

Daniel Snyder, OSB No. 78385
dansnyder@lawofficeofdanielsnyder.com
Carl Post, OSB No. 06105
carlpost@lawofficeofdanielsnyder.com
Cynthia Gaddis, OSB No. 113907
cindygaddis@lawofficeofdanielsnyder.com
LAW OFFICES OF DANIEL SNYDER
1000 S.W. Broadway, Suite 2400
Portland, Oregon 97205
Telephone: (503) 241-3617
Facsimile: (503) 241-2249

Of Attorneys for the plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

LISA SWEENEY,

Case No. 14-cv-1961

Plaintiff,

COMPLAINT

v.

UNLAWFUL EMPLOYMENT ACTION
Title VII Discrimination, Retaliation and
supplemental state law claims

**KAISER FOUNDATION HEALTH
PLAN OF THE NORTHWEST,**

JURY TRIAL DEMANDED

Defendant.

I. PRELIMINARY STATEMENT

1. This is an action for damages and equitable relief, including compensatory damages, back pay, front pay, and attorneys' fees and costs, to redress violation of the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq; violation of the Oregon Family Leave Act, Wrongful Termination, and other unlawful employment practices.

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Law Offices of Daniel Snyder
Attorneys At Law
1000 S.W. Broadway, Suite 2400
Portland, Oregon 97205
(503) 241-3617 Fax (503) 241-2249

II. JURISDICTION

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331.

3. Plaintiff requests this Court invoke its supplemental jurisdiction pursuant to 28 U.S.C. § 1367 with respect to all causes of action based on Oregon statutory provisions or common law as the state claims arise from the same nucleus of operative facts as the federal claims.

4. All preconditions to jurisdiction pursuant to 42 U.S.C. §2000e-5 have been satisfied.

a. On or about September 9, 2013, Plaintiff filed a complaint EEEMSO130909-11223 with BOLI. BOLI cofiled the complaint with the EEOC, charge 38D-2013-00656C.

b. On September 9, 2014, BOLI issued a Determination of Substantial Evidence of an Unlawful Practice and right to sue.

5. Venue is in the District of Oregon pursuant to 28 U.S.C. §1391(b) because the claim arose in this Judicial District.

III. PARTIES

6. Plaintiff, Lisa Sweeney (Plaintiff), is a citizen of the United States. At all times material, Plaintiff worked for defendant in Clackamas County, Oregon. Plaintiff is a former employee of defendant and a lesbian.

7. Defendant Kaiser Foundation Health Plan of the Northwest (Defendant) is an Oregon corporation. Defendant is a hospital and health care organization doing business as Kaiser Permanente. All times material, defendant conducted regular, sustained business activity in Clackamas, Clackamas County, Oregon.

8. At all times relevant, defendant's employees and supervisors as their conduct is alleged herein were acting within the course and scope of their employment with the defendant.

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IV. GENERAL FACTUAL ALLEGATIONS

9. In December 2001, Plaintiff began working on-call for Defendant as a Hospital Administrative Supervisor.

10. In June 2004, Plaintiff became a full time employee at defendant's Kaiser Sunnyside Hospital. Plaintiff worked as a Hospital Administrative Supervisor and partially as manager of Patient Transport and Lift Team.

11. On or about August 16, 2007, Plaintiff saw Meredith Taylor. Plaintiff asked about her FMLA leave with the eminent birth of her children and Director Taylor said "they are not your children."

12. In August 2007, Plaintiff gave birth to twins. Plaintiff applied for FMLA.

13. As of 2007, Defendant and Plaintiff's supervisors and managers were aware that Plaintiff was a lesbian.

14. On April 18, 2012, it was announced that Ms. Wagoner would be the Lead Hospital Administrative Supervisor.

15. On May 11, 2012, Plaintiff sent an email to Caroline Davis in Human Resources, stating that she was confused about her salary, and asked for confirmation that she was 7% below the salary midpoint.

16. On or about May 13, 2012, Ms. Wagoner became the Lead Hospital Administrative Supervisor.

17. On May 14, 2012, Caroline Davis confirmed that Plaintiff was 7% below the salary midpoint.

18. On May 22, 2012, Plaintiff had her first meeting with Ms. Davis in her office. In that meeting Plaintiff told Caroline that Ms. Wagoner on many occasions had spoken disrespectfully

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of gay people, including Plaintiff, her children, her wife and other gay Kaiser employees. Ms. Wagoner openly voiced her support for Meredith Taylor's position on Plaintiff's FMLA denials in the past. Ms. Wagoner refused to cover any shifts if they were related to Plaintiff taking time off work to be with her children. Ms. Wagoner would tell Plaintiff that they were not her children. Plaintiff told Ms. Davis about Ms. Wagoner's apparent hatred of Plaintiff. Plaintiff also stated that her evaluation was done differently than other employees. Plaintiff sent an email that night after the meeting with Ms. Davis, requesting another follow-up meeting on Tuesday May 29, 2012 at 2 pm.

