

RECEIVED

JAN 17 2020

ATTORNEY GENERAL'S OFFICE  
SPOKANE-TIME

COPY  
Original Filed

JAN 17 2020

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

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

KATHRYN ANDERSON,

Plaintiff,

vs.

WASHINGTON STATE UNIVERSITY,

Defendant.

Case No.

20 200202-32

COMPLAINT & DEMAND FOR JURY  
TRIAL

COPY

The Plaintiff, KATHRYN ANDERSON, by and through MATTHEW Z. CROTTY, of CROTTY & SON LAW FIRM, PLLC complains of Defendant and alleges as follows:

**I. PARTIES, JURISDICTION, & VENUE**

1. Kathryn Anderson was employed by the above-captioned Defendant during the time-frame relevant to this lawsuit and worked in Whitman County, Washington, on behalf of Defendant.
2. Defendant Washington State University ("WSU") conducted business in Spokane County, Washington, at all times relevant to this lawsuit.
3. The Spokane County Superior Court has jurisdiction over this case.

1 4. Venue is proper in Spokane County because, *inter alia*, Defendant conducts business  
2 in Spokane County.

3 5. Dr. Anderson served State of Washington's Department of Enterprise Services (DES)  
4 with a Notice of Tort Claim and did so on or about January 25, 2019. The DES acknowledged receipt  
5 of the Notice of Tort Claim and did so on or about February 14, 2019. Over sixty days have elapsed  
6 since January 25, 2019. The administrative pre-requisites to bringing this lawsuit are satisfied.

## 7 II. FACTS

8 6. Dr. Anderson incorporates the above facts as if pled verbatim herein.

9 7. On October 27, 2017 Dr. Wesley Dowd, Dr. Anderson's former supervisor, offered  
10 Dr. Anderson a three-year post-doctoral research assistant position, which began January 2018.  
11

12 8. Dr. Anderson began work at WSU on January 2, 2018.

13 9. WSU employed Dr. Anderson as a post-doctoral research assistant.

14 10. At all times relevant to this lawsuit Dr. Anderson suffered from sleep apnea.

15 11. Sleep apnea is a disability as it, among other things, affects the major life activity  
16 of sleeping.

17 12. In early January 2018, after Dr. Anderson had been working in Dr. Dowd's lab for  
18 approximately one week, Dr. Anderson approached Dr. Dowd to explain her health issues and  
19 discuss accommodation options. Dr. Anderson explained to Dr. Dowd that mornings were a really  
20 challenging time for her and that her sleep apnea made it nearly impossible for her to maintain a  
21 traditional 9AM-5PM schedule. Dr. Anderson explained her intention to compensate for late  
22 arrival mornings by working later in the evenings and on weekends, as she did in her previous  
23  
24

1 research appointment, while attaining her PhD. This was a reasonable request on Dr. Anderson's  
2 part, especially given the lab's need for weekend and evening tasks.

3 13. Dr. Anderson also disclosed to Dr. Dowd her discomfort with requesting the  
4 accommodation because she recognized a cultural bias regarding "early risers" regardless of  
5 medical diagnosis.

6 14. Dr. Anderson told Dr. Dowd about her own sleep apnea diagnosis, formalized in  
7 October 2017 to which Dr. Dowd assured Dr. Anderson that he trusted her self-reporting that her  
8 condition was "medical," and they could make informal accommodations work. However, Dr.  
9 Dowd also told Dr. Anderson that his goal as a post-doc was always to beat his supervisor to work,  
10 which made Dr. Anderson feel uncomfortable. Dr. Dowd then asked if Dr. Anderson could arrive  
11 by 10:30 each day to which Dr. Anderson replied that would be hard to guarantee but that she will  
12 arrive as early as physically possible. Dr. Dowd asked if Dr. Anderson's condition would improve  
13 to which Dr. Anderson responded that the sleep disorder was chronic. Dr. Anderson then told Dr.  
14 Dowd about a smart phone application she used at her previous employment to track hours and  
15 offered to submit time sheets to which Dr. Dowd replied that the time sheets are not necessary.  
16  
17

18 15. On January 29, 2018, Dr. Dowd encouraged Dr. Anderson to meet with WSU HR  
19 Ms. Carter regarding a reasonable accommodation agreement so as to allegedly "protect Dr.  
20 Anderson." According to WSU HR meeting notes, Dr. Anderson spoke with Ms. Carter (WSU HR)  
21 who told her most postdocs set their own hours; hence an RA (Reasonable Accommodation letter)  
22 was not necessary.

