

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ADELA BLETHEN)	
)	
Plaintiff,)	
)	
v.)	CASE NO.
)	
MAINEGENERAL REHABILITATION)	
& NURSING CARE and)	
)	
MAINEGENERAL HEALTH)	
)	
Defendants.)	

COMPLAINT
AND DEMAND FOR JURY TRIAL
INJUNCTIVE RELIEF SOUGHT

COMPLAINT

NOW COMES the Plaintiff, Adela Blethen, by and through undersigned counsel and complains against the Defendants MaineGeneral Rehabilitation & Nursing Care and MaineGeneral Health, (collectively “MaineGeneral”), as follows:

Introduction

1. Plaintiff Adela Blethen’s claims arise under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, the Maine Human Rights Act (“MHRA”), 5 M.R.S.A. § 4551 et seq. and the Maine Whistleblowers’ Protection Act (“MWPA”), 26 M.R.S.A. § 831 et seq.. Defendants discriminated against Ms. Blethen because of her race, color and national origin. Defendants also retaliated against her because she complained about race discrimination.

Parties

2. Plaintiff Adela Blethen is a resident of Hallowell, Kennebec County in the State of Maine.
3. At all relevant times Defendant MaineGeneral Rehabilitation & Nursing Care, a Maine corporation, was doing business in Augusta, Kennebec County in the State of Maine.
4. At all relevant times Defendant MaineGeneral Health, a Maine corporation, was doing business in Augusta, Kennebec County in the State of Maine.
5. At all relevant times, the Defendants operated as an integrated enterprise. Upon information and belief, the Defendants have common ownership and management, they exercise centralized control of labor relations and their operations are interrelated. As such, they operate as a single employer under the Title VII, 42 U.S.C. § 1981, the MHRA and MWPA
6. For the calendar years 2008 and 2009, Defendants employed more than 500 employees in each of 20 or more calendar weeks.
7. At all material times, Defendants employed Plaintiff within the meaning of Title VII, 42 U.S.C. § 1981, the MHRA and the MWPA.

Jurisdiction

8. Jurisdiction is present pursuant to 28 U.S.C. §§ 1331 and 1367.
9. On or about June 23, 2010, Ms. Blethen filed Charges of Discrimination with the Equal Employment Opportunity Commission (EEOC) and the Maine Human Rights Commission (MHRC). The EEOC and MHRC have issued Ms. Blethen notice of her right to sue. Ms. Blethen has exhausted all administrative remedies.

Jury Trial Demand

10. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury on all issues triable of right by jury.

Factual Allegations

11. Ms. Blethen was employed by Defendants as a Certified Nursing Assistant (“CNA”) at MaineGeneral Rehabilitation & Nursing Care’s Gray Birch facility in Augusta, Kennebec County, Maine from June 2006 until November 2009.

12. Ms. Blethen is a native of Mexico, Hispanic and a person of color.

13. During the course of Ms. Blethen’s employment at MaineGeneral, several of the residents of the facility made comments that were racist, referred to her national origin and color, and were derogatory and offensive to Ms. Blethen.

14. In July 2009, Ms. Blethen reported to MaineGeneral’s Director of Nursing Services, Tim Knight that residents had made racially discriminatory offensive comments to her, including calling her “black [expletive]” and saying “I bet your mom was a slave and was raped by a white man.”

15. Ms. Blethen reported additional discriminatory comments by residents to her supervisors in 2008 and 2009, including in the summer 2009 reporting to Registered Nurse Rubi Everette that a resident was repeatedly referring to her as “that Mexican,” and on or about July 29, 2009, reporting to Director of Nursing Services Knight that it bothered her that a resident referred to her as “the Mexican girl.”

16. In August 2009, Defendants through Director of Nursing Services Knight and other staff held a meeting in which they took disciplinary action against Ms. Blethen asserting the accusation that she had been rough with a resident.

17. In the meeting in August 2009 described in paragraph 16 herein, Ms. Blethen asked

Defendants' Director of Nursing Services Knight whether anything had been done on her complaint of discriminatory treatment. Mr. Knight informed her he had not done anything yet, but that he would.

