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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 EDWARD MIER,)
11 Plaintiff,) NO. 2:21-cv-00144-SAB
12 vs.) AMENDED COMPLAINT
13)
14 MUTUAL OF ENUMCLAW)
15 INSURANCE COMPANY,)
16 Defendant.)

17
18 The Plaintiff, EDWARD MIER, by and through MATTHEW Z. CROTTY,
19 of CROTTY & SON LAW FIRM, PLLC, complains of Defendant and alleges as
20 follows:
21

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

23
24 1. Edward Mier was employed by the above-captioned Defendant during
25 the time-frame relevant to this lawsuit and worked in Spokane County, Washington,
AMENDED COMPLAINT - 1

1 on behalf of Defendant.

2 2. Defendant Mutual of Enumclaw Insurance Company (MoE) is
3 incorporated in the State of Oregon and conducted business in Spokane County,
4 Washington at all times relevant to this lawsuit.
5

6 3. The Eastern District of Washington has jurisdiction over this case under
7 the auspices of 28 U.S.C. § 1331 and 29 U.S.C. § 2617.
8

9 4. Venue is proper in the Eastern District of Washington because, *inter alia*,
10 MoE conducts business in Spokane County, Mr. Mier resides in Spokane County, and
11 because acts and omissions giving rise to Mr. Mier's complaint took place in Spokane
12 County, Washington.
13

14 II. FACTS

15 5. Mr. Mier incorporates the above facts as if pled verbatim herein.

16 6. MoE hired Mr. Mier in 2014 as a Claims Property Casualty Risk
17 Manager.
18

19 7. From 2014 through mid-2018 MoE timely promoted Mr. Mier, gave Mr.
20 Mier pay raises, and gave Mr. Mier good (if not excellent) performance reviews.
21

22 8. Beginning October 25, 2018, or thereabouts, things began to change.

23 9. On or about October 25, 2018, Mr. Mier's supervisor, Mike Adams, told
24 Mr. Mier that he (Mier) needed to fire MoE employee David Cannon because Mr.
25

1 Cannon was allegedly disruptive during a training class (which occurred during
2 October 23 -24 in Spokane) and because Mr. Cannon used FMLA for the purposes of
3 maternity and paternity leave and told a co-worker about how nice it was to be able to
4 take that leave.

5
6 10. Upon information and belief, Mr. Adams knew or had reason to know
7 that Mr. Cannon was a member of the Church of Jesus Christ of the Latter Day Saints
8 (LDS).

9
10 11. From time-to-time Mr. Cannon told Mr. Mier that he (Cannon) was LDS.

11 12. Knowing that Mr. Cannon was LDS and believing that Mr. Adams knew
12 that Mr. Cannon was LDS, Mr. Mier objected to Mr. Adams' instruction and did so
13 believing that religious discrimination was happening.

14
15 13. Knowing that management could not discriminate against a person who
16 took FMLA, Mr. Mier objected to Mr. Adams' instruction and did so believing that
17 discrimination relating to Mr. Cannon's FMLA usage was occurring.

18
19 14. Upon information and belief Mr. Cannon (a) requested FMLA relating
20 to the birth of one of his children (b) was eligible for FMLA leave, (c) took
21 approximately eight weeks of FMLA regarding the birth of a child, and (d) MoE
22 approved that leave.

23
24 15. Mr. Mier told Mr. Adams that Mr. Cannon's workplace performance was
25
AMENDED COMPLAINT - 3

1 on par (if not better than) the majority of his peers, that he had as good (or better)
2 results in the inactivity reports, customer surveys, and complaint logs compared to his
3 peers in Mr. Mier's department and compared to other lines of business (auto and
4 casualty) and that Mr. Cannon's work quality was also on par with his team and as
5 good or better than other lines of business. To illustrate this point Mr. Mier referred
6 Mr. Adams to reports showing how Mr. Cannon's performance peers stacked up with
7 his peers as further evidence of Mr. Cannon being unfairly discriminated against.
8
9

10 16. During that same conversation Mr. Mier told Mr. Adams that he (Mier)
11 had spoken to others in the class and none of those individuals reported Mr. Cannon
12 doing anything disruptive or disrespectful.
13

14 17. To be clear, during this conversation Mr. Mier told Mr. Adams words to
15 the effect of "this is discrimination" against Mr. Cannon. In response, Mr. Adams did
16 not ask Mr. Mier to explain what Mr. Mier meant by the word "discrimination".
17