23 16. During the first week of February 2018, Dr. Anderson met with Dr. Dowd to report  
24 Ms Carter's assessment of flexible work hours. In response Dr. Dowd stated that, with HR approval,  
25

1 he was fine with Dr. Anderson setting her own hours to accommodate her health issues. Dr.  
2 Anderson asked Dr. Dowd if he would like to talk to Ms. Carter and Dr. Anderson at the same time  
3 to make sure everyone was on the same page. Dr. Dowd declined saying that it was all settled.

4 17. During the entire month of January 2018, WSU did not discipline Dr. Anderson for  
5 any workplace related conduct.

6 18. During the entire month of February 2018 WSU did not discipline Dr. Anderson for  
7 any workplace related conduct.

8 19. During the entire month of March 2018 WSU did not discipline Dr. Anderson for any  
9 workplace related conduct.

10 20. During the entire month of April 2018 WSU did not discipline Dr. Anderson for any  
11 workplace related conduct.

12 21. On April 24, 2018, after a challenging weekend with unanticipated animal deaths in  
13 the laboratory, Dr. Dowd emailed Dr. Anderson requesting to meet ASAP. Dr. Dowd then revoked  
14 the previously agreed upon informal accommodation for flex time, saying that nontraditional hours  
15 “didn’t work for him, that they had never worked for him.” Dr. Dowd accused Dr. Anderson of  
16 dishonesty in her hourly reporting. When Dr. Anderson offered to share her hourly location tracker  
17 app and/or initiate detailed time sheet reporting, Dr. Dowd refused both again, saying that Dr.  
18 Anderson “needed to be in the lab whenever he was in the lab.”

19 22. On May 15, 2018, Dr. Dowd and Dr. Anderson, while working one of the growth  
20 chambers with, Dr. Dowd announced: “[w]e seem to have gotten off on the wrong foot, and I don’t  
21 know if we can get back from that.” Dr. Anderson responded: “[w]hat wrong foot was that? I thought  
22 things started pretty well.” To which Dr. Dowd retorted, in a mocking tone, “[c]ome on! Who comes  
23  
24  
25

1 in and ask for medical accommodations their first week of work?"

2 23. That same day, May 15, 2018, Dr. Anderson informed Julie Carter and Dayna Coll  
3 (both employees of WSU's HR department) about Dr. Dowd's discriminatory and retaliatory acts.  
4 To Dr. Anderson's surprise, during that May 15<sup>th</sup> meeting, Ms. Coll or Ms. Carter told Dr. Anderson  
5 words to the effect of that WSU HR "generally discourage employees from making accommodation  
6 requests directly to their advisors, as it often results in discrimination." Dr. Anderson then asked  
7 what she should do given that she had already been discriminated against. Ms. Coll and Ms. Carter  
8 then encouraged Dr. Anderson to meet with the ombudperson and OEO.

9  
10 24. On May 16, 2018, Dr. Anderson met with the ombudsperson who claimed they did  
11 not feel able to resolve the situation. The ombudperson recommended Dr. Anderson reach out to  
12 the department chair, but also look for another job because he or she did not believe Dr. Dowd would  
13 be satisfied until Dr. Anderson had been "driven out."

14 **(The protected activity)**

15 25. On May 21, 2018, Dr. Anderson reported Dr. Dowd's retaliatory behaviors to the  
16 WSU's Office of Equal Opportunity.

17 **(The retaliation)**

18  
19 26. On May 21, 2018 Dr. Dowd met with WSU HR regarding Dr. Anderson's complaint.  
20 Meeting notes reveal several disparaging comments that Dr. Dowd made against Dr. Anderson. AT  
21 that meeting WSU HR instructed Dr. Dowd not to discuss Dr. Anderson's performance until a formal  
22 accommodation was in place and any OEO complaint was resolved.

