

COPY

Original Filed

AUG 26 2021

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

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

JUSTIN CARLILE,

Plaintiff,

vs.

WASTE CONNECTIONS US, INC.,

Defendant.

Case No.

21202373-32

**COMPLAINT & DEMAND FOR JURY
TRIAL**

COPY

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

I. PARTIES, JURISDICTION, & VENUE

1. Justin Carlile 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 Waste Connections U.S., Inc. (WC) is headquartered in The Woodlands, Texas and conducted business in Spokane County, Washington at all times relevant to this lawsuit.
3. The Spokane County Superior Court has jurisdiction over this case.

**COMPLAINT & DEMAND FOR JURY
TRIAL - 1**

1 4. Venue is proper in Spokane County because, *inter alia*, Defendant conducts business
2 in Spokane County, Plaintiff resides in Spokane County, and because acts and omissions giving rise
3 to Mr. Carlile's complaint took place in Spokane County, Washington.

4 **II. FACTS**

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

6 6. WC hired Mr. Carlile as a general laborer in May 2019.

7 7. WC promoted Mr. Carlile into a leadership position (Operations Supervisor) in
8 February 2020 at WC's worksite located in Spokane Valley, Washington (the Valley Transfer
9 Station).

10 8. On or around June 8, 2021 Quinn Gonder became Mr. Carlile's supervisor.

11 9. In early June 2021 Aaron Lawhead served as Mr. Gonder's supervisor.

12 10. Mr. Lawhead has a practice of those who take workplace disability leave "pussies"
13 "bitches" and other demeaning words. At one time Mr. Lawhead told a former WC manager that
14 "Dan" who had a L&I claim was a "bitch" for taking time off of work. At another time Mr. Lawhead
15 told that same manager that Matt was a "typical millennial" for taking time off to be with his
16 pregnant wife.
17

18 11. Between his May 2019 hiring at WC and June 2021 Mr. Carlile had no documented
19 performance issues. He'd never been written up or put on notice that his workplace performance was
20 lacking.
21

22 12. Beginning in early June 2021 Mr. Carlile began feeling symptoms consistent with
23 anxiety and depression. Those symptoms included difficulty concentrating, fatigue, feelings of
24 helplessness, difficulty sleeping, and inability to control worrisome feelings.
25

1 13. On June 10, 2021, Mr. Carlile asked Mr. Gonder to have half of June 11, 2021, off.
2 Recently Mr. Carlile (now a salaried employee) had been working approximately 55/hours per week.
3 Mr. Gonder initially denied Mr. Carlile's request but a few hours changed his mind and, in doing so,
4 announced his decision over the radio where Mr. Carlile's WC co-workers could now hear words to
5 the effect of "if you guys are good Justin's gonna take the rest of the day off."

6 14. Mr. Carlile, taking Mr. Gonder's hint that taking time off wasn't what the boss
7 wanted, opted to stay at work.

8 15. On June 14, 2021, Mr. Gonder took Mr. Carlile aside and chastised him for not giving
9 "100%" and Mr. Carlile's efforts "weren't enough." Mr. Gonder's critiques shocked Mr. Carlile as
10 up until he'd asked Mr. Gonder for a half day off to address mental health issues he'd received no
11 negative feedback. Further, up until June 14, 2021, Mr. Carlile had called in sick once since
12 beginning work at WC¹.

13 16. On the afternoon of June 14th Mr. Carlile made a doctor's appointment. That evening
14 Mr. Carlile went home. He was stressed. His blood pressure was elevated. He looked awful. Mr.
15 Carlile's parents advised him to go to the doctor.

16 17. On June 15, 2021, around 8:40 AM Mr. Carlile visited Dr. Cecilia T. Pham who, in
17 turn, diagnosed Mr. Carlile with anxiety and depression and advised Mr. Carlile to take leave under
18 the Family Medical Leave Act (FMLA).