18 18. The Equal Employment Opportunity Commission (EEOC) recommends
19 that employers, like MoE, conduct "a prompt, thorough and impartial investigation of
20 internal discrimination complaints about disciplinary action" which includes asking
21
22
23
24
25

1 “the employee to: Explain why he believes he was treated differently.”¹

2 19. Upon information and belief, MoE (which professes to care greatly about
3 eradicating workplace discrimination) trained Mr. Adams to ask follow up questions
4 when being confronted with a discrimination allegation.
5

6 20. Upon information and belief, Mr. Adams knew Mr. Mier was accusing
7 Mr. Adams of either religious discrimination, or discrimination for taking leave under
8 the FMLA, or both.
9

10 21. Mr. Mier concluded the conversation refusing to fire Mr. Cannon.

11 22. Believing that Mr. Adams was discriminating against Mr. Cannon on
12 account of his religion and/or FMLA usage, Mr. Mier, who understood that he *had* to
13 report suspected discrimination because MoE’s employee handbook required it, asked
14 that HR investigate the allegations against Mr. Cannon. Mr. Adams angrily replied
15 “there will be no HR investigation” and hung up the phone.
16
17

18 23. MoE policy does not give managers, like Adams, the discretion to ignore
19 complaints of discrimination like the one Mr. Mier brought to Mr. Adams on October
20 25, 2018.
21
22

23
24 ¹ See Handling Internal Discrimination Complaints About Disciplinary Action,
25 available at, <https://www.eeoc.gov/employers/small-business/handling-internal-discrimination-complaints-about-disciplinary-action> (last visited August 27, 2021).

1 24. Since Mr. Mier refused to fire Mr. Cannon, Mr. Adams took it upon
2 himself to call Mr. Cannon directly which Mr. Adams did on or around October 31,
3 2018, after regular business hours. During that conversation (of which Mr. Mier was
4 a party) Mr. Adams yelled at Mr. Cannon, accused him of being rude and disruptive
5 at the training event, and told Mr. Cannon that he had no future at MoE.
6

7 25. This late - October 2018 call involved Mr. Adams chastising Mr. Cannon
8 about a comment Mr. Cannon made regarding his (Cannon's) use of eight weeks of
9 FMLA leave relating to the birth of Mr. Cannon's fifth child.
10

11 26. Mr. Cannon would later describe (in an April 2021 complaint he
12 (Cannon) made to MoE) Mr. Adams' chastisement of Mr. Cannon for his FMLA
13 usage during that late-October 2018 call as follows:
14

15 One of the accusations involved a comment I had made about FMLA
16 leave. In November of 2017 my wife and I welcomed a son. We already
17 have 4 children and so my wife requested that I take some time off and
18 help out at home. I took about 8 weeks off. It was wonderful. I took
19 care of almost all the household chores, laundry, food preparation,
20 cleaning and even paid for and took some insurance classes on my own
21 time to help me become better in my job. The very fact that Mike and
22 Michelle brought this up and used the experience and the comment I
23 made about it being a great experience was both harassment and
24 retaliation and is against the law.
25

26 27. Later that day Mr. Cannon called former MoE employee Rod Layton who
27 then called Mr. Mier and asked Mr. Mier whether an HR complaint should be made
28

1 against Mr. Adams. Mr. Mier told Mr. Layton to tell Mr. Cannon that he should file
2 the complaint with HR. Mr. Mier later told Mr. Cannon this because Mr. Mier
3 suspected religious discrimination, discrimination for taking FMLA, or both was in
4 play and because MoE's employee manual required that such reports be made.
5

6 28. On November 1, 2018, Mr. Cannon emailed HR a complaint regarding
7 Mr. Adams.
8

9 29. Mr. Adams knew that Mr. Cannon filed an HR complaint against him.
10

11 30. Upon information and belief, Mr. Adams either knew or had reason to
12 know that Mr. Mier assisted Mr. Cannon in making the HR complaint.
13

14 31. A few weeks later Mr. Adams (who works at MoE's Enumclaw,
15 Washington location) traveled to Spokane and had lunch with Mr. Mier.
16

17 32. That lunch, which took place at the Red Lion Hotel, did not go well for
18 Mr. Mier. At that lunch Mr. Adams berated Mr. Mier for not firing Mr. Cannon, told
19 Mr. Mier that he regretted hiring him, questioned Mr. Mier's leadership skills,
20 questioned Mr. Mier's loyalty to MoE, and strongly implied that Mr. Mier's
21 performance evaluations would suffer.

