

OCT 20 2017

SPokane County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

DEBRA STAPLETON,

Plaintiff,

vs.

THE ANTHEM COMPANIES, INC.,

Defendant.

Case No. 17-2-03583-6

**AMENDED COMPLAINT & DEMAND
FOR JURY TRIAL**

The Plaintiff, DEBRA STAPLETON, by and through MATTHEW Z. CROTTY, of CROTTY & SON LAW FIRM, PLLC, and MICHAEL B. LOVE, of MICHAEL LOVE LAW, PLLC, complains of Defendant and alleges as follows:

I. PARTIES, JURISDICTION, & VENUE

1. Debra Stapleton was employed by the above-captioned Defendant during the time-frame relevant to this lawsuit and worked in Spokane County, Washington, on behalf of Defendant.

2. Defendant The Anthem Companies, Inc. is an Indiana corporation, is registered with the Washington Secretary of State as "The Anthem Companies, Inc.," does business as

1 “Amerigroup”, (“Anthem”) and conducted business in Spokane County, Washington, at all times
2 relevant to this lawsuit.

3 3. The Spokane County Superior Court has jurisdiction over this case.

4 4. Venue is proper in Spokane County because, *inter alia*, Defendant conducts business
5 in Spokane County and the acts and omissions giving rise to Ms. Stapleton’s complaint took place
6 in Spokane County, Washington.

7 **II. FACTS**

8 5. Ms. Stapleton incorporates the above facts as if pled verbatim herein.

9 6. Ms. Stapleton applied for employment with Anthem on or about January 11, 2016.

10 7. Anthem offered Ms. Stapleton a job as a Network Management Representative (Sr.)
11
12 on or about January 13, 2016.

13 8. Ms. Stapleton’s first day of work at Anthem was February 1, 2016.

14 9. Anthem assigned Stacy R. Smith (“Smith”) to serve as Ms. Stapleton’s supervisor.

15 10. On or about February 27, 2017, Ms. Stapleton injured her knee while slipping and
16 falling on the ice. A few weeks later Ms. Stapleton learned that she had suffered a lateral meniscus
17 tear. Ms. Stapleton’s then supervisor, Smith, assisted Ms. Stapleton with contacting HR so as to
18 facilitate the FMLA (Family Medical Leave Act) process.

19
20 11. On or about March 3, 2017, Ms. Stapleton submitted her FMLA paperwork to the
21 appropriate authority within the company.

22 12. Shortly thereafter Anthem issued a document certifying that Ms. Stapleton’s
23 “Intermittent Leave” would run from February 27, 2017, through May 26, 2017.

24 13. Shortly before March 3, 2017, Anthem hired Jacquie Owens (“Owens”) as its
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1 Network Manager. Owens was hired in December 2016 as a Contract Manager. After the Vice
2 President of the plan resigned, Owens was given the title of Network Manager and took over the
3 former Vice President role in the interim. Owens became Smith's immediate manager at that time.

4 14. Smith resigned her position with Anthem toward the end of March 2017.

5 15. Between February 1, 2016 and March 31, 2017, Ms. Stapleton received no discipline
6 regarding her workplace performance, other than a write up for allegedly being rude to a co-worker,
7 Bethany Osgood ("Osgood"), who allegedly stated that Ms. Stapleton was rude to her on a
8 conference call. Osgood later denied that this had occurred.

9 16. Following Smith's resignation Anthem required Ms. Stapleton to report to Owens.

10 17. On or about April 13, 2017, Ms. Stapleton underwent surgery for her meniscus tear.

11 18. As a result of the surgery Ms. Stapleton missed work on April 13 and April 14, a
12 Thursday and Friday. Ms. Stapleton reported back to work the following Monday. Ms. Stapleton's
13 return to work restrictions, post-surgery, prevented her from doing any field work for approximately
14 6 to 8 weeks.

15 19. On or about April 13, 2017, or shortly thereafter, Ms. Stapleton's physician informed
16 Ms. Stapleton that the partial removal of the meniscus exposed severe arthritis and other
17 complications which, in turn, would likely lead to a knee replacement within Ms. Stapleton's future.
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19 20. On or about April 20th, 2017, Ms. Stapleton told Owens of her (Stapleton's) surgeon's
20 prognosis as to Ms. Stapleton's knee and also told Owens that the physician would be extending Ms.
21 Stapleton's FMLA leave. Ms. Stapleton's physician faxed to HR revised documentation extending
22 FMLA and otherwise requiring accommodation of her disability for 3 more months in order for Ms.
23 Stapleton to complete physical therapy.
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1 21. Immediately after (i.e. within seconds of) being informed of Ms. Stapleton's
2 surgeon's findings Owens stated words to the effect of "perhaps they may need to reconsider your
3 position with the company."