19 18. On June 15, 2021, Mr. Carlile applied for FMLA via WC's third party benefits
20 administrator, Cigna.

21
22
23
24
25 ¹ Mr. Carlile's WorkDay account will likely reflect greater than one day of sick leave; however,
those excess days were used for vacation after being approved by management.

1 19. On June 15, 2021, at 12:38 PM Mr. Carlile emailed Mr. Gonder in order to tell him
2 that he was taking medical leave effective immediately.

3 20. Sometime during June 15, 2021, Mr. Gonder called Mr. Carlile's former manager
4 (Matt Konzel) and asked Mr. Konzel words to the effect of "what's wrong with Justin? Why's he
5 gone?"

6 21. About 3-4 other times Mr. Gonder would (throughout June – July) follow up trying
7 to get information on why Mr. Carlile was on leave.

8 22. On June 15, 2021, at 3:43 PM Mr. Carlile emailed Mr. Gonder, Laura Hoel (a WC
9 "HR Generalist" located in Western Washington), Mr. Lawhead, and Jason Hudson (a WC Division
10 Director) and wrote, in part:
11

12 I was disappointed and concerned when you met with me on 6-14 about my work
13 hours. I left last Thursday, June 10th at 430pm after arriving at work at
14 approximately 630 am. That was 30 minutes before close and I had worked a 10
15 hour day. The team was in a good place and I was following what Aaron had said
16 that days to leave early don't often present themselves so get out of work when you
17 can. It is a rare occasion I ever flex my time. I asked if I could take a 1/2 personal
18 day on Friday June 11th as I needed a mental health day. Not only did you deny my
19 ability to flex my schedule, you later changed your mind. You proceeded to
20 announce it to the team over the radio and I did not leave. I felt compelled to stay
21 based on your first response and lack of support for my mental health.

18 ...

19 Instead of recognizing my dedication to the organization and my ability to flex up
20 not just down you indicated that it "wasn't enough" and I need to give "100%". As
21 a salaried employee who is in a leadership role my time management skills, my
22 over-site for this team and the facility have never been of question or concern.

23 23. This wasn't Ms. Hoel's first rodeo regarding an employee seeking workplace FMLA
24 leave on account of depression. In 2019 Ms. Hoel signed a declaration in support of WC's request
25 to dismiss an employee's disability discrimination and FMLA claims in the *Poe v. Waste*

1 *Connections, U.S. Inc. 3:17-cv-6014-RJB (W.D. Wash.) lawsuit.*

2 24. Upon information and belief, Mr. Gonder did not like being called out in front of his
3 bosses (and HR) for not accommodating the mental health concerns of a peer.

4 25. Mr. Carlile's FMLA leave lasted from June 15, 2021, through July 12, 2021.

5 26. On July 8, 2021, Dr. John Shetlar released Mr. Carlile back to work but limited his
6 work week to 40 hours.

7 27. On July 9, 2021, Mr. Carlile emailed Ms. Hoel and Mr. Lawhead in order to inform
8 both "I am cleared to return to work on the Monday July 12th. I am limited to only 40 hours a week
9 per doctors request as well as an hour phone call per week with my doctor. I already reached out to
10 Aaron and explained restrictions of my return and we agreed to a 9am - 530pm shift. Let me know
11 if you have any other questions."

12 28. Mr. Carlile arrived at work on July 12, 2021, at 9:00 AM and was shocked to see the
13 items in his work locker (boots, Patagonia pants, Yeti cup, hard hat) were missing. Mr. Carlile also
14 noticed that the workplace vibe seemed different. He felt shunned. He felt ostracized. Only one
15 person spoke with him and that conversation was brief.
16

17 29. At 9:30 AM on July 12, 2021, Mr. Carlile met with Mr. Gonder and Mr. Lawhead.
18 Mr. Carlile showed Mr. Lawhead and Mr. Gondor his doctor's note which, in turn, informed WC
19 that Mr. Carlile's work week was to be 40 hours or less. Mr. Lawhead asked Mr. Carlile "why the
20 restriction" and "what are the restrictions for" to which Mr. Carlile replied words to the effect of
21 "it's not a physical issue but the details are between my doctor and me." Mr. Carlile asked "where's
22 my stuff" to which Mr. Gonder and Mr. Lawhead professed ignorance that Mr. Carlile's gear was
23 missing. Mr. Lawhead then dismissed Mr. Carlile from the workplace and told him to work from
24
25

**COMPLAINT & DEMAND FOR JURY
TRIAL - 5**

1 home until July 15th “until HR could come into town.”