18. On September 19, 2009, Director of Nursing Services Knight informed Ms. Blethen that her employment was terminated because of alleged suspected abuse of residents.
19. Ms. Blethen denied that she engaged in any abuse of a resident.
20. Ms. Blethen did not abuse residents and, rather, provide excellent care to the residents.
21. The reason provided by Defendants' for the termination of Ms. Blethen is false and is a pretext.
22. Ms. Blethen objected that the termination of her employment was discrimination based on her race, color and national origin and was retaliation for her complaint about discriminatory comments.
23. Ms. Blethen also objected to Defendants' reliance on alleged complaints from residents who had expressed animus towards Ms. Blethen on the basis of her race, color, and national origin as a basis for termination.
24. The timing of Ms. Blethen's termination also evidences a causal connection between her protected complaints and her termination.
25. After Ms. Blethen opposed the termination of her employment, on October 27, 2009 Defendants rescinded the involuntary termination of Ms. Blethen's employment and informed Ms. Blethen she would be allowed to transfer to employment with MaineGeneral in a facility other than Gray Birch, or, if she was unable to transfer to a suitable position, she might resign from employment.
26. In connection with an application for employment to Defendants for a Nursing Unit

Assistant position on or about October 6, 2009, Ms. Blethen informed Defendants' manager of the stated ground for the prior termination of her employment by Defendants.

27. Ms. Blethen was qualified by experience and training for the Nursing Unit Assistant position.
28. Defendants did not offer Ms. Blethen transfer to the Nursing Unit Assistant position for which she had applied in October 2009.
29. Defendants allege that Ms. Blethen was not provided with the Nursing Unit Assistant position because Ms. Blethen had allegedly communicated limitations in her ability to work certain shifts.
30. Defendants' claim that Ms. Blethen communicated limitations in her ability to work certain shifts is false and this explanation by Defendants for their failure to provide Ms. Blethen with the Nursing Unit Assistant position is a pretext.
31. Also, the timing of Defendants' failure to provide Ms. Blethen with the Nursing Unit Assistant position supports a causal connection between her protected activity and her termination.
32. Further, Ms. Blethen was more qualified than the Caucasian applicant eventually chosen to fill the Nursing Unit Assistant position which evidences unlawful disparate treatment on the basis of race, color and national origin.
33. Defendants misrepresented material facts to the Maine Human Rights Commission regarding their unlawful employment actions in this case and have refused to produce relevant documentation that is solely in Defendants' possessions. Defendants' misrepresentations and refusal to produce relevant information evidences efforts by Defendants to dissemble the facts in order to cover up a discriminatory purpose.

34. On November 23, 2009, without prior warning to or consent from Ms. Blethen, Defendants changed Ms. Blethen's employment status to resigned, and terminated her employment.
35. Defendants discriminated against Ms. Blethen in the terms and conditions of her employment by subjecting her to a hostile work environment.
36. Defendants' unlawfully removed Ms. Blethen from her position at Gray Birch because of her race, color, and national origin and Ms. Blethen's race, color, and national origin were motivating factors in Defendants' removal of Ms. Blethen from her position at Gray Birch.
37. Defendants failed to hire and/or transfer Ms. Blethen to an open position because of her race, color, and national origin and Ms. Blethen's race, color, and national origin were motivating factors in Defendants' failure to hire and/or transfer Mr. Blethen to an open position.
38. Defendants failed to take adequate corrective action on Ms. Blethen's reports of discriminatory treatment.
39. Defendants terminated Ms. Blethen's employment because of her race, color, and national origin and Ms. Blethen's race, color, and national origin were motivating factors in Defendants' termination of Ms. Blethen's employment.
40. By disciplining Ms. Blethen, terminating her employment and refusing to allow her to transfer to another position, Defendants discriminated against Ms. Blethen in the terms and conditions of her employment on the basis of her race, color and national origin.
41. By allegedly relying on false information about Ms. Blethen provided by residents whose comments were motivated by racial animus, Defendants' unlawfully discriminated

against Ms. Blethen.

42. Defendants retaliated against Ms. Blethen because she made complaints about race discrimination and engaged in activity protected by Title VII, 42 U.S.C. § 1981, the MHRA and the MWPA. As a result of Defendants' unlawful discrimination against Ms. Blethen, she has suffered damages including but not limited to lost wages, lost benefits, loss of enjoyment of life, humiliation, inconvenience, injury to reputation, injury to career, and other pecuniary and non-pecuniary losses.
43. Ms. Blethen has no plain, adequate, or complete remedy at law to fully redress the wrongs alleged, and will continue to suffer irreparable injury unless Defendants are enjoined by this Court.

Count I - Title VII of the Civil Rights Act of 1964, (Title VII) 42 U.S.C. § 2000e et seq.

44. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 43 as if set forth fully herein.
45. Defendants violated Title VII when they subjected Ms. Blethen to a hostile work environment because of her race, color, and national origin.
46. Defendants violated Title VII when they discriminated against Ms. Blethen with discipline, termination of employment and failure to transfer her to another position because of her race, color, and national origin.
47. Defendants violated Title VII when they retaliated against her with discipline, termination of employment and failure to transfer her to another position because she complained about racial discrimination.
48. As a direct and proximate result of Defendants' violations of Title VII, Ms. Blethen incurred damages.

