

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMILA RICHEY

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Plaintiff,

)

)

JURY DEMAND**v.**

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)

Civil Action No.**WENDY'S OF BOWLING GREEN INC.,)**

)

Defendant.

)

COMPLAINT

This is an action alleging a violation of the Family Medical Leave Act (“FMLA”), 29 U.S.C. § 2611, *et. seq.* Plaintiff is entitled to equitable relief as well as lost wages, liquidated damages, attorneys fees, and costs.

II. JURISDICTION

1. This Court has jurisdiction in accordance with 28 U.S.C. § 1331, 1343, 2201, 2202, 42 U.S.C. § 12117, and 42 U.S.C. § 12133. Venue is proper pursuant to 28 U.S.C. § 1391.

2. The FMLA does not require the exhaustion of administrative remedies.

III. PARTIES

3. Plaintiff, Jamila Richey, is a legal resident of the United States and a legal resident of the State of Alabama. Plaintiff also has a serious health condition

under the FMLA and she is an employee who is eligible for benefits under that statute.

4. Defendant, Wendy's of Bowling Green Inc., is an employer in accordance with 42 U.S.C. § 12111(5) and under the FMLA. 29 U.S.C. § 2611. Defendant owns, operates, and maintains fast-food restaurants throughout the United States. Defendant owns and operates the fast-food restaurant franchise in Guntersville, Alabama (Store No. 5075), where Plaintiff worked.

IV. FACTUAL ALLEGATIONS

5. Plaintiff worked for Defendant approximately six and a half years. She was initially hired by Defendant on or about December 6, 2007, as a fast-food restaurant worker.

6. Defendant did not comply with Plaintiff's FMLA notice and requests on May 15, 2014, May 19, 2014, May 22, 2014, and May 24, 2014. Defendant wrongfully terminated Plaintiff on June 1, 2014 without notice or explanation.

7. As a fast-food restaurant worker for Defendant, Plaintiff performed the following tasks: shop opener; open prep worker; cashier; cleaner; food preparer; sandwich maker; drive through operator; and cook.

8. Plaintiff normally worked Monday - Friday shifts. Plaintiff received her weekly shift assignments through a call system. Plaintiff's assignments required her

to routinely stand, prepare food, cook food, sell food, clean, and organize.

9. As an employee for Defendant, Plaintiff performed her job duties well and without incident. Plaintiff consistently met safety and health standards.

10. On Thursday, May 15, 2014, Plaintiff timely arrived for her scheduled shift. However, as her shift continued on Plaintiff began complaining to her manager, Ashley Baker, about severe abdominal pains and debilitating cramps.

11. As the May 15, 2014 morning progressed, Plaintiff's cramps and severe abdominal pains became worse and she was unable to prepare food or even stand.

12. Defendant's policy does not allow sick employees with potential stomach illness to perform kitchen work, prepare food, clean, or sell food.

13. Plaintiff followed company policy and requested on May 15, 2014 to go to the doctor.

14. On May 15, 2014, Plaintiff saw Dr. Mary F. Holley. Dr. Holley found Plaintiff's pain was "associated with an large Symptomatic ovarian cyst, complex mostly cystic." Dr. Holley noted the ovarian cyst needed to be surgically removed and Plaintiff was advised not to work for the next several days.

15. On May 15, 2014, Dr. Holley scheduled a surgical consultation regarding Plaintiff's cyst removal with Dr. Justice.

16. On May 15, 2013, Plaintiff notified Defendant about her serious medical

condition and her boyfriend delivered her doctor's excuses for that Thursday and Friday to Defendant's restaurant. Whitney Sparks, a crew member, accepted Dr. Holley's work excuses for Plaintiff and delivered them to Plaintiff's shift Manager, Anthony Benzy.

17. Dr. Holley's excuses were received by shift manager Anthony Benzy on May 15, 2014. Manager Benzy told Plaintiff he placed her work excuses for May 15, 2014 and May 16, 2014 on the desk in the manager's office for Ashley Baker.

18. Plaintiff was excused and unable to attend work on May 16, 2014 due to her illness. Defendant never contacted or reprimanded Plaintiff concerning her excused absences.

19. Coworkers told Plaintiff that their manager, Ashley Baker, told everyone that Plaintiff had abandoned her job.

20. Plaintiff never abandoned her job.

21. Defendant's policy defines job abandonment as follows: "An employee will be assumed to have resigned should he/she fail to personally notify management of an absence for three consecutive scheduled work days or walk off the job without authorization."

22. Plaintiff checked the shift schedule on Sunday, May 18, 2014 and noticed she was not listed for any upcoming shifts. Plaintiff contacted Anthony Benzy

to make sure he received her doctor's excuses. Mr. Benzy told Plaintiff that he placed Dr. Holley's excuses in the manager's office for Ashley Baker when he received them on May 15, 2014.

23. Defendants wilfully failed to record Plaintiff's doctor excuses for May 15, 2014 and May 16, 2014. Manager Bezny reviewed Plaintiff's file and noticed the Dr. Holley's excuses were missing and that they were never recorded by Ashley Baker.

24. Plaintiff went to work on Monday, May 19, 2014, to inquire as to why she was not on the shift schedule. On May 19, 2014, Plaintiff notified her General Manager Ashley Baker and about her medical condition and her upcoming surgical consultation.

25. During the May 19, 2014 meeting, Defendant gave no reason as to why Plaintiff was not scheduled to work. Plaintiff contacted Defendant's human resources office and inquired as to why she was not scheduled, but the problem was never resolved.