23 27. On May 21, 2018, at 4:57 PM Cheryl Druffel, Dr. Dowd's administrator forwarded,  
24 to Dr. Dowd and Dr. Carter an email with the subject line "faculty manual." That email contained a  
25

1 single attachment. That attachment read:

2 **6. For Cause: Unsatisfactory Performance**

3 Indefinite research faculty compensated by extramural grant funding may be terminated if their  
4 performance is deemed unsatisfactory by the principal investigator of the research grant or contract to  
5 which their salary is charged. Indefinite faculty have access to advice from the Office for Equal  
6 Opportunity, the University Ombudsman, and the Faculty Status Committee.

7 28. On May 22, 2018, Dr. Dowd met with WSU HR (no name disclosed). Meeting notes  
8 report, "Wes [aka Dr. Dowd] said, 'Done with Kat, ie: does not want her in his lab any longer. Will  
9 pay her to stay away.'"

10 29. Armed with WSU policy on how to fire someone and angered by Dr. Anderson's  
11 May 21, 2018, complaint to the OEO (read: "done with Kat") Dr. Dowd embarked on a mission to  
12 write up Dr. Anderson for any and all performance related issues so as to cover up the retaliatory  
13 reason for her now pre-ordained firing.

14 30. On June 14, 2018 Dr. Anderson sent medical documentation of her sleep apnea  
15 condition to the WSU HR office, formalizing the previously agreed upon informal accommodation.

16 31. On June 20, 2018 WSU HR met with Dr. Dowd and mediator Zami to establish  
17 stipulations of Dr. Anderson's formal Reasonable Accommodation request to include: "Up to noon  
18 start time."

19 32. July 17, 2018 Dr. Dowd met with WSU HR. Meeting notes report,  
20 "Wes [Dr. Dowd] says, 'Frustrated about Kat situation.' Pat [Dr. Carter] says,  
21 Not much we can do about it, you'll have to hold on until 31 December 2018.'"

22 33. On July 30, 2018, WSU HR Analyst Ms Coll provided Dr. Anderson, Dr. Carter, Dr.  
23 Dowd and the Dr Hufford (Interim Dean) with a detailed accommodation agreement letter to support  
24 Dr. Anderson's flexible schedule request.

1           34.     After Dr. Anderson reported Dr. Dowd's disability discrimination in May 2018, the  
2 following retaliatory acts (by Dr. Dowd) occurred.

- 3       • Refusal to hold meetings or interact with Dr. Anderson face to face despite multiple written  
4 requests.
- 5       • Refusal to provide Dr. Anderson with necessary information needed to complete tasks.
- 6       • Removing Dr. Anderson from the project she was hired to do.
- 7       • Excluding Dr. Anderson from team meetings.
- 8       • Improperly delaying Dr. Anderson's work-related resource requests needed to complete  
9 research tasks.
- 10      • Removal of Dr. Anderson's supervisory responsibilities outlined in the original research  
11 proposal.
- 12      • Requiring Dr. Anderson to complete tasks that Dr. Dowd previously described as an  
13 unproductive use of her PhD level expertise and training.
- 14      • Refusal to train Dr. Anderson about relevant tasks and equipment.
- 15      • Excluding Dr. Anderson from lab decisions whereas other lab members with similar or less  
16 experience were included in said decisions.
- 17      • Wrongly claiming (to the Office of Equal Opportunity) that Dr. Anderson displayed a poor  
18 work ethic.
- 19      • Blaming Dr. Anderson for events out of her control (e.g. the meeting on April 24, 2018).
- 20      • Arbitrarily setting up new protocols that directly conflicted with Dr. Anderson's disability  
21 accommodations.
- 22      • Denying Dr. Anderson's requests to work past 5:30 PM, thereby impacting her productivity  
23 and interfering with her ability to work a 40 hour week.

24           35.     **Disparaging Dr. Anderson in front of undergraduate researchers; vocally**  
25 **criticizing her research related questions.** Dr. Anderson informed WSU's OEO of the above-  
referenced retaliatory actions during meetings on, at least, September 19, 2018 and October 4, 2018.  
Yet WSU did nothing to stop the retaliation.