49. Defendants intentionally violated Title VII with malice and/or with reckless disregard for Ms. Blethen's rights.

Count II - 42 U.S.C. § 1981

50. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 49 as if set forth fully herein.

51. Defendants violated 42 U.S.C. § 1981 when they subjected Ms. Blethen to a hostile work environment because of her race, color, and national origin.

52. Defendants violated 42 U.S.C. § 1981 when they discriminated against Ms. Blethen with discipline, termination of employment and failure to transfer her to another position because of her race, color, and national origin.

53. Defendants violated 42 U.S.C. § 1981 when they retaliated against her with discipline, termination of employment and failure to transfer her to another position because she complained about racial discrimination.

54. As a direct and proximate result of Defendants' violations of 42 U.S.C. § 1981 Ms. Blethen suffered damages.

55. Defendants intentionally violated 42 U.S.C. § 1981 with malice and/or with reckless disregard for Ms. Blethen's rights.

Count III - Maine Human Rights Act (MHRA), 5 M.R.S.A. § 4551 et seq..

56. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 55 as if set forth fully herein.

57. Defendants violated the MHRA when they subjected Ms. Blethen to a hostile work environment because of her race, color, and national origin.

58. Defendants violated the MHRA when they discriminated against Ms. Blethen with discipline, termination of employment and failure to transfer her to another position because of her race, color, and national origin.
59. Defendants violated the MHRA when they retaliated against her with discipline, termination of employment and failure to transfer her to another position because she complained about racial discrimination.
60. As a direct and proximate result of Defendants' violations of the MHRA, Ms. Blethen incurred damages.
61. Defendants intentionally violated the MHRA with malice and/or with reckless disregard for Ms. Blethen's rights.

Count IV – Maine Whistleblowers' Protection Act,

(MWPA), 26 M.R.S.A. § 831 et seq..

62. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 61 as if set forth fully herein.
63. Defendants violated the MWPA when they retaliated against her with discipline, termination of employment and failure to transfer her to another position because she complained about racial discrimination.
64. As a direct and proximate result of Defendants' violations of the MWPA, Ms. Blethen suffered damages.
65. Defendants intentionally violated the MWPA with malice and/or with reckless disregard for Ms. Blethen's rights.

Prayer for Relief

Wherefore, Plaintiff respectfully requests that the Court grant the following relief:

- (a) Enter Judgment in Plaintiff's favor;
- (b) Declare the conduct engaged in by Defendants to be in violation of Plaintiff's rights under Title VII, 42 U.S.C. § 1981, the MHRA and the MWPA;
- (c) Enjoin Defendants, their agents, successors, employees, and those acting in concert with Defendants from continuing to violate the rights of Plaintiff;
- (d) Order Defendants to employ Plaintiff in a position commensurate with her experience and qualifications;
- (e) Award Plaintiff damages for back pay and loss of benefits;
- (f) Award Plaintiff compensatory damages in an amount to be determined at trial of this matter;
- (g) Award Plaintiff punitive damages in an amount to be determined at trial of this matter;
- (h) Award Plaintiff nominal damages;
- (i) Award Plaintiff attorney's fees, legal expenses, and costs;
- (j) Award Plaintiff prejudgment interest;
- (k) Permanently enjoin Defendants from engaging in any employment practice which discriminates on the basis of an employee's engagement in protected activity under Title VII, 42 U.S.C. § 1981, the MHRA or MWPA;
- (l) Require that the Defendants' president and/or chief executive officer mail a letter to all employees of Defendants notifying them of the verdict against them and stating that the Defendants will not tolerate discrimination or retaliation in the future;
- (m) Require that the Defendants post a notice in all of their workplaces of the verdict and a

copy of the Court's order for injunctive relief;

- (n) Require that the Defendants train all management level employees about the illegality of discrimination and retaliation against employees on in connection with engaging in activity protected by Title VII, 42 U.S.C. § 1981, the MHRA, or the MWPA;
- (o) Require that the Defendants place a document in Plaintiff's personnel file which explains that the Defendants terminated her and otherwise discriminated against her in retaliation for engaging in activity protected by Title VII, 42 U.S.C. § 1981, the MHRA, or the MWPA; and
- (p) Grant to Plaintiff such other and further relief as may be just and proper.

DATE: July 18, 2011

/s/ Lisa J. Butler

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