by defendant.

11. While employed in the Occupational Health Department, plaintiff observed defendant subjecting certain employees to more stringent scrutiny than others and targeting those employees for termination. Plaintiff observed that employees who were older, had disabilities, or used medical leave under state and federal law were among those that were most heavily targeted by defendant to be subject to this stricter level of scrutiny.

12. In 2009, the Occupational Health Department at the Tualatin Medical Office closed and plaintiff was transferred to defendant's Mt. Talbert location.

13. Upon her commencement of employment at the Mt. Talbert location, plaintiff perceived the workplace to become hostile. Plaintiff was subjected to stricter scrutiny than other employees.

14. In October or November of 2010, plaintiff applied for and was hired for a position as a phone advice nurse in the Family Practice Department at the Sunset Clinic.

15. During all relevant times while plaintiff was employed at the Sunset Clinic, her direct manager was Megan Melvin.

16. During plaintiff's interview for the position at Sunset Clinic, Ms. Melvin told plaintiff that 90% or more of the work was phone work and that less than 10% of work would consist of moderate physical activity. Plaintiff also informed Ms. Melvin at that time of her disabilities and need for reasonable accommodation. She informed Ms. Melvin that she had difficulty with stairs and could not stand more than 30 minutes at a time and needed a position



that was primarily sedentary work. Plaintiff was assured by Ms. Melvin that the position would meet this description.

17. On or about January 3, 2011, plaintiff commenced work in the phone advice position at the Sunset Clinic location.

18. During plaintiff's employment at the Sunset Clinic location, she was denied accommodation by Ms. Melvin and was required to use the stairs instead of the available elevator, was required to stand for excessive periods of time, and was precluded from sitting down during the work day.

19. On or about January 10, 2011, plaintiff injured her left knee due to Ms. Melvin's denial of accommodation. Due to plaintiff's injury, plaintiff sought and used medical leave because of the injury to her knee.

20. On or about January 20, 2011, Ms. Melvin involuntarily transferred plaintiff back to the Mt. Talbert location from the Sunset Clinic instead of initiating an interactive process to accommodate plaintiff's disability.

21. On or about January 21, 2011, plaintiff complained to defendant through their Human Resources Department alleging violations of her rights under the Americans with Disabilities Act and Age Discrimination in Employment Act concerning the period of her employment at the Sunset Clinic location.

22. In late January or early February 2011, plaintiff returned to work at the Mt. Talbert location but was forced to accept a demotion to a Patient Access Specialist ("PAS") to continue working for Defendant. Plaintiff's pay was reduced in accordance with her new position. Plaintiff experienced more stringent scrutiny upon her return to the Mt. Tabor position

than other employees.

23. On or about December 22, 2011, defendant issued plaintiff a Level 1 Corrective Action for alleged errors regarding a patient telephone call.

24. On or about February 10, 2012, defendant issued plaintiff a Level 2 Corrective action for alleged errors regarding scheduling.

25. In late 2012, plaintiff transferred to the Salem Call Center as a PAS because of the hostile work environment at the Mt. Talbert Occupational Health Department. During plaintiff's training period at the Salem location, she was rated as excellent but was told that it was not "working out" two weeks later and was sent back to the Mt. Talbert location as a PAS.

26. On or about January 14, 2013, defendant issued plaintiff a Level 3 Corrective Action for alleged scheduling errors.

27. On or about May 3, 2013, defendant issued plaintiff a Level 4 Corrective Action, suspended plaintiff for a day for her to consider if she wished to "choose" to change her performance or resign. Plaintiff declined to resign from her position with defendant.

28. On or about June 20, 2013, defendant terminated plaintiff's employment.

29. The alleged errors which defendant used to terminate plaintiff's employment were a pretext for discrimination and retaliation against the plaintiff. Other employees who were not members of plaintiff's protected class were not disciplined or terminated for engaging in the same or similar errors or conduct.

30. As a direct and proximate result of defendant's actions, plaintiff has suffered lost wages and fringe benefits through trial, and prejudgment interest on lost wages and benefits, in an amount to be determined at trial. Plaintiff is entitled to an order reinstating her employment or in the alternative an award of lost future wages and fringe benefits in an amount to be determined at trial.