2 30. Mr. Carlile returned to work on July 15, 2021, whereupon Mr. Gonder put Mr. Carlile
3 on a Performance Improvement Plan (PIP). The PIP asked Mr. Carlile to, among other things,
4 improve his “servant leadership” and claimed that “[t]here have been complaints from staff that their
5 needs of a supervisor are not being met.”

6 31. The PIP contained no objectively measurable performance objectives.

7 32. Present at this meeting were Mr. Gonder, Mr. Lawhead, and Ms. Hoel from HR.

8 33. The PIP ended stating “[w]e will follow up every 30 days to review your forward
9 progress” - - - a statement Mr. Carlile understood to mean that he had at least until August 15, 2021,
10 to improve.
11

12 34. Mr. Carlile took immediate steps to comply with the very vague and very subjective
13 PIP. He met with his team members and had conversations with all but one - - - an individual named
14 “Keith” who outright refused to talk to Mr. Carlile.

15 35. Mr. Carlile kept Mr. Gonder informed of his work on complying with the PIP.

16 36. Between July 15, 2021, and August 2, 2021, neither Mr. Gonder, Mr. Lawhead, nor
17 anyone else at WC tell Mr. Carlile that he wasn’t doing enough to comply with his PIP. In fact, on
18 July 29, 2021, Mr. Gonder left Mr. Carlile in charge of the Spokane Valley worksite while Mr.
19 Gonder went to Vancouver.
20

21 37. On August 3, 2021, Mr. Carlile met with Mr. Lawhead for a previously scheduled
22 1:1. At that meeting WC fired Mr. Carlile. Mr. Lawhead’s stated reason for firing Mr. Carlile was
23 “performance” insofar as Mr. Carlile’s reports (Keith being one of them) allegedly had “lost respect”
24 for Mr. Carlile because he went on leave and that Mr. Carlile should have notified his reports of his
25

1 absences.

2 38. Mr. Carlile ended the meeting saying words to the effect of “this is retaliation for me
3 going on FMLA.”

4 **III. CAUSES OF ACTION**

5 39. Mr. Carlile incorporates the above paragraphs as if pled verbatim herein.

6 **(Count One & Two – Violation of the Family Medical Leave Act (FMLA) – Interference and**
7 **Retaliation)**

8 40. The elements of an FMLA interference claim require proof the employee (1) was
9 eligible for the FMLA's protections, (2) the employer was covered by the FMLA, (3) the employee
10 was entitled to leave under the FMLA, (4) the employee provided sufficient notice of her intent to
11 take leave, and (5) the employer denied her FMLA benefits to which she was entitled.” *Bushfield v.*
12 *Donahoe*, 912 F. Supp. 2d 944, 953 (D. Idaho 2012) (*citing Sanders v. City of Newport*, 657 F.3d
13 772, 778 (9th Cir. 2011)). “The employer's intent is irrelevant to a determination of liability in an
14 interference claim.” *Id.* (*citing Sanders*).

15
16 41. Mr. Carlile was eligible for FMLA’s protections. Mr. Carlile worked in excess of
17 1,250 hours for WC in the year prior to June 15, 2021.

18
19 42. WC is an FMLA covered employer. During the timeframe relevant to this lawsuit
20 WC employed in excess of 50 employees within a 75-mile radius of Mr. Carlile’s Spokane Valley,
21 Washington worksite.

