

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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Cori Fisher,	:	Civil Action
	:	
	Plaintiff	: No.
	:	
vs.	:	
	:	
Apple Inc.,	:	
	:	
	Defendant	:
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COMPLAINT

Plaintiff Cori Fisher (“Plaintiff”), by his undersigned counsel, brings this action pursuant to the law cited herein against Defendant Apple Inc. (“Defendant”) seeking relief from the employment discrimination and retaliation committed by Defendants.

INTRODUCTION

1. This is an action arising under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et. seq.*, as amended by the Americans with Disabilities Amendment Act (“ADAA”), the Family Medical Leave Act of 1993, 29 U.S.C. § 2601, *et. seq.* (“FMLA”), the Civil Rights Act of 1866 (“Section 1981”), 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 2000e *et seq.*, and the Pennsylvania Human Relations Act (“PHRA”).

2. Plaintiff asserts that Defendant discriminated against him because of his disability and religion. Plaintiff also asserts that Defendant retaliated against him after he requested and received a reasonable accommodation of his disability and religion, for taking approved FMLA leave, and for complaining about race discrimination, resulting in termination of his employment. As a result of Defendant’s unlawful actions, Plaintiff has suffered damages.

JURISDICTION AND VENUE

3. This Court has original jurisdiction to hear this action and adjudicate the claims herein pursuant to 28 U.S.C. §§ 1331, 1343. The supplemental jurisdiction of this Court is invoked with regard to Plaintiff's PHRA claim.

4. All jurisdictional prerequisites to bringing this action have been satisfied because:

(a) Plaintiff dual-filed a timely complaint with the Equal Employment Opportunity Commission ("EEOC") and the Pennsylvania Human Relations Commission ("PHRC"); and

(b) On December 28, 2016, the EEOC issued the Right to Sue Notice, which is attached hereto as **Exhibit A**.

5. Venue is appropriate in the Eastern District of Pennsylvania because the events or omissions giving rise to Plaintiff's claims occurred therein and because Defendants are doing business and/or may be served with process therein.

THE PARTIES

6. Plaintiff is an adult male and is a citizen and resident of the United States. Plaintiff resides in Philadelphia, Pennsylvania.

7. Plaintiff is a Seventh Day Adventist.

8. Plaintiff is disabled within the meaning the ADA, as amended by the ADAA, because he suffers from (a) an impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, and/or (c) is regarded as having such an impairment.

9. Plaintiff's disability is cancer (in remission).

10. Plaintiff is substantially limited in the major bodily functions of normal cell growth and/or would be so limited if cancer currently in remission was to recur.

11. Defendant is a California for-profit corporation with its headquarters located at 1 Infinite Loop, Cupertino, California 95014.

12. Defendant employs over one hundred thousand (100,000) employees.

13. Defendants are employers within the meaning of the ADA, the FMLA, Section 1981, Title VII, and the PHRA.

FACTUAL BACKGROUND

Plaintiff's Employment History with Defendant

14. In June 2010, Plaintiff began working as a full time Expert for Defendant at its retail store located in Center City at 1607 Walnut Street, Philadelphia, Pennsylvania 19103 (the "Center City Store").

15. Plaintiff worked as a full time Expert for four years.

16. As set forth in more detail below, in February 2016, Plaintiff became a Part Time Specialist.

17. At all relevant times, Plaintiff was qualified for the Expert and Part Time Specialist positions based on his education and prior work experience and because he met Defendant's legitimate expectations for these positions.

Plaintiff Requests and Receives an Accommodation for His Religious Beliefs and Practices

18. In August or September 2010, Plaintiff requested to have Friday from sundown through Saturday at sunset off because he is a Seventh Day Adventist.

19. In response to Plaintiff's request, Larry Burke (Store Leader) told Plaintiff that his request was impossible but asked Plaintiff if he could pick another day to have off to accommodate his religious beliefs.

20. Plaintiff then requested to have Sundays off, which enabled him to attend services with his family.

21. To ensure that he was not scheduled to work on Sundays, Plaintiff had to log into MyPage and select his availability.¹ Plaintiff completed a reason for this request by selecting the religious option in MyPage.

22. Defendant accommodated Plaintiff without any issues until 2012 when Angela McBrier took over scheduling and started scheduling Plaintiff to work on Sundays.

23. Plaintiff explained to Ms. McBrier that he does not work on Sundays and telephoned Shauna (Human Resources) and explained that he does not work on Sundays due to his religious beliefs.

