

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

R. SCOTT ALLISON
1051 Sproul Rd.
Bryn Mawr, PA 19010

Plaintiff,

v.

BRIAN'S HOUSE, INC.
1300 S. Concord Rd
West Chester PA 19382

and

WOODS SERVICES, INC.
40 Martin Gross Drive
Langhorne, PA 19047

Defendant.

CIVIL ACTION NO:

COMPLAINT WITH JURY DEMAND

CIVIL ACTION COMPLAINT

Plaintiff R. Scott Allison (hereinafter "Plaintiff"), by and through undersigned counsel, hereby complains as follows against Defendants Brian's House, Inc. and Wood Services, Inc. (hereinafter collectively referred to in the singular as "Defendants").

INTRODUCTION

1. Plaintiff has initiated this action to redress violations by Defendants of the Family and Medical Leave Act ("FMLA"). Plaintiff was terminated from employment due his taking FMLA qualifying absences. As a result of this action, Plaintiff suffered damages as set forth herein.

JURISDICTION AND VENUE

2. The Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims herein arise under laws of the United States, and specifically the FMLA, 29 U.S.C. § 2601 *et seq.*

3. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice.

4. Pursuant to 28 U.S.C. §§ 1397(b)(1) and (b)(2), venue is properly laid in this judicial district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

PARTIES

5. The foregoing paragraphs are incorporated herein as if set forth in full.

6. Plaintiff is an adult individual, with an address as set forth in the caption.

7. Defendant Brian's House, Inc. ("Defendant Brian's House") is a non-profit organization located at the above captioned address that does business in Pennsylvania, and upon information and belief a subsidiary of Defendant Wood Services, Inc.

8. Defendant Wood Services, Inc. ("Defendant Wood Services") is, a non-profit organization located at the above captioned address that is, upon information and belief, the parent company and/or owner of Defendant Brian's House.

9. At all times relevant herein, Defendant Brian's House and Defendant Wood Services jointly employed Plaintiff.

10. At all times relevant herein, Defendants acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment/engagement with Defendants.

FACTUAL BACKGROUND

11. The foregoing paragraphs are incorporated herein as if set forth in full.

12. In or around 2006, Plaintiff was hired by Defendants as a Maintenance Technician.

13. Plaintiff's primary job duties were to provide maintenance support to all homes owned and operated by Defendant Brian's House, Inc., approximately thirty (30) total homes.

14. In or around January 2011, Plaintiff began to suffer episodic and reoccurring abdominal pain, nausea, and vomiting (hereinafter Plaintiff's "Medical Condition").

15. Between January 2011 and May 2011, Plaintiff's Medical Condition continued to worsen.

16. From January 2011 until May 2011, Plaintiff needed to periodically miss work due to his Medical Condition; in total, Plaintiff missed approximately eight days of work during this time period due to his Medical Condition.

17. Additionally, during this time period (from January 2011 until May 2011), Plaintiff was late to work (by only 15-20 minutes) on approximately seven to ten occasions due to his Medical Condition.

18. Each time Plaintiff was late to and/or required to miss work due to his Medical Condition, he informed Defendants' maintenance supervisor, Richard Daduwich, of same.

19. Defendants failed to provide Plaintiff with individualized notice of his rights under the Family and Medical Leave Act (hereinafter "FMLA").

20. Instead, Defendants disciplined Plaintiff by issuing him a write-up each time he was late and/or absent despite knowledge that each such lateness/absence was caused by Plaintiff's Medical Condition.

21. In or around late May/early June 2011, Plaintiff sought medical attention for his Medical Condition.

22. Plaintiff's physician diagnosed him with a chronic gastric disorder and ordered Plaintiff to treat his Medical Condition via medication.

23. Additionally, Plaintiff's physician ordered that Plaintiff undergo testing to identify the cause and potential cure and/or treatment for his Medical Condition.

24. Plaintiff immediately informed Mr. Daduwich of his physician's diagnosis and orders.

25. Thereafter, Plaintiff continually relayed to Mr. Daduwich information relating to his medical condition and ongoing treatment plan.

26. Nonetheless, Defendants failed to provide Plaintiff with individualized notice of his rights under the FMLA.

27. Between early June 2011 and early July 2011, Plaintiff was absent from work approximately four (4) days due to his Medical Condition.

28. Additionally, between early June 2011 and early July 2011, Plaintiff arrived late to work on approximately five (5) occasions due to his Medical Condition.

