

COSTELLO & MAINS, P.C.
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OCT 22 2012

FRANCO COLAMARCO,	:	SUPERIOR COURT OF NEW JERSEY
	:	GLOUCESTER COUNTY - LAW DIV.
Plaintiff,	:	
	:	Civil Action
vs.	:	
	:	DOCKET NO. L-1539-12
DEPTFORD TOWNSHIP BOARD OF	:	
EDUCATION and JOHN DOES 1-5 AND	:	COMPLAINT AND JURY DEMAND
6-10,	:	
Defendants.	:	

Plaintiff, Franco Colamarco, residing in Williamstown, New Jersey, by way of Complaint against the defendant, says:

Preliminary Statement

This Complaint is brought under the New Jersey Law Against Discrimination ("LAD") alleging disability, perception of disability, and gender discrimination as well as unlawful retaliation. Plaintiff also brings claim for unlawful retaliation in violation of the Federal Family Medical Leave Act ("FMLA").

Identification of Parties

1. Plaintiff, Franco Colamarco, is, at all relevant times herein, a resident of the State of New Jersey and was, during all relevant times herein, an employee at the Deptford Township Board of Education, specifically employed at the Deptford Township High School.

2. Defendant Deptford Township Board of Education was, at all relevant times herein, plaintiff's employer and is located at 2022 Good Intent Road, Deptford, New Jersey.

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.

General Allegations

4. Plaintiff is a male.

5. Plaintiff has been employed by defendants from 2005 through the present.

6. For the period of January 2011 through June 2012, plaintiff served as a vice principal at defendants' high school.

7. Thereafter, plaintiff was unlawfully demoted and returned to his prior position as a teacher.

8. At all times relevant herein, plaintiff performed his job up to and beyond the reasonable expectations of his employer.

9. All discrimination herein is alleged to have been conducted by members of upper management and egregious such that punitive damages are warranted.

10. On or about January 27, 2012, while in the position of vice principal, plaintiff exercised his right to leave under the FMLA due to a disability in his back, including a herniation at L2-L5.

11. Plaintiff was in fact disabled within the meaning of the LAD.

12. In addition and/or in the alternative, plaintiff was perceived as disabled by the defendants.

13. Plaintiff's request for medical leave and exercise of the same constituted a reasonable accommodation under the LAD.

14. Prior to going out on leave, the school principal, Gary Loudenslager, indicated to plaintiff that the leave would create a hardship for the school.

15. Plaintiff was, in fact, on leave until his return to work on April 4, 2012.

16. While plaintiff was out on leave, Mr. Loudenslager began asking teachers in the school questions designed to inquire after plaintiff's job performance.

17. Throughout plaintiff's seven year tenure with the district, plaintiff is unaware of any other similar conduct with regards to any other administrator in the school.

18. On or about April 5, 2012, one day after plaintiff's return for medical leave, Mr. Loudenslager advised plaintiff that he, Mr. Loudenslager, would not be recommending plaintiff for rehire as a vice principal.

19. Upon information and belief, to the extent that personnel decisions are made by the superintendent and/or the school board, those individuals rely upon the information and recommendation of school principals.

20. The next day, plaintiff complained to defendants' assistant superintendent Carolyn Morehead, who advised plaintiff that she was unable to take any action and also suggested that plaintiff take a voluntary transfer to teacher so as to avoid any adverse review in his file.

21. Plaintiff next approached superintendent Ralph Ross, who advised plaintiff that the high school would be receiving a new principal and that if Melvin Allen wanted to retain plaintiff, Mr. Ross would approve the same.

22. Plaintiff in fact contacted Mr. Allen via telephone.

23. Mr. Allen advised plaintiff that he appreciated plaintiff's conduct but that he, Mr. Allen, wanted a female in the position.

24. The position was in fact filled by a female.

25. As a result of his demotion to teacher, plaintiff has been forced to suffer economic and non-economic harms.

26. A determinative and/or motivating factor in plaintiff's demotion was his status as a disabled person and/or defendants' perception of plaintiff as disabled.

27. In addition and/or in the alternative, a determinative and/or motivating factor in plaintiff's demotion was retaliation against plaintiff for having exercised his right to a reasonable accommodation under the LAD.

28. In addition and/or in the alternative, a determinative and/or motivating factor in plaintiff's demotion was retaliation against plaintiff for having exercised his right to leave under the FMLA.

29. In addition and/or in the alternative, a determinative and/or motivating factor in plaintiff's demotion was plaintiff's gender.

COUNT I

Disability Discrimination Under the LAD

30. Plaintiff hereby repeats and realleges paragraphs 1 through 29, as though fully set forth herein.

31. The conduct set forth above constitutes disability discrimination in violation of the LAD which is the liability of the defendants.

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

COUNT II

Perception of Disability Discrimination in Violation of the LAD

32. Plaintiff hereby repeats and realleges paragraphs 1 through 31, as though fully set forth herein.

33. The conduct set forth above constitutes perception of disability discrimination in violation of the LAD, which is the liability of the defendants.

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

COUNT III

Unlawful Retaliation in Violation of the LAD

34. Plaintiff hereby repeats and realleges paragraphs 1 through 33, as though fully set forth herein.

35. The conduct set forth above constitutes unlawful retaliation in violation of the LAD which is the liability of the defendants.

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

COUNT IV

FMLA Retaliation

36. Plaintiff hereby repeats and realleges paragraphs 1 through 35, as though fully set forth herein.

37. The conduct set forth above constitutes unlawful retaliation in violation of the FMLA.

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

COUNT V

Gender Discrimination Under the LAD

38. Plaintiff hereby repeats and realleges paragraphs 1 through 37, as though fully set forth herein.

39. The conduct set forth above constitutes gender discrimination in violation of the LAD which is the liability of the defendants.

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

COUNT VI

Request for Equitable Relief

40. Plaintiff hereby repeats and realleges paragraphs 1 through 39 as though fully set forth herein.

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

42. Plaintiff requests a declaration by this Court that the practices contested herein violate New Jersey Law Against Discrimination and the Federal Family Medical Leave Act.

43. Plaintiff requests that this Court order the defendant to cease and desist all conduct inconsistent with the LAD going forward, both as to the specific plaintiff and as to all other individuals similarly situated.

44. 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.

45. 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.

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

47. To the extent that plaintiff has contested herein wrongful demotion, transfer or wrongful denial demotion, plaintiff requests the Court equitably direct the defendant to instate the plaintiff in the disputed position, to restore plaintiff to the former position, responsibility, role or title, and to do such other equity as the Court may direct to restore the plaintiff to the position occupied prior to the wrongful acts complained of herein.

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

49. 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, non-compensatory damages, punitive damages, interest, costs of suit, attorneys' fees, enhanced attorneys' fees, and any other relief the Court deems equitable and just.


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DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiffs' employment, to plaintiffs' 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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JURY DEMAND

Plaintiffs hereby demand a trial by jury.

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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.

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DESIGNATION OF TRIAL COUNSEL

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

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