24. Following these discussions, Defendant continued to honor Plaintiff's religious accommodation.

Plaintiff's Medical Leaves for Treatment of His Disability

25. In March 2014, Plaintiff began a medical leave of absence for cancer treatment.

26. In August or September 2014, Plaintiff returned to work with Defendant.

27. From May 2015 until September 2015, Plaintiff took a second medical leave of absence for cancer treatment. Specifically, Plaintiff had a cancerous cyst removed.

28. A portion of Plaintiff's medical leaves was covered under Defendant's leave policy. Once exhausted, Plaintiff's leaves were covered under the FMLA.

¹ MyPage is a portal application for Apple employees, which allows them to login to view and modify their personal data, including their work schedules.

Plaintiff Returns from Medical Leave; Defendant Attempts to Revoke Plaintiff's Religious Accommodation, Forcing Plaintiff to Transition from Full-time Employment to Part-time Employment

29. Following Plaintiff's return from medical leave in September 2015, Defendant began scheduling Plaintiff to work on Sundays, which violated his reasonable accommodation.

30. Following Plaintiff's return from medical leave in September 2015, Plaintiff was attending school on Tuesdays and Thursdays from 9 a.m. to 1 p.m.

31. Plaintiff asked Amy Gieseke (Store Leader) if he could have Thursdays off and to change his Tuesday availability, which request she denied.

32. Ms. Gieseke told Plaintiff that the only way he could have the requested availability is if he gave up his Sundays off.

33. Ms. Gieseke told Plaintiff to change his availability in MyPage to show that he was available to work on Sunday, but that she would not schedule him to work on Sundays, which would have maintained Plaintiff's religious accommodation.

34. Ms. Gieseke further instructed Plaintiff to change his availability back once school was over (to show he was not available to work on Sundays).

35. Once Plaintiff completed school, he tried to change his availability back to showing that he did not work on Sundays, but was unable to.

36. Plaintiff spoke with Ms. Gieseke and reminded her that he had a religious accommodation, which is to not work on Sundays.

37. Ms. Gieseke informed Plaintiff that if he wanted Sundays off, he would have to switch from full time employment to part time because Defendant was "going in a different direction... the business is changing."

38. Ms. Gieseke clearly stated to Plaintiff that the only way to get Sundays off is if he transitioned to part-time employment.

39. Following Plaintiff's discussion with Ms. Gieseke, Plaintiff met with Ms. Gieseke and Shauna (Human Resources) in which he reminded them that throughout his employment, he had never had to work on Sundays because of his religious accommodation. Plaintiff also informed them that his original accommodation request was to have off Friday from sundown through Saturday at sunset. A few days later, Ms. Gieseke told Plaintiff that Defendant would continue to accommodate him.

40. Every quarter, Defendant's managers do a rotation in scheduling. In February 2016, Angela McBrier (Senior Manager) told Plaintiff that she was tired of Plaintiff complaining about his scheduling and it was not fair that Plaintiff did not work on Sundays.

41. Plaintiff then spoke with Michael Washington (Senior Manager) and told him that he wanted to switch to part-time employment. Mr. Washington instructed Plaintiff to email Ms. Gieseke and let her know that he had decided to go part-time, which Plaintiff did.

42. Plaintiff made the decision to switch to part-time employment so that his religious accommodation would not be an issue. Based on comments from Plaintiff's managers, Plaintiff felt that his managers resented him for not working on Sundays.

Plaintiff Reports Defendant's Racist Practice; Defendant Retaliates

43. In mid-February 2016, Plaintiff complained to Ms. Gieseke and Mr. Washington about race discrimination.

44. Specifically, after Plaintiff observed a store manager ask a police officer to tell African American teenagers to leave the store, Plaintiff complained about Defendant's instructions to employees to closely monitor African American customers and to ask African American customers to leave the store. All of the store managers told employees to closely monitor African American customers, which concerned Plaintiff.

45. A week after Plaintiff complained about Defendant's discriminatory practice, Defendant accused Plaintiff of violating its policies regarding an incident that occurred in December 2015.

46. Defendant told Plaintiff they were investigating the December 2015 incident. Defendant allowed Plaintiff to continue working during its alleged investigation.

47. On April 6, 2016, Defendant terminated Plaintiff's employment allegedly for the December 2015 incident.

48. Although three other employees were involved in the alleged December 2015 incident, Defendant only terminated Plaintiff.