22 33. In a late-2018 conversation Mr. Mier told Mr. Adams (and MoE manager
23 Michelle Wyatt who was also present) that Mr. Cannon was speaking with an attorney
24 about a religious discrimination claim against MoE. This discussion was consistent
25

1 with talks Mr. Cannon and Mr. Mier would have in which Mr. Cannon contended that
2 Ms. Wyatt was treating Christian employees poorly.

3 34. Upon information and belief, Mr. Mier's statement to Mr. Adams that
4 Mr. Cannon was being discriminated against on account of his religion was not news
5 to Mr. Adams (or Ms. Wyatt) as Mr. Layton, a former MoE employee with knowledge
6 of Mr. Adams' treatment of Mr. Cannon, alleged in an exit interview that Mr. Adams
7 and Ms. Wyatt were treating Christian employees poorly.
8
9

10 35. In early-January 2019 Mr. Mier told Mr. Adams and Ms. Wyatt that he
11 (Mier) believed that Mr. Cannon was being discriminated and that Mr. Cannon would
12 be making a discrimination claim against MoE. Neither Ms. Wyatt nor Mr. Adams
13 asked Mr. Mier to explain what he meant by discrimination.
14

15 36. In late-January 2019, Mr. Mier and Stephen Payne (a supervisor
16 reporting to Mr. Mier) conducted a phone call with Mr. Adams. The subject of the call
17 was one of Mr. Payne's workers, Ryan Johnson. Mr. Adams told Mr. Mier and Mr.
18 Payne to downgrade Mr. Johnson's performance evaluation from "Satisfactory" to a
19 lower rating.
20
21

22 37. Mr. Mier refused to downgrade Mr. Johnson's performance review.

23 38. Mr. Mier told Mr. Adams "what you want me to downgrade Ryan for
24 relates to Ryan going on FMLA to care for his terminally ill father. You can't do that.
25

1 It violates the FMLA because it's FMLA related.”

2 39. Mr. Adams was livid. He threatened Mr. Mier's and Mr. Payne's future
3 raises.

4 40. Mr. Mier told Mr. Adams to run the Ryan Johnson issue by HR. Mr.
5 Adams refused.
6

7 41. Upon information and belief, Mr. Adams did not check with MoE HR
8 regarding Mr. Johnson.
9

10 42. On February 6, 2019, Mr. Mier traveled to Enumclaw for his annual and
11 previously scheduled performance review. The vast majority of the performance
12 review involved Mr. Adams expressing anger to Mr. Mier about Mr. Mier's refusal to
13 go along with the management decisions he (Adams) was making regarding Mr.
14 Cannon and Mr. Johnson. Mr. Adams gave Mr. Mier the worst performance review
15 he'd ever received and ended the review saying “this is a shot across the bow” and “it
16 makes my blood boil when people go to HR.”
17
18

19 43. Mr. Adams' comments on Mr. Mier's 2018 performance review
20 (discussed and finalized on February 6, 2019) effectively admitted Mr. Adams'
21 disgust that Mr. Mier had the gumption to oppose Mr. Adams' discriminatory desires:
22
23
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25

Leadership at your level requires consideration of long term impacts to organizations outside of property or even claims.
Concerns around your approach/handling of the issue with David Cannon. Your main concern appeared to be the "risk" to the company. While it's possible that the company may have faced some exposure from a termination of employment, there were other considerations. The other part of the "equation" is the cost to the company in lost productivity, potential member/agent impact and lost customer opportunity, impact on co-workers (both in the unit and others) and the fact that we have an employee with limited potential taking a spot that could be filled by a new employee who has potential to make a greater contribution. In situations like this self-assurance and confidence are key. When asked if you'd want more adjusters like David, you said "no". If that's the case then you can't accept the status-quo, this employee has had performance issues in the past and behavior issues recently. Some issues are still present

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8 44. On or about April 7, 2019, Mr. Mier told Sandy Williams (MoE) HR (a)
9 that he (Mier) believed that he was getting retaliated against by Mr. Adams for
10 opposing Mr. Adams' efforts to fire Mr. Cannon (b) to review Mr. Mier's most recent
11 performance review (quoted in the above paragraph) where the issue of Mr. Cannon's
12 potential termination was addressed, and (c) to follow up with Mr. Mier if more
13 information was needed.
14

15
16 45. Although MoE policy requires investigation of allegations of harassment
17 MoE HR conducted no such investigation into Mr. Mier's complaint.

18 46. Instead MoE fired Mr. Mier.

