UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO.: _____

ALISSA CELLUCI

Plaintiff,

v.

NOVA SOUTHEASTERN UNIVERSITY, INC.

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, ALISSA CELLUCCI ("CELLUCCI"), files this Complaint against Defendant, NOVA SOUTHEASTERN UNIVERSITY, INC. ("NSU"), for violations of the Family and Medical Leave Act, 29 U.S.C. §2601, *et. seq*. ("FMLA"), Pregnancy Discrimination Act ("PDA"), and Title VII 42 U.S.C. § 2000e *et. seq*., and in support thereof states the following:

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff, Alissa Cellucci, resides in Davie, Florida.

2. The Defendant, NSU is a Florida Corporation with its primary place of business in Fort Lauderdale, Broward County, Florida.

3. This Court has subject matter jurisdiction over the Plaintiff's claims, because this action arises, in part, under Title VII of the Civil Rights Act, 42 U.S.C. §2000e, *et. seq.,* as amended by the Civil Rights Act ("Title VII") and under the Family

and Medical Leave Act 29 U.S.C. § 2617(a)(2) without regard to jurisdictional amount or diversity of citizenship.

4. Venue is appropriate here in the Fort Lauderdale Division of the Southern District of Florida pursuant to 28 U.S.C. 1391(b) because the actions complained of herein took place in Fort Lauderdale and the Defendant's principal place of business is in Fort Lauderdale.

5. Plaintiff filed a Charge of Discrimination (510-2010-04535) with the Equal Employment Opportunity Commission within 300 days of acts complained of herein.

6. The EEOC issued a Notice of Rights to Plaintiff. A copy of said EEOC Notice is attached hereto as "Exhibit A."

7. Plaintiff filed suit within 90 days of receipt of this Notice.

8. All conditions precedent, including notices and intention to file suit, have been satisfied.

FACTUAL ALLEGATIONS

9. NSU is an employer with 50 or more employees within a 75 mile radius.

10. On or about May 7, 2008, CELLUCCI initiated employment with NSU as an administrator for Human Resources and Payroll.

11. In July, 2009, Plaintiff started an IVF cycle and advised her supervisors that she would have to take some time off to attend routine doctors' appointments.

12. After years of trying to become pregnant and several IVF cycles to help induce pregnancy, in November, 2009, Plaintiff became pregnant and told Marie Stokes ("STOKES"), her supervisor, that she was pregnant. Excited about her new found

pregnancy, and leaving nothing to chance or the last minute, Plaintiff requested FMLA leave from August 22, 2010 (her due date) unit November 14, 2010 (12 weeks later).

13. During this time in November of 2009, Plaintiff was promised by STOKES that her job was safe and that she should proceed to attend any needed doctor's appointments, so long as sufficient notice was given, which Plaintiff always did through e-mail documentation within 48 hours notice of appointments and assured her, that her FMLA claim was all set.

14. Plaintiff was planning on continuing her normal one calendar year, course of employment, up to her due date of August 22, 2010, and then returning to work after the allotted time she was entitled to receive under the Family Medical Leave Act of 1993.

15. On or about February 25, 2010, Plaintiff was called into her supervisors, STOKES and Susie Marshall's office ("MARSHALL"). Plaintiff was advised that she had worked her maximum hours for the calendar year (which according to purported NSU policy was 1,000 hours). STOKES advised that this policy only allowed Plaintiff 1,000 hours of work in one calendar year from her start date. This was the first time, throughout her career that, that Plaintiff had ever been made aware of the policy or told that she was approaching the allotted time permitted in the alleged policy.

16. Next Plaintiff requested NSU for a copy of the documentation that she filled out when hired along with any other relevant documentation to the NSU policy that STOKES and MARSHALL had brought to her attention. Plaintiff was advised that since she was no longer en employee with NSU the HR department would not be able to furnish the information to her. Plaintiff at that time also asked for a copy of her hours and was given the same explanation.

17. The Equal Employment Opportunity Commission's Guidelines on Pregnancy Discrimination provide that any written or unwritten employment policy or practice which excludes employees because of pregnancy, childbirth or related medical conditions gives rise to a *prima facie* violation of Title VII. 29 CFR 1604.10.