49. To the best of Plaintiff's knowledge, none of the other employees involved in the incident have a disability (or are perceived to be disabled) nor did any of them request religious accommodations or complain about race discrimination.

50. At the time of Plaintiff's termination, Plaintiff had no prior disciplinary actions.

COUNT I
Violation of the ADA, as Amended by the ADAA
(Disability Discrimination)

51. Plaintiff incorporates by reference paragraphs 1 through 50 as though the same were set forth at length herein.

52. As averred above, Plaintiff is an individual with a disability within the meaning of the ADA and ADAA.

53. As averred above, Plaintiff has a record of his impairment.

54. As averred above, alternatively, Plaintiff is regarded as having such an impairment.

55. As averred above, Plaintiff was qualified for the Expert and Part Time Specialist positions because of his education and prior work experience and because he met Defendant's legitimate expectations for the position.

56. Plaintiff could perform the essential functions of the Expert and Part Time Specialist positions with or without a reasonable accommodation.

57. As averred above, Plaintiff requested a reasonable accommodation for his disability, which was medical leave to obtain treatment for his disability.

58. Plaintiff's accommodation request did not impose an undue hardship on Defendant because Defendant granted Plaintiff's requests.

59. As averred above, Defendant harassed and discriminated against Plaintiff because of his disability. Specifically, after Defendant returned from medical leave, Defendant attempted to revoke Plaintiff's religious accommodation, forcing Plaintiff to transition from full-time to part-time employment, and terminated Plaintiff's employment for an alleged December 2015 incident in which other, non-disabled employees were involved, but were not terminated.

60. Alternatively, Defendant discriminated against Plaintiff because he has a record of impairment.

61. Alternatively, Defendant discriminated against Plaintiff because Defendant regarded him as having an impairment.

62. Defendant's actions violate the ADA, as amended by the ADAA.

63. Defendant acted with malice or reckless indifference to Plaintiff's rights under the ADA, as amended by the ADAA.

COUNT II
Violation of the ADA, as Amended by the ADAA
(Retaliation)

64. Plaintiff incorporates by reference paragraphs 1 through 63 as though the same were set forth at length herein.

65. As averred above, Plaintiff engaged in protected activity by making requests for a reasonable accommodation – the medical leaves of absence.

66. As averred above, following Plaintiff's medical leaves of absence, Defendant subjected Plaintiff to adverse actions, including tricking Plaintiff into giving up his religious accommodation, essentially forcing Plaintiff to switch from full-time to part-time employment, and terminating Plaintiff's employment.

67. Defendant has retaliated against Plaintiff in violation of the ADA, as amended by the ADAA.

68. Defendant's conduct has been intentional, deliberate, willful, and in callous disregard of Plaintiff's rights.

69. Defendant's policies and practices have harmed Plaintiff with respect to the terms and conditions of his employment.

70. By reasons of Defendant's retaliation, Plaintiff is entitled to all legal and equitable remedies available under the ADA, as amended by the ADAA.

COUNT III
Violation of the FMLA
(Retaliation)

71. Plaintiff incorporates by reference paragraphs 1 through 70 as though the same were set forth at length herein.

72. In March 2014 and at all relevant times thereafter, Plaintiff had a serious health condition as defined in the FMLA because it required continuing treatment by a health care provider.

73. In March 2014 and again in May 2015, Plaintiff gave appropriate notice to Defendant of his need to be absent from work.

74. Plaintiff was eligible for FMLA leave in March 2014 and May 2015.

75. Pursuant to its FMLA policy, Defendant granted Plaintiff's request to be absent from work.

76. As averred above, Plaintiff was out of work on FMLA leave from March 2014 until August or September 2014 and again from May 2015 until September 2015.

77. As averred in more detail above, following Plaintiff's return from FMLA leave in September 2015, Defendant retaliated against Plaintiff.

78. As averred above, on April 6, 2016 Defendant terminated Plaintiff's employment.

79. Plaintiff's taking FMLA leave was a determinative factor in Defendant's actions and decision to terminate Plaintiff's employment.

80. Defendant retaliated against Plaintiff for requesting time off from work, pursuant to the FMLA, to care for his serious health condition, in violation of the FMLA.

81. Defendant knew or showed reckless disregard for whether its actions were prohibited by the law.

82. As a direct result of Defendant's willful and unlawful actions in violation Plaintiff's rights under the FMLA, Plaintiff has suffered damages, including a loss of earnings and employment benefits.