19
20 47. On April 8, 2019, Mr. Adams fired Mr. Mier for "a perception of a
21 conflict of interest" because Mr. Adams supposedly heard from someone that Mr.
22 Mier spoke to his (Mier's) cousin about a claim that Mr. Mier's cousin's company
23 (Maxcare) was working on.
24

1 48. As of April 8, 2019, Maxcare was one of MoE's preferred vendors.

2 49. Before April 8, 2019, (and before the end of January 2019) Mr. Mier told
3 Mr. Adams that his cousin worked at Maxcare to which Mr. Adams indicated that
4 there was no problem. Previously Mr. Mier disclosed his relationship with Maxcare
5 in writing per MoE conflict avoidance policy.
6

7 50. When told of this Mr. Mier said, to Mr. Adams, "how is this a conflict?
8 You knew, cause I told you well before this, that my cousin works at Maxcare." Mr.
9 Adams had no substantive response other than to say that he'd been reviewing Mr.
10 Mier's emails (none of which Mr. Adams showed to Mr. Mier) regarding the Maxcare
11 matter but Mr. Adams would not let on as to what the supposedly incriminating emails
12 said.
13

14
15 51. MoE's stated reason for firing Mr. Mier (potential conflict of interest) is
16 a pretext as Mr. Mier disclosed that potential conflict to which MoE management
17 expressed no concern. For it was only after Mr. Mier persisted in opposing Mr.
18 Adams' threatened FMLA violations that this "conflict" became an issue.
19

20
21 52. It is MoE policy to only disclose employment dates and position held
22 when prospective employers call MoE for reference checks.

23 53. However, MoE did not follow that policy when it came to Mr. Mier.

24 54. Months after his retaliatory firing Mr. Mier applied for (and was offered)
25

1 a job at PEMCO only to have that offer rejected after someone from MoE told
2 PEMCO that Mr. Mier was fired for a conflict of interests.

3
4 **III. CAUSES OF ACTION**

5 55. Mr. Mier incorporates the above paragraphs as if pled verbatim herein.

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

7 56. The FMLA bars employers from discharging or in any other way
8 discriminating against any person, whether or not an employee, for opposing or
9 complaining about any unlawful practice under the FMLA.
10

11 57. It is an unlawful practice for an employer to downgrade an employee's
12 performance evaluation because the employee took leave under the FMLA. It is also
13 an unlawful employment practice for an employer to discriminate against an employee
14 who opposes the firing of a worker because that worker took FMLA.
15

16 58. On at least two occasions Mr. Mier opposed Mr. Adams' stated intent to
17 either fire or punish workers who had taken FMLA.
18

19 59. Within months of each opposition Mr. Mier received a poor performance
20 review and, following that, had his employment terminated for a pretextual reason.
21

22 60. MoE's actions have caused Mr. Mier damages in an amount to be proven
23 at trial.
24

1 **(Count Two – Wrongful Discharge in Violation of Public Policy)**

2 61. A common law wrongful discharge in violation of public policy claim is
3 actionable where, as is the case here, “employees are fired for refusing to commit an
4 illegal act.” *Rose v. Anderson Hay & Grain Co.*, 184 Wn.2d 268, 276 (2015).
5

6 62. Here Mr. Mier refused to commit two illegal acts. The first illegal act
7 was his refusal to fire Mr. Cannon at Mr. Adams’ request because of Mr. Cannon’s
8 FMLA usage and because of Mr. Mier’s belief that Mr. Adams was targeting Mr.
9 Cannon on account of Mr. Cannon’s LDS faith. The second illegal act was Mr. Mier’s
10 refusal to downgrade Mr. Johnson’s performance review because of an issue relating
11 to Mr. Johnson’s FMLA usage.
12

13 63. MoE terminated Mr. Mier’s employment on account of his refusal to
14 commit those two acts.
15

16 64. MoE has caused Mr. Mier damage in an amount to be determined at trial.
17

18 **(Count Three – Wrongful Discharge Based Upon Breach of a Promise)**

19 65. Washington law protects employees from wrongful discharge based
20 upon a breach of a promise contained in an employee’s handbook regardless of
21 whether the employee’s employment is at-will.
22

23 66. To prosecute such a claim the employee must show “(1) that a statement
24 (or statements) in an employee manual or handbook or similar document amounts to
25

1 a promise of specific treatment in specific situations, (2) that
2 the employee justifiably relied on the promise, and (3) that
3 the promise was breached.” *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cty.*, 189
4 Wn.2d 516, 540 (2017).