4 22. During the following few weeks Owens proceeded to make Ms. Stapleton's life a
5 "living hell." For example, Owens would nitpick Ms. Stapleton for the most minor transgressions
6 regardless of whether any of those transgressions had merit. During meetings with coworkers Owens
7 publicly embarrassed Ms. Stapleton. Specifically, Owens would single Ms. Stapleton out on a call
8 by grilling her about her activities that she did not request of others. Ms. Stapleton's co-workers
9 corroborated this behavior on the part of Owens during the complaint that Ms. Stapleton filed against
10 Owens for harassment and bullying.

11 23. On or about May 5, 2017, Ms. Stapleton filed a complaint with the company's Human
12 Resources department claiming, in part, that Owens' treatment of her was in retaliation for her
13 disability/request for medical leave. Ms. Stapleton provided examples to HR of Owens' demeaning,
14 belittling, abrasive and harassing behavior which occurred after April 20, 2017, and that Ms.
15 Stapleton reasonably believed in good faith was retaliation for her disability/request for medical
16 leave.
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18 24. On or about May 20, 2017, Ms. Stapleton was informed, by HR, that her complaint
19 against Owens was closed. Human Resources would not, however, provide Ms. Stapleton with any
20 documentation as to what, if any, findings were made vis-à-vis the complaint nor provide Ms.
21 Stapleton with any assurances that she (Stapleton) would be protected from retaliation as a result of
22 her having filed the discrimination and retaliation complaint against Owens.
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24 25. From May 30, 2017, to June 8, 2017, approximately two weeks after Ms. Stapleton's
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1 HR complaint was “closed,” Owens went on vacation.

2 26. Owens returned from vacation on or about June 8, 2017.

3 27. On June 13, 2017, Owens terminated Ms. Stapleton’s employment with the company.

4 28. The company’s stated reason for the termination was “poor work performance.” The
5 company would not, however, provide Ms. Stapleton with any specific example or proof of alleged
6 poor work performance.

7 29. Shortly after Ms. Stapleton’s termination Ms. Stapleton was informed that Anthem’s
8 management was well aware of Owens’ improper behavior, as well as her propensity to retaliate.
9 However, despite this knowledge, management was unwilling to put a stop to Owens’ improper
10 behavior because Anthem was in the process of trying to procure government contracts and, as a
11 result, supposedly needed Owens. Several witnesses in the office have also witnessed Owens’
12 volatile, aggressive behavior during a confrontation with one of Ms. Stapleton’s co-workers, Carrie
13 Reidhead (“Reidhead”), in which she (Owens) got in Reidhead’s face, yelled at her and threatened
14 her stating: “Do you value your job.” This threatening comment occurred immediately after
15 Reidhead spoke out in a meeting, which apparently Owens did not appreciate.
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17 30. Specifically, Osgood stated that Stuart Battersby (“Battersby”), as well as at least
18 one corporate VP, stated that those individuals knew that Ms. Stapleton was doing a good job.
19 However, they were afraid to “rock the boat” by addressing Owens’ retaliatory behavior due to the
20 fact that the company was trying to win government contracts in the state of Washington.
21

22 31. Anthem’s stated reason for Ms. Stapleton’s termination, e.g. “poor work
23 performance” is demonstrably false. One of Ms. Stapleton’s former customer states: “Debbie was
24 always responsive to our needs and communication with her was excellent” and that Ms. Stapleton
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1 “has been a breath of fresh air in an industry that continues to be frustrating for medical practices
2 and patients alike. It’s extremely unfortunate that she is no longer my go to person at Amerigroup.”

3 32. Another former customer of Ms. Stapleton wrote that “she made the time and effort
4 to travel to our small community here in Republic, WA to introduce herself and help me through a
5 pretty major claims issue” and that “[s]he listened well and took the initiative to see I got the help I
6 needed.”

7 33. Another former customer of Ms. Stapleton states: “I have known Debra on a
8 professional level for about a year and she did an excellent job in her position as a Provider Relations
9 Representative. Debra called on our office frequently and was always very personable, with
10 excellent communication skills. Debra always proved to be very knowledgeable and seemed to be
11 very organized and diligent when performing her duties as a Provider Relations Representative.”