COUNT IV
Violation of Section 1981
(Retaliation)

83. Plaintiff incorporates by reference paragraphs 1 through 82 as though the same were set forth at length herein.

84. As averred above, Defendant instructed its Center City Store's employees to closely monitor African American customers and to ask African American customers to leave the store. All of the store managers told employees to closely monitor African American customers, which concerned Plaintiff.

85. As averred above, in mid-February 2016, Plaintiff observed a store manager ask a police officer to tell African American teenagers to leave the store.

86. As averred above, in mid-February 2016, Plaintiff complained to Ms. Gieseke and Mr. Washington that Defendant was treating African American customers differently than Caucasian customers.

87. Defendant's racially discriminatory practice denies African Americans the same right to make and enforce contracts with Defendant that Caucasian customers enjoy.

88. As averred above, one week after Plaintiff complained about Defendant's discriminatory practice, Defendant accused Plaintiff of violating its policies regarding an incident that occurred in December 2015.

89. As averred above, on April 6, 2016, Defendant terminated Plaintiff's employment for the alleged December 2015 incident.

90. As averred above, although there were three other employees involved in the alleged December 2015 incident, Defendant only terminated Plaintiff.

91. To the best of Plaintiff's knowledge, none of the other employees involved in the alleged December 2015 incident had complained to Defendant about race discrimination and/or its racially discriminatory practices.

92. As averred above, at all relevant times, Plaintiff was qualified for the position of Part Time Specialist, which he held at the time of Defendant's termination of his employment.

93. As averred above, at the time of Plaintiff's termination, Plaintiff had no prior disciplinary actions.

94. By terminating Plaintiff's employment, Defendants retaliated against Plaintiff for engaging in protected activity in violation of Section 1981.

95. Defendant's conduct has been intentional, deliberate, willful, and with callous disregard of Plaintiff's rights.

96. By reason of the Defendants' retaliation, Plaintiff has been severely harmed because he lost his job and has no income.

97. Plaintiff is entitled to all legal and equitable remedies available under Section 1981.

COUNT V
Violation of Title VII
(Disparate Treatment)

98. Plaintiff incorporates by reference paragraphs 1 through 97 as though the same were set forth at length herein.

99. As averred above, Plaintiff's protected class is Seven Day Adventist.

100. As averred above, at all relevant times, Plaintiff was qualified for the position of Part Time Specialist, which he held at the time of Defendant's termination of his employment.

101. As averred above, Defendant treated Plaintiff differently than similarly situated employees outside of Plaintiff's protected class by terminating Plaintiff's employment for the alleged December 2015 incident. Defendant did not terminate any of the similarly situated employees outside of Plaintiff's protected class for the same or similar conduct.

102. As averred above, Plaintiff has suffered an adverse action – Defendant terminated his employment.

103. Defendant discriminated against Plaintiff with respect to the terms and conditions of his employment because of Plaintiff's religious beliefs in violation of Title VII.

104. Defendant's conduct has been intentional, deliberate, willful, and in callous disregard of Plaintiff's rights.

105. Defendant's policies and practices have harmed Plaintiff with respect to the terms and conditions of his employment.

106. By reasons of Defendant's discrimination, Plaintiff has been severely harmed because he lost his job and has no income.

107. Plaintiff is entitled to all legal and equitable remedies available under Title VII.

COUNT VI
Violation of Title VII
(Retaliation)

108. Plaintiff incorporates by reference paragraphs 1 through 107 as though the same were set forth at length herein.

109. As averred above, Defendant instructed its Center City Store's employees to closely monitor African American customers and to ask African American customers to leave the store. All of the store managers told employees to closely monitor African American customers, which concerned Plaintiff.

110. As averred above, in mid-February 2016, Plaintiff observed a store manager ask a police officer to tell African American teenagers to leave the store.

111. As averred above, in mid-February 2016, Plaintiff complained to Ms. Gieseke and Mr. Washington that Defendant was treating African American customers differently than Caucasian customers.

112. Defendant's racially discriminatory practice denies African Americans the same right to make and enforce contracts with Defendant that Caucasian customers enjoy.

113. As averred above, one week after Plaintiff complained about Defendant's discriminatory practice, Defendant accused Plaintiff of violating its policies regarding an incident that occurred in December 2015.

114. As averred above, on April 6, 2016, Defendant terminated Plaintiff's employment for the alleged December 2015 incident.

115. As averred above, although there were three other employees involved in the alleged December 2015 incident, Defendant only terminated Plaintiff.

