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SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY

DEC 11 2013

REC'D & FILED
CIVIL CASE
MANAGEMENT OFFICE

TERESA TORRES,	:	SUPERIOR COURT OF NEW JERSEY;
	:	CUMBERLAND COUNTY – LAW DIV.
Plaintiff,	:	
	:	Civil Action
vs.	:	
	:	DOCKET NO. <i>Cum L 1043-13</i>
BRIDGETON BOARD OF EDUCATION	:	COMPLAINT AND JURY DEMAND
and JOHN DOES 1-5 AND 6-10,	:	
Defendants.	:	

Plaintiff, Teresa Torres, residing in Vineland, New Jersey, by way of Complaint against the defendants, says:

Preliminary Statement

This Complaint is brought under the New Jersey Law Against Discrimination (“LAD”) alleging failure to accommodate, failure to engage in the interactive process, disability and perception of disability discrimination.

Identification of Parties

1. Plaintiff Teresa Torres is, at all relevant times herein, a resident of the State of the State of New Jersey and was employed by defendants.

2. Defendant Bridgeton Board of Education is, at all relevant times herein, a public body amenable to suit under the LAD, maintaining a principal place of business in Bridgeton, New Jersey and is the employer of each and every individual mentioned herein.

3. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their direct acts or on the basis of *respondeat superior*, are answerable to the plaintiff for the acts set forth herein.

General Allegations

4. Plaintiff was employed as a third grade teacher with defendants from September 2008 through the date of her non-renewal and was performing her job up to the reasonable expectations of her employer.

5. On or about August 30, 2011, plaintiff sustained a work related injury.

6. Plaintiff was diagnosed with herniated discs in her back, rendering her disabled within the meaning of the LAD.

7. Plaintiff missed approximately one month of work, in October 2011, and returned to work with no restrictions in November of 2011.

8. Plaintiff worked throughout the 2011-2012 school year, but was still actively treating for her injuries.

9. Her pain steadily increased, and during the summer of 2012, plaintiff got three injections of cortisone.

10. At the end of August 2012, plaintiff reported to work to prep her classroom for the upcoming school year.

11. Because plaintiff was in so much pain, her doctor returned her to work for the 2012-2013 school year with sedentary work restrictions, and no lifting of more than 10 lbs.

12. Plaintiff handed this note to Principal Rebecca Guess, who said "I can't have you in my building because you have restrictions and I can't provide accommodations."

13. Principal Guess did not allow plaintiff to prep her classroom, and advised plaintiff to go to the administration office.

14. Plaintiff went to the administration office to speak to the director of human resources, Terrell Everett.

15. Mr. Everett was not available, but called plaintiff later in the day to advise that "Because you have restrictions, we can't accommodate you, and you can't be in the building."

16. There was no discussion of what plaintiff's restrictions were, and whether her restrictions would interfere with performing the essential functions of her job.

17. Defendants had an obligation to consider to what extent plaintiff's work could be altered or abolished by way of reasonably accommodating the plaintiff's disability.

18. The fact that the defendants completely failed to even discuss this with plaintiff, or to request additional information, is a *per se* violation of the New Jersey LAD.

19. In addition, the failure of the defendants to accommodate plaintiff inferentially stems from a perception that the defendants held regarding the plaintiff's capacity to work, which gives rise to intentional discrimination based upon plaintiff's disability or perceptions held regarding that disability, in violation of the LAD separately and distinctly.

20. At the conclusion of plaintiff's conversation with Mr. Everett, he said "When can you come back to work?"

21. Plaintiff advised that she was at work that day, yet plaintiff remained out of work until February, 2013.

22. In February 2013, plaintiff called the workers' compensation carrier to ask when she could be returned to work.

23. The workers' compensation carrier advised plaintiff to get a second opinion with regard to her injury.

24. Plaintiff saw another doctor for a second opinion, and that doctor scheduled a functional capacity exam.

25. While plaintiff was waiting for the date for her functional capacity exam, the workers' compensation carrier called her again and said, "Why haven't you been back to work?"

26. Plaintiff advised that she had been obtaining a second opinion, as they had requested her to do.

27. The representative from the workers' compensation carrier told plaintiff "I just spoke to human resources at the Board of Education and human resources can now make accommodations for you, so just go back to work."

28. Plaintiff returned to work on February 12, 2013.

29. On or about February 25, 2013, the results of plaintiff's functional capacity exam were released.

30. After plaintiff's doctor reviewed the exam results, plaintiff's doctor issued new restrictions.

31. These new restrictions were a requirement that plaintiff sit for six out of the eight hours in a working day, no lifting of more than 8 lbs, and no climbing or descending stairs.

32. Plaintiff gave this note to Leigha Saulin, who works in the Board of Education office, and is responsible for "accommodations."

33. Ms. Saulin advised plaintiff that she did not know how to complete the accommodation plan, because she did not know what "sedentary duties" were.

34. From February to April 2013, plaintiff suggested to Ms. Saulin and others that she be given a teacher's aide to help her when her students needed to leave the classroom, so that plaintiff could use the elevator.

