

**IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF OKLAHOMA**

1.	VELMA McMAHAN,)	
)	
	Plaintiff,)	
v.)	No. CIV-04-
)	
1.	TVC MARKETING ASSOCIATES,)	
	INC., AND)	
2.	TVC PRO-DRIVER, INC.,)	ATTORNEY LIEN CLAIMED
)	JURY TRIAL DEMANDED
)	
	Defendants.)	

COMPLAINT

COMES NOW THE PLAINTIFF, Velma McMahan, and for her Complaint in the above-entitled action, alleges and states as follows:

PARTIES

1. The Plaintiff is Velma McMahan, an adult resident of Oklahoma City, Oklahoma County, Oklahoma.
2. The Defendants are 1) TVC Marketing Associates, Inc., a corporation or entity doing business in Oklahoma County, Oklahoma, and 2) TVC Pro-Driver, Inc., a corporation or entity doing business in Oklahoma County, Oklahoma.

JURISDICTION AND VENUE

3. This is a cause of action for age discrimination in employment in violation of the Age Discrimination in Employment Act; retaliation for and interference with Plaintiff's rights under the Family and Medical Leave Act ("FMLA"); discrimination under the Americans with Disabilities Act and Oklahoma state law; and violation of the Equal Pay Act ("EPA"). Jurisdiction over the federal

claims is vested pursuant to 29 U.S.C. § 626(c), 42 U.S.C. §12117(a), 29 U.S.C. §206(d), 29 U.S.C. §2601, and 28 U.S.C. § 1331. This Court has jurisdiction over Plaintiff's corresponding state law claims pursuant to 28 U.S.C. § 1367 (a).

4. Plaintiff has exhausted her administrative remedies as to the above-listed claims by filing a timely Charge of Discrimination with the Oklahoma Human Rights Commission ("OHRC") on or about July 16, 2004 and amending on or about July 28, 2004. She received her notice of right to sue dated August 24, 2004 and has timely filed this action within ninety (90) days of receipt of such notice.

5. The Defendants are located in Oklahoma County and can be served in such county. All of the actions complained of occurred in Oklahoma County, Oklahoma. Oklahoma County is located within the Western District of Oklahoma wherefore venue is proper in this Court under 28 U.S.C. § 1391(b).

STATEMENT OF FACTS

6. Plaintiff is an adult female whose date of birth is October 26, 1941 making her sixty-three (63) years old.

7. Plaintiff began working for the Defendants in approximately March 2000. She continued working there until her termination in January 2004. Plaintiff was employed as an Attorney Relations Runner with Defendants.

8. During her employment, Plaintiff was paid significantly less than other, similarly situated male employees.

9. During her employment, Plaintiff repeatedly heard derogatory comments about her age. She was also questioned about whether she intended to retire.

10. On or about September 20, 2003, Plaintiff suffered a heart attack requiring her to take medical leave. Plaintiff was hospitalized for approximately three weeks. Plaintiff was approved for FMLA leave.

11. Because of Plaintiff's medical condition, Plaintiff was a qualified individual with a disability within the meaning of the Americans with Disabilities Act and Oklahoma State law in that she was disabled, had a record of a disability, or was perceived as disabled. Plaintiff's disability substantially limited her ability to breathe, walk, and lift, *inter alia*. Plaintiff's disability also caused her various cardiac and respiratory difficulties. Despite being a qualified individual with a disability, Plaintiff could perform the essential functions of her job with or without a reasonable accommodation. The Defendants, however, discriminated against the Plaintiff by refusing her a reasonable accommodation in the form of a part time schedule until she was fully recovered, not allowing her to return to work, and by terminating her due to, *inter alia*, her medical condition.

12. In November 2003, Plaintiff asked her supervisor, Bob Thompson, if she could return to work part time until she fully recovered. Thompson told Plaintiff he would "let her know." Since the date of Plaintiff's medical leave, Plaintiff inquired every month if she could work part time, only to be told that someone would contact her.

13. In December, 2003, Plaintiff was released by her doctor to return to work full time.

14. In January 2004, Plaintiff went to the Defendants' office and inquired about returning to work full time. A receptionist at Defendants' office notified Plaintiff that she was an "ex-employee" and had been terminated.

15. Plaintiff was terminated from her employment due to her disability, in retaliation for her use of medical leave under FMLA, and because of her age. Her FMLA rights were also

interfered with. Plaintiff's age was also a motivating factor in terminating Plaintiff.

16. As a direct and proximate result of Defendants' actions, Plaintiff has suffered injuries described hereafter.

COUNT I

For her first cause of action, Plaintiff incorporates all prior allegations and further alleges and states as follows:

17. The matters alleged above constitute violations of the Age Discrimination in Employment Act (ADEA).

18. As damages the Plaintiff has suffered lost earnings, past and future, and other equitable and compensatory damages allowed by the Civil Rights Act of 1991. Plaintiff is also entitled to liquidated damages, attorney fees and costs.

COUNT II

For her second cause of action, Plaintiff incorporates all prior allegations and further alleges and states as follows:

19. Retaliation for and interference with Plaintiff's use of medical leave is contrary to the Family and Medical Leave Act.

20. As the direct and proximate result of Defendants' actions, Plaintiff has suffered injuries and is entitled to recovery of all damages or other relief allowed by FMLA, including but not limited to, lost wages (past and future), liquidated damages, and attorney's fees and costs.

COUNT III

_____ For her third cause of action, Plaintiff incorporates all prior allegations and further alleges and states as follows:

21. Discrimination based on a record of a disability, being perceived as disabled, or being disabled is contrary to the ADA and 25 O.S. § 1901, *et seq.*

22. As a direct and proximate result of the Defendants' actions, Plaintiff has suffered lost income, past and future, emotional distress and other non-pecuniary losses.

23. Because the actions of the Defendants were willful, wanton or, at the least, in reckless disregard of Plaintiff's rights, Plaintiff is entitled to punitive damages as provided by the Civil Rights Act of 1991.

COUNT IV

_____ For her fourth cause of action, Plaintiff incorporates all prior allegations and further alleges and states as follows:

24. The above-described actions constitute a violation of the Equal Pay Act.

25. As the direct and proximate result of Defendants' action, Plaintiff has suffered lost wages and is entitled to her lost income, past and future, and such remedies as the law may allow.

PRAYER

WHEREFORE, Plaintiff prays that this Court enter judgment in favor of the Plaintiff and against the Defendants and assess compensatory damages including but not limited to back pay, future wages and emotional distress damages, together with pre- and post judgment interest, costs, attorney's fees, liquidated damages, punitive damages, and such other relief as this Court may deem equitable and appropriate or allowed by law.

RESPECTFULLY SUBMITTED THIS 14th DAY OF SEPTEMBER, 2004.

s/Jana B. Leonard

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