19. On May 23, 2012, Director Mynell Harper announced in the monthly Supervisor meeting that she was leaving, that her last day would be May 31, 2012, and Interim Director Kelpo who also attended the meeting would be in charge. During this meeting, both Ms. Wagoner and Jessica Madison spoke very disrespectfully about an African American bed board employee named Yolanda. They repeatedly stated that she was "stupid". They said Kaiser only kept her because they had to. Ms. Harper stated Kaiser could deal with Yolanda through corrective action process, but Ms. Harper requested that the supervisors all write the employee up, so it did not look like all the complaints were coming from Ms. Wagoner. After the meeting, Plaintiff was following Ms. Wagoner and Jessica Madison down the hallway and heard them using the word "nigger" in regards to Yolanda.

20. On or about May 24, 2012, Ms. Davis sent "FMLA Homework" to Ms. Wagoner and asked about Plaintiff's sexual orientation and FMLA.

21. On June 4, 2012, Plaintiff received an email from Ms. Wagoner questioning Plaintiff's patient placement decision, with Interim Director Kelpo copied on the email. Plaintiff

explained her rationale, and there were no further questions or replies from Ms. Wagoner or Director Kelpe.

22. On June 7, 2012, Plaintiff emailed Ms. Davis as a follow-up to their 2nd meeting in May 2012, which contained a chronology of her FMLA denials, and the list of 19 witnesses with their phone numbers.

23. On June 13, 2012, Plaintiff had a meeting in Ms. Davis' office regarding Plaintiff's complaint about her salary.

24. Toward the end of July 2012, during the hospital Supervisor's monthly meeting, Director Kelpe introduced Director Sherie Ambrose. Director Kelpe stated that Ms. Ambrose was moving into the Interim Assistant Director of Nursing position of Kaiser Sunnyside, until a new Director of Nursing could be found.

25. On August 29, 2012, Plaintiff was notified that Clackamas County 911 called defendant and reported approximately 500 bags of defendant's biohazard material on Sunnyside Road by the hospital and that it needed to be cleaned up immediately.

26. Plaintiff was the Incident Commander in the event of an emergency, assembled an Incident Assessment Team, and responded to the spill.

27. On September 11, 2012, Plaintiff was disciplined for leaving defendant's campus to respond to the emergency situation on August 29, 2012. Defendant did not have a policy that prohibited Plaintiff from leaving the campus.

28. On September 18, 2012, Plaintiff notified Ms. Davis that she wished to grieve the corrective action she received on September 11, 2012.

29. On September 28, 2012, Plaintiff met with Susan Mullany, Director of Kaiser NW hospitals, and complained of discrimination and retaliation.

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30. On September 29, 2012, Plaintiff sent Ms. Mullany a follow-up email regarding her complaints.

31. On October 15, 2012, Plaintiff met with Human Resources consultant Kristen Paric and complained of discrimination and retaliation.

32. On October 23, 2012, Plaintiff met with Human Resources consultant Ms. Paric and complained of discrimination and retaliation.

33. On October 24, 2012, Plaintiff was notified that she completed the educational objectives of the development plan.

34. On November 27, 2012, Plaintiff was notified by Ms. Paric that she completed her investigation. Ms. Paric did not interview any of the witnesses identified by Plaintiff.

35. On December 4, 2012, Plaintiff reported discrimination to Rich Smith, Vice President of Human Resources.

36. On December 18, 2012, Plaintiff requested to meet with Mr. Smith about her complaints.

37. On January 3, 2013, Plaintiff spoke to Mr. Smith via telephone and complained of discrimination.

38. On January 4, 2013, Plaintiff was told she was being investigated regarding a grievance filed in December 2012 by someone in the staffing office regarding a staffing office process. Plaintiff had no control over the policy of the staffing office.

39. On January 6, 2013, Plaintiff spoke to Mr. Smith again about her discrimination complaints. Plaintiff also emailed Gary Peterson that day and told him that she thought she was going to be fired in the near future.