22 43. Mr. Carlile was entitled to FMLA leave as his depression and anxiety was a serious
23 health condition.

24 44. Mr. Carlile informed WC of his intent to take FMLA leave.

1 45. WC denied Mr. Carlile the benefit of continued (post August 3, 2021) FMLA
2 eligibility by firing him for failing to do something the FMLA didn't require: tell one's co-workers
3 the reason for taking leave.

4 46. As it relates to the FMLA retaliation claim a plaintiff must show "(1) he availed
5 himself of a protected right under the FMLA; (2) he was adversely affected by an employment
6 decision; and (3) there is a causal connection between the two actions." *Bourgo v. Canby Sch. Dist.*,
7 167 F. Supp. 2d 1173, 1179 (D. Or. 2001). And circumstantial evidence of close proximity between
8 the protected FMLA leave and discharge, standing alone, is enough to withstand summary judgment.
9 *Foraker v. Apollo Grp., Inc.*, 427 F. Supp. 2d 936, 942 (D. Ariz. 2006) *aff'd*, 302 F. App'x 591 (9th
10 Cir. 2008); *Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 507 (9th
11 Cir.2000).

12
13 47. Mr. Carlile took leave under the FMLA form June 15, 2021, through July 12, 2021.

14 48. WC placed Mr. Carlile on a PIP the day he returned to the worksite following his
15 FMLA, stole his personal belongings while Mr. Carlile was on FMLA, and then fired Mr. Carlile
16 before the 30-day PIP timeframe expired and justified its firing on made up performance grounds
17 when those supposed performance issues were based on Mr. Carlile going on leave but not telling
18 his subordinates why.
19

20 49. A causal connection exists for the reasons set out in the above-paragraph including
21 (a) the closeness in time between FMLA ending and the PIP, theft, and discharge, (b) WC not having
22 any documented performance issues with Mr. Carlile until *after* he returned from FMLA, and (c)
23 WC firing Mr. Carlile before his PIP ended.

24 50. WC's violations of the FMLA are willful. The HR Generalist (Ms. Hoel) who was
25

1 involved in Mr. Carlile's FMLA was well aware of FMLA and rules regarding disabled employees
2 as she'd been involved in a lawsuit regarding both years earlier. Surly she knew better but either
3 assisted WC in violating the FMLA or sat idly by and allowed Mr. Carlile's management to fire him
4 for no legitimate reasons.

5 51. WC's violations of the FMLA caused Mr. Carlile damages in an amount to be proven
6 at trial.

7 **(Count Three– Disability Discrimination)**

8 52. In order for Mr. Carlile to prevail on his disability discrimination claim he must
9 prove: (1) that he has a disability, record of a disability, and/or was "regarded as" disabled ,(2) that
10 he was able to perform the essential functions of the job in question with or without reasonable
11 accommodation; and (3) an adverse employment action. WPI 330.32.

12 53. Mr. Carlile is disabled with anxiety and depression.

13 54. Mr. Carlile also had a record of being treated for anxiety and depression during the
14 June – July 2021 time frame.

15 55. Mr. Gonder and Mr. Lawhead regarded Mr. Carlile as disabled by asking why Mr.
16 Carlile went on leave (via Lawhead) and contacting (via Gonder) Mr. Carlile's former supervisor to
17 ask why Mr. Carlile was missing work.

18 56. Mr. Carlile was able to perform the essential functions of his job as shown by, for
19 example, he being placed solely in charge of the Spokane Valley site on July 19, 2021.

20 57. WC fired Mr. Carlile.

21 58. WC's actions caused Mr. Carlile damages in an amount to be proven at trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IV. PRAYER FOR RELIEF

Mr. Carlile respectfully seeks:

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

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

C. A declaration that Defendant violated the FMLA and the WLAD.

D. All other relief that is just and equitable.

DATED this 26th day of August 2021.

CROTTY & SON LAW FIRM, PLLC

By: 

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

Attorneys for Plaintiff