31. As a direct and proximate result of defendant's actions, plaintiff has suffered emotional distress, damage to her reputation and other compensatory damages in an amount to be determined at trial.

32. Defendant's actions in were in deliberate disregard of plaintiff's employment rights. Plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

33. Plaintiff has hired legal counsel to bring these claims and is entitled to an award of costs and reasonable attorney fees.

34. Plaintiff has filed this complaint within 90 days of the issuance of a private right to sue notice by the Oregon Bureau of Labor and Industries on her complaints for unlawful employment practices.

#### **IV. CLAIMS FOR RELIEF**

##### **FIRST CLAIM FOR RELIEF (SEX DISCRIMINATION)**

35. Plaintiff incorporates by reference paragraphs 1 through 34.

36. Defendant subjected plaintiff to strict scrutiny and different treatment with respect to discipline and a wrongful termination because of plaintiff's age, sex and an actual or perceived disability in violation of 42 USC §2000e-2(a) and ORS 659A.030.



## **SECOND CLAIM FOR RELIEF (RETALIATION)**

37. Plaintiff incorporates by reference paragraphs 1 through 34.

38. Defendant subjected plaintiff to strict scrutiny and different treatment with respect to discipline and a wrongful termination in retaliation for plaintiff's complaints of unlawful employment practices in violation of ORS 659A.030(1)(f), 42 USC § 2000e-3(a), and 29 USC § 623(d).

## **THIRD CLAIM FOR RELIEF (AGE DISCRIMINATION)**

39. Plaintiff incorporates by reference paragraphs 1 through 34.

40. Defendant subjected plaintiff to strict scrutiny and different treatment with respect to discipline and a wrongful termination because of plaintiff's age, sex and an actual or perceived disability in violation of ORS 659A.030 and 29 USC § 623(a)(1).

## **FOURTH CLAIM FOR RELIEF (DISABILITY DISCRIMINATION)**

41. Plaintiff incorporates by reference paragraphs 1 through 34.

42. Defendant subjected plaintiff to strict scrutiny and different treatment with respect to discipline and a wrongful termination because of plaintiff's disability in violation of ORS 659A.112 and 42 USC § 12112.

## **FIFTH CLAIM FOR RELIEF (DISABILITY DISCRIMINATION)**

43. Plaintiff incorporates by reference paragraphs 1 through 34.

44. Defendant subjected plaintiff to disability discrimination by disciplining and terminating plaintiff for reasons related to her disabilities without providing reasonable accommodation.

### **SIXTH CLAIM FOR RELIEF (RETALIATION)**

45. Plaintiff incorporates by reference paragraphs 1 through 34.

46. Defendant subjected plaintiff to strict scrutiny and different treatment with respect to discipline and a wrongful termination because of plaintiff's requests for reasonable accommodation and her complaints regarding disability discrimination in violation of 42 USC § 12203.

### **SEVENTH CLAIM FOR RELIEF (FMLA/OFLA RETALIATION)**

47. Plaintiff incorporates by reference paragraph 1 through 34.

48. Defendant violated 29 USC §2615 and ORS 659A.183 by subjecting plaintiff to strict scrutiny and different treatment with respect to discipline and by terminating plaintiff for exercising her right to take medical leave for a serious health condition.

### **V. RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

1. An award of lost wages and fringe benefits, and prejudgment interest through trial, in an amount to be determined at trial;
2. An order reinstating plaintiff's employment or in the alternative an award of lost future wages and fringe benefits through retirement in an amount to be determined at trial.
3. An award for mental and emotional distress, damage to reputation and other compensatory damages in an amount to be determined at trial.
4. An award of liquidated damages in an amount to be determined at trial;
5. An award of punitive damages in an amount to be determined at trial.
6. An award of costs and attorneys fees; and,



7. All other fit and proper relief as the court may deem proper.

DATED this 23<sup>rd</sup> day of September, 2014.

  
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Plaintiff herein demands trial by jury.

  
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