40. On January 9, 2013, Plaintiff told Mr. Peterson that things continued to deteriorate, and he said he would speak to Lauren Bridge, Chief Nursing Officer.

41. On January 12, 2013 the Plaintiff was seen at urgent care for pneumonia. Plaintiff was authorized by her doctor to be off work from January 12, 2013 to January 17, 2013. Plaintiff called off work and advised of her time authorized to be off of work. Later that day, Plaintiff was called by her supervisor Ms. Wagoner and told that there was no coverage and she had to come in to work. Plaintiff told Wagoner that she had been to urgent care, had pneumonia, and was taken off work. Ms. Wagoner told her to report to work anyway.

42. Plaintiff complied with Wagoner's directive and reported to work on January 13, 2013. Plaintiff attempted to give Ms. Wagoner her doctor's note but Ms. Wagoner refused to take it and said "quite frankly I could care less about your doctor's note." Plaintiff also contacted Matrix that day and notified them of her medical condition and requested leave due to her illness.

43. After working the days she was told, Plaintiff was disciplined for coming in to work in violation of her doctor's note.

44. On January 24, 2013, Plaintiff was placed on a last chance agreement because defendant said Plaintiff came to work in violation of her doctor's orders.

45. On January 29, 2013, Plaintiff received notice from Matrix that her FMLA and OFLA request was approved for January 12-17, 2013.

46. On January 30, 2013, Plaintiff complained to Susan Mullany about discrimination and retaliation against her. Plaintiff also reported that Ms. Wagoner had previously bragged about her involvement with a termination of a gay Registered Nurse in the past and her premeditated termination of an African-American bed board employee. Plaintiff also reported that Ms. Wagoner and supervisor Jessica Madison were overheard in the public restroom by a
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visitor in October 2012, stating “well we finally got the last of those niggers out of here.”

Plaintiff also complained that she had reported discrimination and retaliation several times and defendant had not taken any corrective action. Plaintiff also reported discrimination and retaliation to Mr. Smith.

47. On January 31, 2013, Plaintiff met with Ms. Bridge and again reported discrimination and retaliation.

48. On February 20, 2013, Plaintiff met with an attorney hired by defendant to investigate her complaints of discrimination and retaliation.

49. In February 2013 Plaintiff spoke to Human Resources to complain about discrimination based upon race, sexual orientation, age, and disability that she felt was occurring at Kaiser.

50. Plaintiff applied for other positions with defendant in an attempt to remove herself from the hostile work environment but was not selected for any of the positions.

51. Defendant failed to pay Plaintiff as much as coworkers with similar seniority and experience. Defendant did not select Plaintiff for positions she applied for.

52. In 2012 and 2013, Plaintiff complained of discrimination and retaliation against her due to her sexual orientation and against other people due to their sexual orientation, race, age, and disabilities. Defendant failed to take remedial actions to correct such discrimination and retaliation and retaliated against Plaintiff for her reports.

53. On April 8, 2013, Plaintiff was placed on paid administrative leave.

54. On or about May 7, 2013, Plaintiff's employment was terminated.

FIRST CLAIM FOR RELIEF

Family and Medical Leave Act of 1993 - 29 U.S.C. § 2601 et seq.

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1. Plaintiff realleges all relevant paragraphs.
2. Defendant is an 'employer' within the meaning of 29 U.S.C. § 2611(4).
3. Defendant employed at least 50 employees for each working day during each of 20 or more calendar work weeks in 2012 or 2013.
4. At all times material, Plaintiff was an 'eligible employee' within the meaning of 29 U.S.C. § 2611(2).
5. At all times in 2013, defendant employed 50 or more employees within 75 miles of the worksite where Plaintiff performed work for defendant.
6. Plaintiff was employed by defendant for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.
7. Plaintiff was employed by defendant for more than 12 months prior to commencing leave on January 12, 2013.
8. At all times material, Plaintiff was an 'eligible employee' within the meaning of 29 U.S.C. § 2611(2).
9. Plaintiff took medical leave protected by the Family Medical Leave Act (FMLA).
10. At all material times, Plaintiff suffered from a serious health condition, as defined by 29 U.S.C. § 2611(11).
11. Defendant interfered, discriminated and retaliated against Plaintiff for engaging in the protected activity of taking leave under FMLA and reporting FMLA violations.
12. Defendant interfered, discriminated and retaliated against Plaintiff for taking medical leave by taking adverse employment actions against Plaintiff, including, but not limited to, requiring Plaintiff to work after she requested leave and during the time her doctor took her off

work due to her serious health condition, placing Plaintiff on a corrective action, and terminating Plaintiff's employment.