18. In l978, Congress enacted the Pregnancy Discrimination Act. Pursuant to this amendment to Title VII, an employer who maintains a policy that subjects pregnant employees to disparate treatment violates Title VII.

19. NSU had not issued any form of formal discipline to Plaintiff prior to her termination.

20. NSU had not issued any form of informal discipline to Plaintiff prior to her termination.

COUNT I AGAINST NSU
FAILURE TO PROVIDE FMLA NOTICE UNDER 29 CFR 825.300

21. The Plaintiff repeats each and every allegation of paragraphs one through twenty as if fully set forth herein at length.

22. 29 CFR 825.300, says in relevant part:

> When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, **the employer must notify the employee of the employee's eligibility** to take FMLA leave **within five business days**, absent extenuating circumstances. (emphasis added).
>
> The eligibility notice must state whether the employee is eligible for FMLA leave as defined in § 825.110(a). If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer, the number of hours of service worked for the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

23. Plaintiff requested FMLA leave through her supervisor STOKES in November of 2009.

24. NSU failed under its duties 29 CFR 825.300 by acquiring knowledge that one of its employees was requesting FMLA leave, yet it did not (within five days) properly notify Plaintiff as to her eligibility.

25. NSU failed to notify Plaintiff as to her eligibility for her FMLA requested leave.

26. NSU failed to state a reason why she was not eligible, and instead promised her it was "*all set*."

27. Instead, NSU (knowing that Plaintiff was pregnant and due in August of 2010) waited until she had reached 1000 hours knowing that if she stayed much longer she would be entitled by law to FMLA and fired her to prevent her from being able to receive the laws protection.

28. NSU's failure to properly provide her notice as to her FMLA rights within five days of her FMLA request interfered, restrained, and denied her exercise of FMLA rights, caused her damages, and violated 29 CFR 825.300.

29. 29 CFR 825.300 provides rights to those employees who may not qualify for FMLA leave by providing a notice requirement even when an employee does not yet qualify for the FMLA leave.

COUNT I I AGAINST NSU
FMLA RETALIATION UNDER 29 U.S.C. §2615

30. The Plaintiff repeats each and every allegation of paragraphs one through twenty as if fully set forth herein at length.

31. Under 29 U.S.C. §2612, an eligible employee shall be entitled to a total of 12 workweeks of leave for the birth or adoption of a child; to care for a child, spouse, or parent with a serious health condition; or because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

32. An eligible employee is defined in the statute as "an employee who has been employed…for at least 12 months by the employer" and who has at least 1,250 hours of service with such employer during the previous 12-month period" 29 U.S.C. § 2611(2)(A)

33. Under 29 U.S.C. §2615, it is unlawful for and employer to *interfere with, restrain, or deny the exercise of or* ***attempt*** *to exercise*, any rights provided under the FMLA.

34. At the time of Plaintiff's anticipated leave, she would have been an *eligible employee*, because by August 22, 2010 she would have been employed by NSU for at least twelve months. This would have constituted a valid claim for compensation under 29 U.S.C. §2612.

35. CELLUCCI was terminated from her position because she attempted to exercise her FMLA rights by requesting FMLA benefits. She was discharged and otherwise retaliated against because she requested and inquired into her FMLA rights.

36. CELLUCCI was terminated from her position because she attempted inquire about the FMLA rights and hours she had.

37. NSU discharged, CELLUCCI, as detailed previously, by reason of CELLUCI's valid claim for FMLA benefits or attempt to claim FMLA benefits.

38. There is more than a casual connection between the protective activity that the Plaintiff engaged in and the employer's action. In fact, this is the reason why the Plaintiff was terminated.

39. The unlawful employment practices complained of herein and the actions of NSU and its agents were willful, wanton, intentional, and done with malice or with reckless indifference to CELLUCCI's statutorily protected employment rights in violation under 29 U.S.C. §2612.

40. As result of the Defendant's aforementioned actions, it has violated 29 U.S.C. §2615.

41. As a direct, proximate and foreseeable result of NSU and its agents' actions, CELLUCCI has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, the potential loss of future employment, and other non-pecuniary losses and intangible injuries.