35. Plaintiff was not given an aide, and no one was receptive to her request for this accommodation.

36. In or around the beginning of April 2013, plaintiff was advised that her "tenure status" had changed "pending bilingual certification."

37. Plaintiff had become tenured in September of 2011, and had already taken all of the courses which the State requires for a standard bilingual/bi-cultural certificate.

38. At the end of April 2013, human resources advised plaintiff that they could not renew her contract because they could not issue her another provisional certification, as her provisional certification had already been renewed twice.

39. However, on May 14, 2013, plaintiff saw a memo forwarded to all staff indicating that the Board was renewing emergency and provisional certificates for the 2013-2014 school year.

40. When plaintiff asked why her provisional certificate was not being renewed, Mr. Everett's secretary, Lennita Linen advised that all the other teachers whose certificates were being renewed had an ESL Certification.

41. Upon information and belief, that is not the case.

42. Plaintiff is aware of teachers who have not completed the requisite courses that the State requires, who do not have an ESL Certification, whose provisional certifications had been renewed twice before, who obtained an extension on their provisional certificate for the 2013-2014 school year.

43. However, plaintiff's provisional certification was not renewed.

44. Plaintiff obtained an attorney to write a letter on her behalf with regard to the request for an aide, and only after the Board received that letter was plaintiff given an aide, so that she would not have to use the stairs in taking her students in and out of the classroom.

45. A determinative and/or motivating factor in plaintiff's non-renewal of her contract, and tenure status change, was the plaintiff's disability and/or perceptions held regarding that disability and/or the fact that plaintiff was perceived to be disabled.

46. All acts were undertaken purposefully, willfully and intentionally, and by members of upper management, making punitive damages warranted.

COUNT I

Failure to Engage in the Interactive Process Under the LAD

47. Plaintiff hereby repeats and realleges paragraphs 1 through 46, as though fully set forth herein.

48. For the reasons set forth above, defendants' conduct in this matter violates the LAD's requirements of engaging in the interactive process intentionally and egregiously.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

COUNT II

Failure to Accommodate

49. Plaintiff hereby repeats and realleges paragraphs 1 through 48, as though fully set forth herein.

50. For the reasons set forth above, defendants' conduct in this matter violates the LAD's requirements of reasonable accommodation, intentionally and egregiously.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

COUNT III

Discrimination Based Upon Disability

51. Plaintiff hereby repeats and realleges paragraphs 1 through 50, as though fully set forth herein.

52. For the reasons set forth above, a determinative and/or motivating factor in the actions undertaken against the plaintiff was plaintiff's status as a disabled person.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit,

attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

COUNT IV

Discrimination Based Upon Perceptions About and/or of Disability

53. Plaintiff hereby repeats and realleges paragraphs 1 through 52, as though fully set forth herein.

54. For the reasons set forth above, a determinative and/or motivating factor in the actions undertaken against the plaintiff was on the basis of perceptions held regarding, or of, plaintiff's disability.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

COUNT V

Request for Equitable Relief

55. Plaintiff hereby repeats and realleges paragraphs 1 through 54 as though fully set forth herein.

56. Plaintiff requests the following equitable remedies and relief in this matter.

57. Plaintiff requests a declaration by this Court that the practices contested herein violate New Jersey law as set forth herein.

58. Plaintiff requests that this Court order the defendants to cease and desist all conduct inconsistent with the claims made herein going forward, both as to the specific plaintiff and as to all other individuals similarly situated.

59. To the extent that plaintiff was separated from employment and to the extent that the separation is contested herein, plaintiff requests equitable reinstatement, with equitable back pay and front pay.

60. Plaintiff requests, that in the event that equitable reinstatement and/or equitable back pay and equitable front pay is ordered to the plaintiff, that all lost wages, benefits, fringe benefits and other remuneration is also equitably restored to the plaintiff.

61. Plaintiff requests that the Court equitably order the defendants to pay costs and attorneys' fees along with statutory and required enhancements to said attorneys' fees.

62. Plaintiff requests that the Court order the defendants to alter their files so as to expunge any reference to which the Court finds violates the statutes implicated herein.

63. Plaintiff requests that the Court do such other equity as is reasonable, appropriate and just.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, cost of suit, attorneys' fees, enhanced attorneys' fees, equitable back pay, equitable front pay, equitable reinstatement, and any other relief the Court deems equitable and just.

COSTELLO & MAINS, P.C.

Dated: 6/9/14

By: 
Kevin M. Costello

DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

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By: _____

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

COSTELLO & MAINS, P.C.

By: _____

Kevin M. Costello

RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.
2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

COSTELLO & MAINS, P.C.

By: _____

Kevin M. Costello

DESIGNATION OF TRIAL COUNSEL

Kevin M. Costello, Esquire, of the law firm of Costello & Mains, P.C., is hereby designated trial counsel.

COSTELLO & MAINS, P.C.

By: _____

Kevin M. Costello