13. As a direct and proximate result of defendant's interference, discrimination and retaliation, Plaintiff has suffered lost income and will continue to suffer past and future wages, past and future benefits, and other expenses, all to Plaintiff's economic damages in an amount to be determined at trial.

14. The court should enter an order declaring that defendant violated the FMLA.

15. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of prejudgment interest at the legal rate from the date the damage occurred until the date of judgment.

16. Plaintiff is entitled to an award of liquidated damages pursuant to 29 U.S.C. § 2617(a)(1)(A).

17. Pursuant to 29 U.S.C. § 2617(a)(3), Plaintiff is entitled to an award of attorney's fees, expert fees, and costs incurred herein.

18. Plaintiff is entitled to post judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

SECOND CLAIM FOR RELIEF

Oregon Family Leave Act - ORS 659A.150 et. seq.

19. Plaintiff realleges all relevant paragraphs.

20. Plaintiff took medical leave protected by the Oregon Family Leave Act (OFLA).

21. Defendant employed 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year 2012.

22. Defendant employed 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year 2013.

23. Immediately prior to commencing family leave in 2013, Plaintiff worked for defendant for more than 180 days.

24. Plaintiff worked an average of more than 25 hours per week for defendant during the 180 days immediately preceding the date on which Plaintiff commenced family leave.

25. At all material times, Plaintiff had a serious health condition as that term is defined in ORS 659A.150(6).

26. Defendant interfered, discriminated and retaliated against Plaintiff for engaging in the protected activity of taking leave under OFLA and reporting OFLA violations.

27. Defendant interfered, discriminated and retaliated against Plaintiff for taking medical leave by taking adverse employment actions against Plaintiff, including, but not limited to, requiring Plaintiff to work after she requested leave and during the time her doctor took her off work due to her serious health condition, placing Plaintiff on a corrective action, and terminating Plaintiff's employment.

28. As a result of defendant's interference, discrimination and retaliation against Plaintiff, Plaintiff suffered and continued to suffer economic losses, mental anguish, pain and suffering, and other non-pecuniary losses.

29. As a result of defendant's discrimination and retaliation against Plaintiff, Plaintiff is entitled to equitable relief.

30. Pursuant to 659A.885, Plaintiff is entitled to recover back pay.

31. The court should enter an order declaring that defendant violated the OFLA.

32. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of prejudgment interest at the legal rate from the date the damage occurred until the date of judgment.

33. Pursuant to ORS 659A.885(1) and ORS 20.107, Plaintiff is entitled to recover Plaintiff's reasonable attorney fees and costs, including expert witness fees.

34. Plaintiff is entitled to post judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

THIRD CLAIM FOR RELIEF

(ORS Chapter 659A.199 – Whistleblower)

35. Plaintiff realleges all relevant paragraphs.

36. Plaintiff reported to Defendant conduct that Plaintiff believed was evidence of a violation of state or federal laws, rules, or regulations.

37. Defendant discriminated and retaliated against Plaintiff because of the reports made by Plaintiff. Defendant's actions violated ORS 659A.199, are an unlawful employment practice, and caused Plaintiff economic and noneconomic damages.

38. Plaintiff is entitled to a declaration that the conduct of the Defendant violated ORS 659A.199.

39. As a result of defendant's unlawful employment actions, Plaintiff suffered, and continues to suffer, economic and non-economic damages.

FOURTH CLAIM FOR RELIEF

ORS 659A.030

Discrimination based on Sexual Orientation

40. Plaintiff realleges all relevant paragraphs.

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41. Defendant discriminated against Plaintiff because of her sexual orientation.
42. Defendant's conduct violated ORS 659A.030.
43. The court should enter an order declaring that defendant violated ORS 659A.030.
44. As a result of defendant's unlawful employment actions, Plaintiff suffered, and continues to suffer, economic and non-economic damages.

FIFTH CLAIM FOR RELIEF

ORS 659A.030

Hostile Work Environment based on Sexual Orientation

45. Plaintiff realleges all relevant paragraphs.
46. Plaintiff was subjected to a hostile work environment because of her sexual orientation.
47. Defendant was aware of the hostile work environment but failed to take action to remedy the situation.
48. Defendant's conduct violated ORS 659A.030.
49. The court should enter an order declaring that defendant violated ORS 659A.030.
50. As a result of defendant's unlawful employment actions, Plaintiff suffered, and continues to suffer, economic and non-economic damages.