29. Each time Plaintiff was late or absent during this time (between early June 2011 and early July 2011), he informed Defendants that such lateness/absence was due to his Medical Condition.

30. Nonetheless, each time Plaintiff was late to/absent from work during this time (between early June 2011 and early July 2011) Defendants issued to Plaintiff a written warning.

31. From January 2011 until July 2011, nearly all of Plaintiff's absences and tardies were due to his Medical Condition.

32. On July 11, 2011, Defendants fired Plaintiff.

33. Defendants allegedly fired Plaintiff for excessive lateness and absenteeism.

34. In fact, Defendants fired Plaintiff for having taken FMLA qualifying intermittent leaves.

35. At no point in 2011 did Defendants provide Plaintiff with an FMLA mandated eligibility notice.

36. At no point in 2011 did Defendants provide Plaintiff with an FMLA rights and responsibilities notice.

37. At no point in 2011 did Defendants provide Plaintiff with an FMLA designation notice.

38. At no point in 2011 did Defendants designate Plaintiff's leaves as FMLA protected leave.

39. Defendants penalized Plaintiff for having taken leaves in 2011 that were due to his Medical Condition, leaves that Defendants should have designated and treated as FMLA protected.

COUNT I
Violations of the Family and Medical Leave Act
(Interference)

40. The foregoing paragraphs are incorporated herein as if set forth in full.

41. Plaintiff was an eligible employee under the definitional terms of the Family and Medical Leave Act.

42. As of January 2011, Plaintiff was employed with Defendants for at least twelve (12) months.

43. Further, Plaintiff had at least 1,250 hours of service with Defendants during the twelve (12) months prior to the commencement of his medical leaves of absence.

44. Defendants are engaged in an industry affecting commerce and employs fifty (50) or more employees for twenty (20) or more calendar workweeks in the current or proceeding calendar year.

45. Plaintiff required time off from work due to his Medical Condition.

46. Plaintiff's Medical Condition constituted a serious health condition within the meaning of the FMLA.

47. Plaintiff was entitled to receive continuous and/or intermittent leave under the FMLA for a total of twelve (12) workweeks of leave, and Defendants were not permitted to interfere with Plaintiff's rights under the FMLA.

48. Plaintiff was entitled to receive continuous and/or intermittent leave under the FMLA for a total of twelve (12) workweeks of leave, and Defendants were not permitted to retaliate against Plaintiff for exercising his rights under the FMLA.

49. Defendants interfered with Plaintiff's FMLA rights by failing to provide Plaintiff with individualized notice of his FMLA rights.

50. Defendants interfered with Plaintiff's FMLA rights by failing to provide Plaintiff with an FMLA mandated eligibility notice.

51. Defendants interfered with Plaintiff's FMLA rights by failing to provide Plaintiff with an FMLA mandated rights and responsibilities notice.

52. Defendants interfered with Plaintiff's FMLA rights by failing to provide Plaintiff with an FMLA mandated designation notice.

53. Defendants interfered with Plaintiff's FMLA rights by firing him for having taken leave that Defendants should designated and treated as FMLA protected leave.

54. Defendants interfered with Plaintiff's FMLA rights by penalizing him for having taken leave that Defendants should designated and treated as FMLA protected leave.

55. Defendants interfered with Plaintiff's FMLA rights by firing him to prevent him from taking further FMLA leave.

56. As a result of Defendants' unlawful actions, Plaintiff has suffered damages.

COUNT II
Violations of the Family and Medical Leave Act
(Retaliation)

57. The foregoing paragraphs are incorporated herein as if set forth in full.

58. Defendants retaliated against Plaintiff by disciplining him for having taken leaves that Defendants should designated and treated as FMLA protected leave.

59. Defendants retaliated against Plaintiff by firing him for having taken leaves that Defendants should have designated and treated as FMLA protected leave.

60. As a result of Defendants' unlawful actions, Plaintiff has suffered damages.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendants are to be prohibited from continuing to maintain its illegal policy, practice, or custom of discriminating against employees based on their need to take FMLA qualifying leaves and/or their health conditions;

B. Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants' illegal actions, including but not limited to past lost and future lost earnings;

C. Plaintiff is to be awarded liquidated damages pursuant to the FMLA;

D. Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate;

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal law.

Respectfully submitted,

SWARTZ SWIDLER, LLC

/s/ Richard Swartz

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Dated: November 23, 2011