5
6 67. The “specific situation” situation at issue here involved Mr. Mier
7 “feeling” that he witnessed discrimination on account of Mr. Cannon’s religion and
8 on account of Mr. Cannon and Mr. Johnson’s FMLA usage and reporting that
9 suspected discrimination to Mr. Adams (October 2018 & late-January 2019) and HR
10 (April 2019).

11
12 68. MoE’s Employee Handbook, page 6, lists “*EEO responsibilities*”
13 including ensuring that “no discrimination of any type occurs in daily working
14 activities and team interactions.”

15
16 69. An “*Employee[s] EEO responsibilities*” are “**A CONDITION OF**
17 **EMPLOYMENT AT MUTUAL OF ENUMCLAW**”.

18
19 70. Consistent with the condition of employment that MoE employees
20 ensure that “no discrimination of any type occurs”, MoE’s Employee Handbook,
21 page 7, ***requires*** (“you are to notify your Supervisor...immediately”) employees to
22 report ***harassment*** said employees “***feel***” they “experienced or ***witnessed.***” *Id.*
23 (emphasis added).
24
25

1 71. MoE’s Employee Handbook, page 7, defines “harassment” as
2 “unwelcome conduct...which may be based upon a person’s protected status such
3 as...religion...or other protected group status.”

4 72. Using FMLA places a worker in a “protected group status.”

5
6 73. In exchange complying with *the requirement* that supervisors be
7 notified of harassment an employee *feels* he or she witnessed, MoE’s Employee
8 Handbook, page 7, *promises* that “the Company forbids retaliation against anyone
9 who has reported harassment.”

10
11 74. The MoE handbook, page 8, also promises a thorough and prompt HR
12 investigation of any report of harassment.

13
14 75. Mr. Mier justifiably relied upon this promise in MoE’s manual when
15 he opposed Mr. Adams’ harassment of Mr. Cannon and Mr. Johnson.

16
17 76. Mr. Mier’s reliance was justifiable because he read the above-
18 referenced provisions and understood them to mean that if he wanted to stay
19 employed by MoE he *had* to report harassment (here religious and FMLA
20 discrimination) he *felt* he *witnessed* and, in exchange for making the required report
21 to management, he would not be retaliated against.

22
23 77. Mr. Mier also justifiably relied on MoE’s promises based off of his
24 experience with his prior employer, Traveler’s Insurance. Travelers’ HR was greatly

1 involved in ensuring employee performance problems were addressed whereas
2 MoE's HR department was not. This difference (HR involvement at Travelers verses
3 no HR involvement at MoE) motivated Mr. Mier to rely on the directives and
4 promises made by MoE in its policy manual that he would not be retaliated against
5 should he do what MoE HR was supposed to do in taking steps to ensure adverse
6 employment decisions are not made for illegal purposes.
7

8
9 78. Mr. Mier also justifiably relied on MoE's promises because Mr.
10 Adams' notes in Mr. Mier's performance review indicated that any employment
11 decision regarding Mr. Cannon was up to Mr. Adams and Ms. Wyatt (with no
12 mention of HR weighing in on whether such actions were motivated by a retaliatory
13 or discriminatory animus) which, in turn, led Mr. Mier to repeatedly tell (e.g. on
14 October 25, 2018, and in late-January 2019) Mr. Adams that HR needed to be
15 involved in addressing issues with Mr. Cannon and Mr. Johnson.
16
17

18 79. Mr. Mier was aware of the enforceable promise contained in the MoE
19 employee manual at the time he opposed Mr. Adams' discriminatory acts and was
20 aware of (and relied on) that policy when he reported Mr. Adams' retaliatory conduct
21 to HR.
22

23 80. MoE breached this promise of specific treatment when it terminated
24 Mr. Mier's employment.
25

1 81. Defendant's actions caused Mr. Mier damages in an amount to be
2 proven at trial.

3 **IV. PRAYER FOR RELIEF**

4 Mr. Mier respectfully seeks:

5
6 A. All damages allowed under the law including front pay, back pay, pre-
7 judgment interest, adverse tax consequences, liquidated damages, and general
8 damages.

9
10 B. Attorneys' fees, costs, and litigation expenses as allowed under RCW
11 49.48.030, and the FMLA.

12
13 C. A declaration that Defendants violated the FMLA and the common law
14 relating to wrongful discharge.

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

16 DATED this 30th day of August 2021.

17
18
19 CROTTY & SON LAW FIRM, PLLC

20
21 By/s/ Matthew Z. Crotty

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CERTIFICATE OF SERVICE

I certify that on August 30, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties, if any, shall be served in accordance with the Federal Rules of Civil Procedure.

CROTTY & SON LAW FIRM, PLLC

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