SIXTH CLAIM FOR RELIEF

ORS 659A.030

Retaliation for Opposing Discrimination based on Sexual Orientation

51. Plaintiff realleges all relevant paragraphs.
52. Defendant retaliated against Plaintiff because she opposed discrimination based on her sexual orientation.

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53. Defendant's conduct violated ORS 659A.030.

54. The court should enter an order declaring that defendant violated ORS 659A.030.

55. As a result of defendant's unlawful employment actions, Plaintiff suffered, and continues to suffer, economic and non-economic damages.

SEVENTH CLAIM FOR RELIEF

ORS 659A.030

Retaliation for Opposing Discrimination

56. Plaintiff realleges all relevant paragraphs.

57. Defendant retaliated against Plaintiff because she opposed discrimination based on race, age, and disability.

58. Defendant's conduct violated ORS 659A.030.

59. The court should enter an order declaring that defendant violated ORS 659A.030.

60. As a result of defendant's unlawful employment actions, Plaintiff suffered, and continues to suffer, economic and non-economic damages.

DAMAGES FOR CLAIMS THREE THROUGH SEVEN

61. As a result of defendant's unlawful employment actions, Plaintiff suffered, and continues to suffer, economic and non-economic damages.

62. Plaintiff is entitled to equitable relief, including, but not limited to, reinstatement to employment with defendant, as well as an award of back pay and lost benefits.

63. If reinstatement is not awarded, then plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and other compensatory damages for past or future pecuniary losses.

64. Plaintiff is entitled to compensatory damages to compensate her for her emotional distress.

65. Defendant's acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendants should be assessed punitive damages in an amount as fixed by a jury to punish defendant and to deter such conduct in the future.

66. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of prejudgment interest at the legal rate from the date the damage occurred until the date of judgment.

67. Pursuant to ORS Chapter 659A and ORS 20.107, Plaintiff is entitled to recover Plaintiff's reasonable attorney fees and costs, including expert witness fees.

68. Plaintiff is entitled to post judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

EIGHTH CLAIM FOR RELIEF

(Wrongful Termination)

69. Plaintiff realleges all relevant paragraphs.

70. Plaintiff's remedies under OFLA and FMLA do not constitute a complete remedy for the damage Defendant has inflicted.

71. As a result of defendant's wrongful termination of Plaintiff's employment, Plaintiff suffered and continues to suffer humiliation, anxiety, distress, and impairment of Plaintiff's personal dignity and right to be free from discrimination or interference with Plaintiff's statutory rights. Plaintiff suffered, and continues to suffer, economic damages, including, but not limited to, past and future wages, past and future benefits, and other expenses.

72. Plaintiff is entitled to an award for past lost wages and benefits and future lost earnings, benefits, and lost earning capacity, and other compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount to be proved at trial.

73. Defendant's acts were willful and malicious and done with reckless indifference to Plaintiff's protected rights. Defendants should be assessed punitive damages in an amount as fixed by a jury to punish defendant and to deter such conduct in the future.

74. To the extent any amount awarded to Plaintiff is for damages occurring prior to the entry of judgment, Plaintiff is entitled to an award of prejudgment interest at the legal rate from the date the damage occurred until the date of judgment.

75. Pursuant to ORS 20.107, Plaintiff is entitled to an award of attorney fees and expert witness fees.

76. Plaintiff is entitled to post judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

V. PRAYER FOR RELIEF

Plaintiff prays for the following judgment against defendant:

1. A sum which will fully compensate Plaintiff for Plaintiff's non-economic damages in a sum that is just as determined by a jury;
2. A sum which will fully compensate Plaintiff for Plaintiff's economic damages in a sum that is just as determined by a jury;
3. Equitable relief, including but not limited to, reinstatement if Plaintiff so chooses;
4. Liquidated damages;
5. Plaintiff's costs and disbursements incurred herein;

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6. Plaintiff's attorney fees;
7. Expert witness fees;
8. Pre and post judgment interest; and
9. For such other and further relief as the Court may deem just and equitable.

Plaintiff demands a trial by Jury.

Dated: December 8, 2014

Law Offices of Daniel Snyder

/s/ Carl Post

Daniel Snyder, OSB No. 783856
dansnyder@lawofficeofdanielsnyder.com
Carl Post, OSB No. 06105
carlpost@lawofficeofdanielsnyder.com
Cynthia Gaddis, OSB No. 113907
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Telephone: (503) 241-3617
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Of Attorneys for Plaintiff