12 34. During the course of Ms. Stapleton’s employment with Anthem she received written
13 letters and emails of appreciation from customers. Ms. Stapleton transmitted those letters to her then-
14 supervisor with the instruction that those letters be placed in Ms. Stapleton’s personnel file.

15 35. On or about July 12, 2017, Ms. Stapleton received a “copy” of what the company
16 represented was her personnel file. Suspiciously absent from Ms. Stapleton’s personnel file were
17 any of the customer appreciation email/letters that she had received during the course of her
18 employment with Anthem. Also absent from Ms. Stapleton’s personnel file was any reference to the
19 HR complaint for discrimination, hostile work environment and retaliation that Ms. Stapleton made
20 against Owens. Also absent from Ms. Stapleton’s personnel file was any FMLA paperwork.

21 36. Present in Ms. Stapleton’s personnel file was a “Corrective Action Form”. That
22 “Corrective Action Form” states “Job Performance” and “Conduct” as “Reason for Corrective
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1 Action” and lists an event from January 13, 2016, as a reason for the corrective action and states
2 that: “January 27, 2016, you were placed on a personal improvement plan (PIP).”

3 37. Ms. Stapleton did not work at Anthem on January 13, 2016.

4 38. Ms. Stapleton did not work at Anthem on January 27, 2016.

5 39. Ms. Stapleton was put on a PIP relating to training, and the need to become more
6 skilled with the companies systems, and become more self-sufficient in determining issue
7 resolutions. Ms. Stapleton was originally hired to manage seven (7) counties in Eastern
8 Washington, and within three (3) months was given an additional seven (7) counties after another
9 representative resigned. Ms. Stapleton was doing double the workload of any of her co-workers,
10 with no additional assistance, and little to no support or training.
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12 **III. CAUSES OF ACTION**

13 40. Ms. Stapleton incorporates the above paragraphs as if pled verbatim herein.

14 **(Count One – Violation of the state Family Medical Leave Act (FMLA))**

15 41. Ms. Stapleton was eligible for FMLA benefits because she had worked for Anthem
16 for at least one (1) and had worked at least 1,250 hours in the preceding year. Anthem also employed
17 in excess of fifty employees within 75 miles of Ms. Stapleton’s workplace during the relevant
18 timeframe.
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20 42. In order to prove FMLA interference, discrimination and retaliation claims an
21 employee must prove that: (1) she took or requested protected leave; (2) the employer subjected her
22 to an adverse employment action; and (3) the taking of or requesting protected leave was a “negative
23 factor” in the adverse employment decision. *See McCauley v. ASML US, Inc.*, 917 F.Supp.2d 1143,
24 1152 (D.Or.2013); 29 C.F.R. § 825.220(c). A plaintiff may prove an interference claim “by using
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1 either direct or circumstantial evidence, or both.” *Schultz v. Wells Fargo Bank, Nat. Ass’n*, 970 F.
2 Supp. 2d 1039, 1052-53 (D. Or. 2013).

3 43. Ms. Stapleton had a serious health condition (major knee surgery) for which she took
4 protected leave for the February 27, 2017 to May 26, 2017 “certified period.” Ms. Stapleton’s
5 physician faxed to Anthem HR paperwork certifying her need for and an extension of FMLA which
6 would have ended in August of 2017.

7 44. In *close proximity* of Ms. Stapleton taking protected leave and having her leave re-
8 certified by her physician, Ms. Stapleton’s employment was terminated which, unquestionably, is
9 an adverse employment action.

10 45. Ms. Stapleton’s taking of leave was a negative factor in Anthem’s decision to
11 terminate Ms. Stapleton’s employment given, *inter alia*, the *close temporal* proximity between Ms.
12 Stapleton’s return to work and termination, Owens’ hostile treatment of Ms. Stapleton which
13 followed within days of Ms. Stapleton informing Owens of her FMLA leave, and the fact that
14 Anthem’s stated reason for termination is a pretext to cover up the company’s illegal termination.
15 Further, under the FMLA, an employee returning from FMLA is to be treated as if he or she never
16 went on leave and Anthem’s termination of Plaintiff’s employment constitutes such interference
17 with that FMLA right.
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19 46. The Defendant’s acts and omissions have caused Ms. Stapleton damages in an
20 amount to be proven at trial.
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22 **(Count Two – Violation of Washington Law Against Discrimination (WLAD) – Disability,**
23 **Discrimination and Hostile Work Environment)**

24 47. Under the WLAD, RCW 49.60.180, an employee’s perceived or actual disability
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cannot be a substantial factor in an employer's adverse employment action.

