

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

TABITHA OLIVAS,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

COMPLAINT

COMES NOW Plaintiff, Tabitha Olivas, by and through her counsel, Cornish and Dell'Olio, and for her Complaint against the Defendant, Wal-Mart Stores, Inc., states as follows:

Introduction

1. This is an action brought against Wal-Mart Stores, Inc. pursuant to the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601, *et seq.*, as interpreted by 29 C.F.R. § 825, *et seq.*, for failure to follow the FMLA Employer Notice Requirements.

Jurisdiction

2. Jurisdiction is proper in the District of Colorado pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 2617(a)(2).

Venue

3. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b)(2) as the complained of employment actions occurred in the State of Colorado.

Parties

4. Ms. Olivas is a 20 year old female who resides in El Paso County, Colorado.

5. Ms. Olivas worked for Wal-Mart Stores, Inc. as a cashier at Store #1434 until her employment was involuntarily terminated on August 10, 2009.

6. Ms. Olivas is an “eligible employee” within the meaning of 29 U.S.C. § 2611(2) of the FMLA.

7. Wal-Mart Stores, Inc. is a foreign corporation doing business in good standing in the State of Colorado.

8. Wal-Mart Stores, Inc. conducts business in Colorado Springs, Colorado at Store # 1434 located at 707 South Eighth Street, Colorado Springs, Colorado, 80905.

9. Wal-Mart Stores, Inc. is an “employer” within the meaning of 29 U.S.C. § 2611(4) of the FMLA.

Factual Allegations

10. Ms. Olivas worked for Wal-Mart Stores, Inc. at Store #1434 in Colorado Springs from or about June 18, 2008 until her employment was terminated on August 10, 2009.

11. During her employment with Wal-Mart Stores, Inc. Ms. Olivas began to suffer from a medical condition that required medical assistance.

12. As a result of her medical condition Ms. Olivas submitted paperwork to take her 12 weeks of leave under the FMLA.

13. Ms. Olivas requested her FMLA leave on three separate occasions.

14. Ms. Olivas submitted her first FMLA request to “Vandee” in Personnel.

15. “Vandee” rejected Ms. Olivas’ first request for FMLA leave because she claimed it was filled out incorrectly.

16. Ms. Olivas then submitted her second request for FMLA leave approximately two weeks later to “Bridget,” the Co-Manager of Store #1434.

17. “Bridget” rejected Ms. Olivas’ second request for FMLA leave because Ms. Olivas’ physician was unable to provide a definite ending date for the duration of Ms. Olivas’ medical condition.

18. Finally, on or about July 8, 2009 Ms. Olivas submitted her final request for FMLA leave, along with a written certification of her medical condition as provided by her physician, to “Donald,” the Assistant Manager of Store #1434.

19. Ms. Olivas never received any written notice that her final FMLA request had been granted or rejected.

20. Ms. Olivas never received any written notice stating whether she was eligible for FMLA leave.

21. Ms. Olivas never received any written notice that her requested leave would not be designated as FMLA-qualifying.

22. According to Wal-Mart Stores, Inc. attendance records, from June 12, 2009 through July 9, 2009 Wal-Mart Stores, Inc. recorded Ms. Olivas’ absences as authorized absences under the FMLA.

23. From July 10, 2009 through August 9, 2009 Wal-Mart Stores, Inc. recorded each of Ms. Olivas’ twenty three absences as no call/no shows.

24. As a result of these no call/no show dates Wal-Mart Stores, Inc. involuntarily terminated Ms. Olivas' employment for alleged job abandonment.

25. At the time her employment was involuntarily terminated for allegedly abandoning her job Ms. Olivas believed that she was on FMLA leave.

Cause of Action – FMLA Notice Violations

26. Plaintiff herein incorporates paragraphs 1 through 25 by reference.

27. Wal-Mart Stores, Inc. failed to comply with the FMLA Employer Notice Requirements contained in 29 C.F.R. § 825.300 by failing to provide Ms. Olivas an eligibility notice, rights and responsibilities notice, and a designation notice.

28. 29 C.F.R. § 825.300(e) states that a, "Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights."

29. 29 U.S.C. § 2615(a)(1) makes it "unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under" the FMLA.

30. By failing to follow the FMLA Employer Notice Requirements Wal-Mart Stores, Inc. interfered with, restrained, or otherwise denied Ms. Olivas the exercise of her FMLA rights.

31. Wal-Mart Stores, Inc.'s failure to comply with the FMLA Employer Notice Requirements caused the termination of Ms. Olivas' employment by not providing her the notice or information necessary to determine that her absences from work would not be counted as FMLA leave.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. Backpay in amount equal to lost compensation and benefits;
2. Damages for all other monetary losses sustained as a direct result of the violation;
3. Reinstatement or front pay in lieu thereof;
4. Liquidated damages;
5. Pre- and post- judgment interest at the highest statutory rate;
6. Costs and attorneys fees pursuant to Fed. R. Civ. P. 54 and 29 U.S.C. § 2617; and
7. All other legal or equitable relief the court deems appropriate.

DEMAND FOR A JURY TRIAL

Plaintiff demands a jury trial for all issues triable by jury.

Respectfully submitted this 31st day of August, 2010.

CORNISH and DELL'OLIO

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