42. The actions of NSU and its agents make reinstatement ineffective as a make-whole remedy, entitling CELLUCCI to front pay in lieu of reinstatement.

43. A retaliation plaintiff does not need to prove that the underlying employment practice by the employer was, in fact, unlawful; instead, employees are protected from retaliation if they oppose an employment practice that they reasonably and in good faith believe to be unlawful. *See Clark County School District v. Breeden*, 532 U.S. 268 (2001).

COUNT III AGAINST NSU
VIOLATION OF THE FEDERAL PREGNANCY DISCRIMINATION ACT 42 U.S.C. § 2000e (k) & U.S.C. 2000e-2(a)(1)

44. The Plaintiff repeats each and every allegation of paragraphs one through twenty as if fully set forth herein at length.

45. Title VII of the Civil Rights Act provides that it shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge or otherwise to discriminate against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2(a)(1).

46. In 1978, Congress amended Title VII of the Civil Rights Act of 1964 to include the Pregnancy Discrimination Act, which expands the Act's definition section to encompass pregnancy-based discrimination under the definition of sex discrimination: The terms "because of sex" or "on the basis of sex" include, but are not limited to, because or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes. 42 U.S.C. § 2000e(k).

47. It is a violation of Title VII to discharge or refuse to hire a woman because she is pregnant, or to discharge or refuse to hire women as a class because some of them might become pregnant.

48. Plaintiff was fully qualified for the position she held at all relevant times.

49. Plaintiff was pregnant and therefore a member of the class protected under the PDA.

50. NSU knew Plaintiff was pregnant before it terminated her.

51. Knowing Plaintiff was pregnant, NSU knew she would be entitled to 12 weeks off under the FMLA if it did not terminate her before her due date.

52. Knowing Plaintiff was pregnant, NSU believed it would affect Plaintiff's ability to do her job.

53. Plaintiff was terminated from her position as a human resources administrator because of her pregnancy and/or to avoid having to allow her to take time off.

54. NSU knew by Plaintiff becoming pregnant it would negatively affect its costs for employee benefit programs.

55. NSU discriminates against women it thinks they will become pregnant by instituting a policy where they are terminated when they reach 1000 hours so as to not have to pay them during pregnancy and/or allow them FMLA leave.

56. Such actions constitute unlawful employment practices under the Federal Pregnancy Discrimination Act 42 U.S.C. *§* 2000e(k).

57. Defendant intentionally, willfully and wantonly discriminated against Plaintiff by, including, but not limiting to, denying her access to the FMLA, denying her the same benefits under NSU's fringe benefit programs, instituting an employment policy which weeds out potential women that are likely to become pregnant, and terminating her employment because of her pregnancy in violation of the Title VII's PDA.

58. As a direct and proximate result of defendant's discriminatory conduct, CELLUCCI has suffered damages and is entitled to judgment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Alissa Cellucci, demands judgment as follows:

a) Front pay in lieu of reinstatement;

b) Back pay;

c) Compensatory damages;

d) Punitive damages (because as discussed above in detail, defendant's conduct was despicable and the acts herein alleged were malicious, fraudulent and oppressive, and were committed with an improper and evil motive to injure plaintiff, amounting to malice and in conscious disregard of plaintiff's rights);

e) Prejudgment interest;

f) Attorneys' fees pursuant to 42 U.S.C. 2000e-5(k), 29 U.S.C. §2617(a)(3) and other applicable statutes whether state or federal;

g) Costs of this action;

h) For damages as set forth in 29 U.S.C. 2617, including any wages, salary, employment benefits, interest at the prevailing rate, and liquidated damages.

i) For actual damages in the amount to be determined according to proof;

j) For consequential damages in an amount to be determined according to proof;

k) For general damages in an amount to be determined according to proof;

l) For special damages in an amount to be determined according to proof;

m) For exemplary damages;

n) For nominal damages; and

o) For such other relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Complaint and on all other issues so triable.

Filed this 30th day of December, 2010.

Respectfully submitted:

By: _____

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