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Attorneys for Plaintiff

GLENN MACK, JR.
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V.

WHOLE FOODS MARKET
2001 Pennsylvania Ave.
Philadelphia, PA 19119

and

SARA PERLSTEIN
c/o WHOLE FOODS MARKET
2001 Pennsylvania Ave.
Philadelphia, PA 19119

and

JAMIE MCFADDEN
c/o WHOLE FOODS MARKET
2001 Pennsylvania Ave.
Philadelphia, PA 19119

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM 2010

NO.

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Glenn Mack Jr. (hereinafter “Plaintiff”), by and through undersigned counsel, hereby avers as follows against Whole Foods Market, Sara Perlstein, Jamie McFadden, and James Martin (hereinafter, “Defendants”).

INTRODUCTION

1. This action arises out of Defendants’ violation of the Pennsylvania Human Relations Act (“PHRA”) and intentional infliction of emotional distress. Plaintiff is African-American and a practitioner of the Islamic faith. In or around October 2010, Plaintiff’s Supervisor learned of Plaintiff’s religious beliefs and that Plaintiff was going to Mecca to make Hajj (a religious pilgrimage required of all Muslims). Thereafter, Plaintiff was subjected to a hostile work environment due to his religion. Plaintiff complained to Defendants about same, but Defendants did not issue any effective remedial measures. In fact, the hostility persisted and became so severe that Plaintiff went from praying in an empty storage area inside the building to praying by the dumpsters outside the building. On February 21, 2011, Defendants fired Plaintiff for alleged attendance reasons. In fact, Defendants fired Plaintiff because of his religious beliefs and/or his complaints of religious discrimination. Accordingly, Plaintiff files this lawsuit alleging religious discrimination and retaliation, in violation of the PHRA and for intentional infliction of emotional distress.

2. Jurisdiction and venue for this action is properly laid in the Court of Common Pleas of Philadelphia County, Pennsylvania as all or a substantial portion of the events giving rise to this lawsuit occurred in Philadelphia County, Pennsylvania and Defendants are subject to suit within said County.

PARTIES

3. Plaintiff is an adult individual with a Pennsylvania address as set forth in the caption.

4. Defendant Whole Foods Market is a corporation and business entity that owns and operates multiple locations in Pennsylvania, in particular the location listed at the address set forth in the caption.

5. Defendant Sara Perlstein is an adult citizen of Pennsylvania, agent and/or employee of Defendant Whole Foods Market, who acted in a supervisory role for employees at Defendant Whole Foods Market's Pennsylvania location at the address as set forth in the caption.

6. Defendant Jamie McFadden is an adult citizen of Pennsylvania, agent and/or employee of Defendant Whole Foods Market, who acted in a supervisory role for employees at Defendant Whole Foods Market's Pennsylvania location at the address as set forth in the caption.

7. At all times relevant herein, Defendants acted by and through their agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with Defendant Whole Foods Market.

FACTUAL BACKGROUND

8. The foregoing paragraphs are incorporated herein as if set forth in full.

9. Plaintiff, a Muslim, is practitioner of the Islamic faith.

10. Plaintiff was hired in or around October 2008 as a full-time employee for the Prepared Food Services department at Defendant's Union, New Jersey location.

11. Throughout Plaintiff's tenure with Defendant, Plaintiff received numerous accolades for his performance including "Employee of the Quarter" and "Time Chairman."

12. In or around November 2009, Plaintiff transferred to Defendant's Callowhill, Philadelphia location, located at the address set for forth in the caption.

13. On Plaintiff's first day at the Callowhill location, Defendant Sara Perlstein ("Defendant Perlstein") commented to Plaintiff, "A lot of Muslims shop here."

14. As a result of Defendant Perlstein's comment, Plaintiff was cautious in disclosing his Muslim identity.

15. In or around August 2010, Plaintiff requested an 18-day vacation in October 2010 so he could make Hajj.

16. A Hajj is a religious pilgrimage to Mecca (in Saudi Arabia) and is required of all Muslims to perform in their lifetime.

17. Defendant Whole Foods Market's vacation policy permitted Plaintiff to take up to 30 days vacation at a time so long as the request was given at least two weeks in advance.

18. Defendant Perlstein approved Plaintiff's request, but repeatedly pestered him for details regarding same.

19. In or around early October 2010, prior to Plaintiff's Hajj, Defendant Perlstein asked him what he would be doing for his vacation.

20. Before Plaintiff could reply, co-worker Anna Breininger told Defendant Perlstein, "Isn't it great? Glenn [Plaintiff] is taking a pilgrimage to Mecca."

21. The next day, Defendant Perlstein called Plaintiff to her office and informed him, for the first time, of an "informal black out policy," which allegedly prohibited employees from using vacation days in November and December.

22. Furthermore, Defendant Perlstein told Plaintiff, "I can't guarantee your job when you return," and advised Plaintiff that, upon his return from Mecca to make Hajj, he would be placed on "seasonal status," an on-call temporary position without benefits (prior to same, Plaintiff was a full-time employee with benefits).

23. Plaintiff then went to Mecca to complete his Hajj and returned to work on or around November 26, 2010.

24. Upon Plaintiff's return, Plaintiff went to Defendant Jamie McFadden in Human Resources to inquire as to why he had been placed on seasonal status and he informed Human Resources he believed he was being mistreated because he had gone to Mecca to make Hajj.

25. Human Resources claimed to have returned Plaintiff to full-time status with benefits, but Plaintiff never received said benefits.

26. Furthermore, upon Plaintiff's return to work, Defendant Perlstein and others began to treat Plaintiff in a hostile manner.

27. In particular, prior to Plaintiff's Hajj, he would use his scheduled breaks to pray in a storage area, which area was inaccessible to customers and seldom visited by staff.