116. To the best of Plaintiff's knowledge, none of the other employees involved in the alleged December 2015 incident had complained to Defendant about race discrimination and/or its racially discriminatory practices.

117. As averred above, at all relevant times, Plaintiff was qualified for the position of Part Time Specialist, which he held at the time of Defendant's termination of his employment.

118. As averred above, at the time of Plaintiff's termination, Plaintiff had no prior disciplinary actions.

119. By terminating Plaintiff's employment, Defendant retaliated against Plaintiff for engaging in protected activity in violation of Title VII.

120. Defendants' conduct has been intentional, deliberate, willful, and in callous disregard of Plaintiff's rights.

121. Defendant's policies and practices have harmed Plaintiff with respect to the terms and conditions of his employment.

122. By reason of the Defendant's retaliation, Plaintiff has been severely harmed because he lost his job and has no income.

123. Plaintiff is entitled to all legal and equitable remedies available under Title VII.

COUNT VII
Violations of the PHRA
(Disparate Treatment and Retaliation)

124. Plaintiff incorporates by reference paragraphs 1 through 123 as though the same were set forth at length herein.

125. The actions taken by Defendant as described above were unlawful and in violation of the PHRA.

126. As a direct result of Defendant's willful and unlawful actions in discriminating and retaliating against Plaintiff in violation of Plaintiff's rights under the PHRA, Plaintiff has suffered great humiliation, embarrassment, discomfort, and suffering; moreover, Plaintiff has been damaged in entering into further employment relationships, has suffered a loss of earnings and employment benefits and a severely diminished earning capacity and may continue to suffer such losses in the future.

WHEREFORE, Plaintiff respectfully requests this Court to:

(a) Issue a Declaratory Judgment declaring that Defendants' actions, as set forth in this Complaint, violated Plaintiff's rights under the ADA, as amended by the ADAA, the FMLA, Section 1981, Title VII, and the PHRA;

(b) Enjoin and restrain Defendant and all other persons acting on behalf of, or in concert with, Defendants from engaging in such unlawful practices.

(c) Enter judgment in favor of Plaintiff, and against Defendant, for back pay in the amount of wages and fringe benefits it is determined that Plaintiff lost as a result of Defendant's unlawful conduct, together with interest.

(d) Enter judgment in favor of Plaintiff and against Defendant, placing Plaintiff in the position he would have had absent Defendant's unlawful conduct. In the alternative, award Plaintiff front pay in the amount of wages and benefits it is determined that Plaintiff would lose because of Defendant's unlawful conduct.

(e) Enter judgment in favor of Plaintiff, and against Defendants, for compensatory and punitive damages, as allowable by law, including but not limited to, damage for humiliation, together with interest.

(f) Enter judgment in favor of Plaintiff and against Defendant for liquidated damages to the extent allowable by law for the willful violation of the FMLA.


(g) Award Plaintiff reasonable attorney's fees together with the costs of this action.

(h) Award such other and further legal and equitable relief as may be necessary and appropriate to redress fully the deprivation of Plaintiff's rights, to prevent their recurrence in the future and to protect other employees from such unlawful behavior.

JURY DEMAND

Plaintiff hereby demands a jury to try all claims triable by jury.

Dated: March 28, 2017



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Philadelphia, PA 19107
(215) 586-3751; (215) 359-2741 fax
Attorney for Plaintiff

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Cori Fisher
901 North Penn Street
Apt R-1904
Philadelphia, PA 19123

From: Philadelphia District Office
801 Market Street
Suite 1300
Philadelphia, PA 19107

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

Table with 3 columns: EEOC Charge No., EEOC Representative, Telephone No.
530-2016-02954, Legal Unit, Legal Technician, (215) 440-2828

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- List of reasons for closing file: The facts alleged in the charge fail to state a claim... Your allegations did not involve a disability... The Respondent employs less than the required number of employees... Your charge was not timely filed... The EEOC issues the following determination... The EEOC has adopted the findings of the state or local fair employment practices agency... Other (briefly state)

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

Signature of Spencer H. Lewis, Jr. with text 'On behalf of the Commission'

12/28/16

Enclosures(s)

Spencer H. Lewis, Jr.,
District Director

(Date Mailed)

cc: APPLE, INC.
Ryan D. Freeman, LITTLER MENDELSON, P.C.
(for Respondent)

Stephanie J. Mensing, Attorney at Law
MENSING LAW (for Charging Party)

Exhibit A