26. During the May 19, 2014 meeting, Plaintiff was never reprimanded, counseled regarding tardiness or absences, or terminated by Defendant.

27. Defendant has a progressive discipline policy that involves the following three steps: "(1) 1st Written Warning; (2) Final Written Warning; (3)

Termination.”

28. On or about May 20, 2014, Ashley Baker asked Plaintiff to meet with her again to discuss her employment situation and medical condition. Plaintiff told Manager Baker that she refused to schedule a meeting unless their District Manager, Christy Mathis, was present.

29. On or about May 22, 2014, Plaintiff met with District Manager Christy Mathis and General Manager Ashley Baker about her serious medical condition, upcoming surgery consultation, and her FMLA papers. Plaintiff offered to fill out the FMLA paperwork and both parties discussed how Defendant would handle the situation. Mathis told Plaintiff that filling out her FMLA papers was not necessary at that time.

30. Mathis told Plaintiff at the May 22, 2013 meeting to hold on to her FMLA papers.

31. Pursuant to Defendant's requirements and policy, Plaintiff provided notice of her severe medical condition and her surgical needs. Plaintiff stated that she needed surgery and that she could only sedentary work until after she recovered from surgery and her medical documents stated the same

32. On May 24, 2014, Plaintiff had another meeting with Defendant concerning why she was not being scheduled to work. Plaintiff met with Managers

Ashley Baker and Chelsea Hackett. However, Plaintiff was still not assigned to the work schedule.

33. Defendant wilfully failed to schedule Plaintiff for work after the May 19, 2014 meeting when they found out she was suffering from a serious medical condition and needed surgery.

34. On May 26, 2014, Ashley Baker told Plaintiff that she should not come back to work.

35. Defendant terminated Plaintiff without notice or cause on June 1, 2014.

36. As a result of Defendant's actions, Plaintiff has suffered extreme harm, including, but not limited to, loss of employment, denial of wages, compensation, and other benefits and conditions of employment. Additionally, Plaintiff has suffered injury, including pain, humiliation, mental anguish and suffering, and loss of enjoyment of life.

37. Defendant was aware of the FMLA and its requirements. Defendant knowingly and/or recklessly denied Plaintiff her rights under the FMLA.

The Family Medical Leave Act and Retaliation

V. CAUSES OF ACTION

38. Plaintiff realleges and incorporates by reference paragraphs 1-37 above with the same force and effect as if fully set out in specific detail herein below.

39. As stated, Plaintiff was an eligible employee in that she was person entitled to leave to care for her own serious health condition pursuant to 29 U.S.C. § 2612. Plaintiff had a serious medical condition under, *inter alia*, 29 C.F.R. § 825.119.

40. Plaintiff was entitled to benefits under the FMLA and Defendant acknowledged such by contacting and meeting with Plaintiff on May 19, 2014, May 22, 2014, and May 24, 2014 regarding her serious medical condition, doctor's appointments, upcoming surgery, and her FMLA paperwork regarding her upcoming surgery. Defendant is an employer in accordance with 29 U.S.C. § 2611.

41. Defendant violated the Family Medical Leave Act, 29 U.S.C. § 2614, *inter alia*, by failing or refusing to return Plaintiff to her former or an equivalent position and by interfering with Plaintiff's rights under the FMLA by not allowing her to return to work after Plaintiff mentioned her serious medical condition and her upcoming surgery.

42. Further, Defendant retaliated, coerced, oppressed, and/or took adverse action against Plaintiff due to her need for medical leave under the FMLA. 29 C.F.R. § 825.220. Plaintiff engaged in a protective activity including opposing Defendant's failure to reinstate her to her former shift after she gave Defendant multiple notices of her serious medical condition. Immediately after this, Defendant wilfully refused

to reinstate Plaintiff and terminated her. Defendant's actions were causally and directly connected to Plaintiff's protected activity.

43. As a result of Defendant's actions, Plaintiff has suffered extreme harm, including, but not limited to, loss of employment opportunities, denial of wages, compensation and other benefits and conditions of employment. Additionally, Plaintiff has suffered injury including pain, humiliation, mental anguish and suffering.

44. Defendant was aware of the law and knowingly and/or recklessly denied Plaintiff her rights under the FMLA.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the Defendant, including the action taken against Plaintiff by Defendant, are violative of Plaintiff's rights as secured the FMLA, 29 U.S.C. § 2611, *et. seq.*

2. Grant Plaintiff equitable relief, reinstatement and a permanent injunction enjoining the Defendant, its agents, successors, employees, attorneys and those acting in concert with the Defendant, and at the Defendant's request, from continuing to

violate Plaintiff's rights as well as those who are similarly situated pursuant the FMLA, 29 U.S.C. § 2611, *et. seq.*

3. Award Plaintiff damages including back pay, front pay, interest, and liquidated damages.
4. Award Plaintiff reasonable costs, attorney's fees and expenses.
5. Award such other relief and benefits as the cause of justice may require.

THE PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY.

Respectfully submitted,

/s/ Rocco Calamusa, Jr.

Rocco Calamusa, Jr.

Patrick Evans

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**PLAINTIFF REQUESTS THAT DEFENDANT BE SERVED WITH
SUMMONS AND COMPLAINT BY FIRST CLASS U.S. CERTIFIED MAIL.**

/s/Rocco Calamusa, Jr.
Rocco Calamusa, Jr.
Counsel for the Plaintiff

DEFENDANT'S ADDRESS:

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