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2 48. In order to state a WLAD disability discrimination claim the plaintiff must establish
3 satisfactory workplace performance, the existence of a disability, an adverse employment action,
4 and a causal connection between the disability and adverse employment action.

5 49. Ms. Stapleton (a) performed her work satisfactorily as evidenced by the above-
6 referenced customer comments, (b) was disabled (or perceived as disabled) as shown by her knee
7 injury, (c) suffered an adverse employment action as shown by her termination, and (d) establishes
8 a causal connection between the disability and firing via, *inter alia*, the (i) close proximity between
9 her May 26, 2017 removal from "certified" leave and her request for an extension of leave thereafter
10 and her June 13, 2017, firing; (ii) Owens' statements about the company "reconsidering" Ms.
11 Stapleton's position following Ms. Stapleton telling Owens of her disability; and, (iii) the (false)
12 disciplinary write-up contained in Ms. Stapleton's performance file that placed Ms. Stapleton on a
13 performance improvement plan five days before Ms. Stapleton actually started working at Anthem.
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15 50. The Defendant's acts and omissions have caused Ms. Stapleton damages in an
16 amount to be proven at trial.

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18 **(Count Three – Violation of Washington Law Against Discrimination - Retaliation)**

19 51. The WLAD's anti-retaliation provision provides, in part:

20 It is an unfair practice for any employer, employment agency, labor union, or other
21 person to discharge, expel, or otherwise discriminate against any person because he
22 or she has opposed any practices forbidden by this chapter, or because he or she has
23 filed a charge, testified, or assisted in any proceeding under this chapter. RCW
24 49.60.210.

25 52. Practices protected under the WLAD's anti-retaliation provision include, without
limitation, requesting an accommodation and complaining, to HR, of disability discrimination.

1 53. Ms. Stapleton both requested an accommodation and complained of disability
2 discrimination, was summarily terminated, and, for the reasons stated above, her requests for
3 accommodation and complaints to HR were substantial factors in Anthem's decision to fire her.

4 54. Anthem's actions caused Ms. Stapleton damages in an amount to be proven at trial.

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6 **(Count 4 – Wrongful Discharge in Violation of Recognized Public Policy for
7 Exercising a Legal Right or Privilege)**

8 55. Washington law clearly protects employees from wrongful discharge for exercising
9 a legal right or privilege regardless of whether the employee's employment is at-will. *Thompson*
10 *v. St. Regis Paper Co.*, 102 Wn.2d 219 (1984).

11 56. To state a cause of action for wrongful discharge Ms. Stapleton must prove that her
12 termination was motivated by reasons that contravene an important mandate of public policy, in
13 this case, exercising a legal right or privilege to avail herself of protection under Chapter 49.78
14 RCW and Chapter 49.60 RCW as it relates to her additional claims for violation of her rights under
15 the state Family Medical Leave Act and Washington's Law Against Discrimination.

16 57. Ms. Stapleton's exercise of the legal rights or privileges set forth above was a
17 substantial factor for her termination from employment.

18 58. Anthem's actions caused Ms. Stapleton damages in an amount to be proven at trial.

19 **IV. PRAYER FOR RELIEF**

20 Ms. Stapleton respectfully seeks:

21 A. All damages allowed under the law including front pay, back pay, liquidated
22 damages, pre-judgment interest, adverse tax consequences, and general damages including,
23 without limitation, emotional distress damages. *See* Chapter 49.78 RCW and Chapter 49.60 RCW
24 and what is allowed under a common law claim of wrongful discharge.

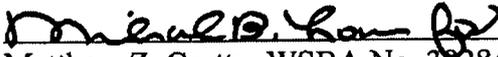
1 B. Attorneys' fees, costs, and litigation expenses as allowed under RCW 49.48.030,
2 49.60.030(2), 49.78.330(3).

3 C. A declaration that Defendant violated the FMLA and WLAD and wrongfully
4 discharged her in violation of a recognized public policy.

5 D. All other relief that is just and equitable.

6 DATED this 25th day of October 2017.

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