1           36.     On October 15, 2018, WSU, terminated Dr. Anderson's employment, effective  
2 December 31, 2018. Dr. Dowd unquestionably requested the termination, with possible concurrence  
3 from HR.

4           37.     On December 12, 2018, Dr. Carter falsely accused Dr. Anderson of committing the  
5 crime of data theft. Dr. Carter claimed that some unnamed individual reported that Dr. Anderson  
6 was not allowing him or her to access certain data. This was a false claim. In response to this claim,  
7 Dr. Anderson promptly handed all data notebooks over to Dr. Dowd. At this time, Dr. Dowd  
8 informed Dr. Anderson that he had not thought Dr. Anderson was withholding data and had no idea  
9 why Dr. Anderson had received the accusatory email, which he had been cc'd on. Thus, Dr.  
10 Anderson immediately requested that WSU tell her who specifically made that report and to identify  
11 what data Dr. Anderson allegedly denied access. WSU has yet to tell Dr. Anderson who her accuser  
12 is nor to provide factual basis for the data accusation.

14           38.     On December 14, 2018, Dr. Anderson took leave from WSU under the  
15 recommendation of Michele Lynch, Dr. Anderson's Licensed Clinical Professional Counselor.  
16 Lynch advised Dr. Anderson not to return to work due to the hostile nature of the environment.

18           39.     In December 2018, upon approving Dr. Anderson's leave, Dr. Carter requested that  
19 Dr. Anderson use her remaining hours to write a research manuscript related to her work in the lab.  
20 However, Dr. Dowd refused to provide Dr. Anderson with the data required to complete the assigned  
21 task, rendering the research manuscript an impossible task. Dr. Dowd never provided the necessary  
22 data, despite January 8, 2019 confirmation from WSU counsel Terry Ryan that Dr. Anderson was,  
23 in fact, expected to submit the research manuscript. Both Dr. Dowd and Dr. Carter recognize the  
24 professional value of publication in Dr. Anderson's career path, thus withholding the data



1 represented work sabotage against Dr. Anderson.

2 40. WSU is partially funded by federal money as Dr. Anderson was hired as part of the  
3 NSF-IOS Grant Number 1655529.

4 41. As a condition of receiving the federal money WSU agrees to ensure that it maintains  
5 a workplace that is free of disability discrimination.

6 **III. CAUSE OF ACTION**

7 42. Dr. Anderson incorporates the above paragraphs as if pled verbatim herein.

8 **(Count One – Violation of the Washington Law Against Discrimination RCW**  
9 **49.60.210 - Retaliation)**

10 43. The WLAD's anti-retaliation provision provides, in part:

11 It is an unfair practice for any employer, employment agency, labor union, or other  
12 person to discharge, expel, or otherwise discriminate against any person because he  
13 or she has opposed any practices forbidden by this chapter, or because he or she has  
14 filed a charge, testified, or assisted in any proceeding under this chapter. RCW  
15 49.60.210.

16 44. Practices forbidden under the WLAD include, without limitation, disability  
17 discrimination.

18 45. Dr. Anderson opposed the workplace disability discrimination that she was  
19 experiencing at WSU when she complained to WSU OEO on May 21, 2018.

20 46. WSU retaliated against Dr. Anderson by terminating Dr. Anderson's employment  
21 effective December 31, 2018, as communicated in writing on October 15, 2018.

22 47. WSU's actions caused Dr. Anderson damages in an amount to be proven at trial.

23 **IV. PRAYER FOR RELIEF**

24 Dr. Anderson respectfully seeks:

1 A. All damages allowed under the law including front pay, back pay, pre-judgment  
2 interest, adverse tax consequences, and general damages.

3 B. Attorneys' fees, costs, and litigation expenses as allowed under RCW 49.48.030, and  
4 49.60.030(2).

5 C. A declaration that Defendant violated the WLAD.

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

7 DATED this January 17, 2020.

8  
9 CROTTY & SON LAW FIRM, PLLC

10  
11 By: 

12 Matthew Z. Crotty, WSBA No. 39284  
13 905 West Riverside Ave. Ste 404  
14 Spokane, Washington 99201  
15 Telephone No. 509.850.7011

16 Attorneys for Plaintiff  
17  
18  
19  
20  
21  
22  
23  
24  
25