28. After Plaintiff's return from Hajj, Defendant Perlstein and other co-workers would follow Plaintiff during his prayer time (which was during his break time) and heckle him as he prayed.

29. As a result of same, Plaintiff eventually began to pray near a dumpster behind the store to avoid Defendant Perlstein and others.

30. On or around February 21, 2011, Plaintiff received a call from Defendant Perlstein stating he was fired for attendance reasons.

31. In fact, Defendant Whole Foods Market fired Plaintiff because of his religious beliefs and/or because he had complained to Human Resources about religious discrimination.

32. On or about March 11, 2011, Plaintiff filed an EEOC Charge (which was dual-filed with the PHRC) alleging religious discrimination and retaliation, as detailed above.

33. Defendant Whole Foods Market maintains an internal policy which states that all employees who are terminated for attendance reasons are to become eligible for re-hire six months after their termination date (thus Plaintiff should have been eligible for re-hire in or around September 2011).

34. In or around mid-to late 2011, Plaintiff was contacted by two of Defendant Whole Foods Market's stores interested in hiring him (Defendant Whole Foods Market's Wynnewood, Pennsylvania and Devon, Pennsylvania stores).

35. Shortly thereafter, Plaintiff interviewed twice for the Wynnewood store and was notified orally (by telephone) of a start date in early November 2011.

36. The day before Plaintiff was scheduled to start at the Wynnewood store, however, he received another phone call from the store notifying him that corporate headquarters had indicated that Plaintiff was “banned” from all positions with Whole Foods in all locations.

37. In January 2012, Plaintiff was contacted by a Manager at Respondent’s Devon store who had seen Plaintiff’s application online (which Plaintiff had previously submitted in months prior).

38. The Devon Store Manager told Plaintiff that “an interview would be a formality” and that he, the Devon store Manager, “just needed to check with corporate” before giving Plaintiff a start date.

39. Shortly thereafter, Plaintiff was notified, again by telephone, that he was ineligible for re-hire at any of Defendant Whole Foods Market’s location.

40. On or about April 4, 2012, Plaintiff filed an EEOC Charge (which was dual-filed with the PHRC) alleging religious discrimination and retaliation, as detailed above.

COUNT I
Violation of PHRA
(Religious discrimination)

- 41. The foregoing paragraphs are incorporated herein as if set forth in full.
- 42. Defendants are “employers” within the meaning of the PHRA.
- 43. Plaintiff is an “employee” within the meaning of the PHRA.
- 44. The PHRA makes it unlawful for an employer to discriminate against an employee because an employee practices a certain religious faith.
- 45. Defendants discriminated against Plaintiff and terminated Plaintiff’s employment because Plaintiff practiced the Islamic faith.
- 46. As a direct consequence of Defendants’ unlawful actions as described above, Plaintiff has and continues to suffer emotional distress, pain and suffering, humiliation, and substantial lost income.

COUNT II
Violation of PHRA
(Retaliation)

- 47. The foregoing paragraphs are incorporated herein as if set forth in full.
- 48. The PHRA makes it unlawful for an employer to retaliate against an employee for requesting and accepting a religious accommodation.
- 49. Defendants terminated Plaintiff’s employment because Plaintiff requested vacation time to make Hajj and accepted said accommodation.
- 50. Defendants’ actions of terminating the employment of Plaintiff because Plaintiff requested and/or accepted a religious accommodation is in violation the PHRA.
- 51. The PHRA makes it unlawful for an employer to retaliate against an employee for filing a PHRA Complaint (Plaintiff’s EEOC Charge was “dual-filed” as a Complaint with the PHRA).

52. Defendants further retaliated against Plaintiff by banning him from all of its stores, and marking him ineligible for re-hire, because Plaintiff filed a Complaint with the PHRA alleging religious discrimination and retaliation.

53. As a direct consequence of Defendants' unlawful actions as described above, Plaintiff has and continues to suffer emotional distress, pain and suffering, humiliation, and substantial lost income.

COUNT III
Intentional Infliction of Emotional Distress

54. The foregoing paragraphs are incorporated herein as if set forth in full.

55. Defendants directly and through its employees and/or agents intentionally caused severe emotional distress to Plaintiff by its willful, wanton, extremely reckless and indifferent conduct, including but not limited to discrimination and retaliation as set forth above.

56. The actions of Defendants and their employees and/or agents go well beyond all bounds of decency and were done with the purpose of inflicting emotional distress and fear.

57. That the aforesaid actions by Defendants and their employees and/or agents were so outrageous in character and were so extreme in degree that a reasonable member of the community would regard such conduct as atrocious, going beyond all possible bounds of decency and as being utterly intolerable in a civilized community.

58. As a direct and proximate result of Defendants' and their employees' and/or agents' extremely reckless and indifferent conduct, Plaintiff suffered severe emotional distress and mental anguish.

59. As a direct consequence of Defendants' unlawful actions as described above, Plaintiff has and continues to suffer emotional distress, pain and suffering, humiliation, and substantial lost income.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendants are to be prohibited from continuing to maintain its illegal policy, practice, or custom of discriminating against employees or prospective employees based on the faith they practice;

B. Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants' illegal actions, including but not limited to lost past and future earnings;

C. Plaintiff is to be awarded punitive damages in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their willful, deliberate, malicious, and outrageous conduct and to deter Defendants and other employers from engaging in such misconduct in the future;

D. Plaintiff is to be awarded damages for emotional distress and/or pain and suffering and Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate;

E. Plaintiff is to be awarded the costs and expenses of this action and a reasonable attorney's fees as provided by applicable law; and

F. Plaintiff is to be permitted to have a trial by jury.

(Signature on following page)

Respectfully submitted,

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Dated: July 13, 2012