UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MILAGROS DEL VALLE on behalf of herself and all others similarly situated individuals,

Plaintiff,

CASE NO.

vs.

GASTRO HEALTH, LLC, a Florida limited Liability Company, f/k/a **GASTRO HEALTH, PL,** f/k/a **GASTROENTEROLOGY CARE CENTERS, LLC.**

JURY TRIAL DEMANDED

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, **MILAGROS DEL VALLE** ("Plaintiff" or "Del Valle") through undersigned counsel, files this Complaint and Demand for Jury Trial against Defendant, **GASTRO HEALTH, LLC** a Florida Limited Liability Company, f/k/a **GASTRO HEALTH, PL** f/k/a **GAESTROENTEROLOGY CARE CENTERS, LLC** collectively ("Defendant" or "Gastro Health") and states as follows:

PRELIMINARY STATEMENT

1. This is a claim by Plaintiff **MILAGROS DEL VALLE** against her former employer, **GASTRO HEALTH, LLC,** f/k/a **GASTRO HEALTH, PL** f/k/a **GAESTROENTEROLOGY CARE CENTERS, LLC**, for violations of the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.*, Section 510 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq*., and the Florida Civil Rights Act ("FCRA"), Fla. Stat. § 760 *et. seq.*

2. In enacting the Family Medical Leave Act, as amended, 29 U.S.C. § 2601, et seq. ("the FMLA"), Congress wished to remedy its finding that employees with serious health conditions have "inadequate job security" when they have to leave work for temporary periods. *See* 29 U.S.C. § 2601(a)(4). The FMLA provides eligible employees, like Del Valle with unpaid, job-protected leave in the event they are suffering from a serious medical condition. 26 U.S.C. § 2612(a)(1). An employee that takes FMLA protected leave is entitled to return to the same position after coming back to work. 29 U.S.C. § 2614(a)(1). Further, the FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the FMLA. 29 U.S.C § 2615(a)(1). Likewise, it is unlawful for an employer to discharge or discriminate against any individual for opposing any practice made unlawful under the FMLA. 29 U.S.C. § 2615(a)(2).

3. The Florida Civil Rights Act ("FCRA")is also a remedial statute aimed at combating discrimination against individuals with physical or mental disabilities. The FCRA is meant to protect employees, like Del Valle, from discrimination, harassment and retaliation in the workplace on account of a real or perceived mental or physical handicap, or for asking for a reasonable accommodation related to the handicap.

4. The Employee Retirement Income Security Act ("ERISA") was passed in 1974. In passing the Act, Congress found that the "continued well-being and security of millions of employees and their dependents" depends directly on ensuring safeguards with respect to employee benefit plans. 29 U.S.C. § 1001(a). Congress also found it to be "desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character" of employee benefit plans under ERISA. *Id*.

5. ERISA was enacted "to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries . . . establishing standards of

conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(b). Section 510 of ERISA makes it unlawful "for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan." 29 U.S.C. § 1140.

6. Plaintiff, MILAGROS DEL VALLE, suffered from multiple disabilities that were also chronic health conditions entitling her to benefits under the FMLA, and protection from discrimination under the FCRA. Ms. Del Valle made Defendant aware of her health condition and her doctor's treatment plan who recommended she take a medical leave. Ms. Del Valle initially requested and was approved for a one (1) week medical leave using her vacation/paid time off. Despite the Defendant's knowledge of her need for leave, Defendant failed to provide her notice of her FMLA rights, or designate her upcoming leave as FMLA protected leave. Shortly after, and closer to her initial leave date of August 12, 2019, Ms. Del Valle contacted human resources requesting FMLA paperwork. On or about August 8, 2019, just four (4) days before starting her initial medical leave, and one (1) day after she asked for the FMLA papers, she was terminated. Ms. Del Valle qualified for FMLA leave, she had FMLA leave available to her, and she was denied the leave and terminated instead. The stated reason for Ms. Del Valle's termination was manufactured after she disclosed her need and intentions to take medical leave as a means of discrimination and retaliation against Ms. Del Valle and/or interfering with her rights under the FMLA, Section 510 of ERISA and the FCRA.

7. Accordingly, Ms. Del Valle seeks all available relief in law and equity, including but not limited to: (i) a declaration from this Court that Defendant's actions were unlawful; (ii) back pay and front pay (where reinstatement is not feasible); (iii) medical expenses; (iv) compensatory damages in whatever amount she is found to be entitled; (v) liquidated damages in whatever amount she is found to be entitled; (vi) an award of interest, costs and reasonable

attorney's fees and expert witness fees; (vii) punitive damages; (viii) equitable relief; (ix) declaratory relief; (x) pre-judgment and post-judgment interest (where allowable); and (xi) a jury trial on all issues so triable.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and the FMLA and ERISA, and has authority to grant declaratory relief under the FMLA and pursuant to 28 U.S.C. § 2201 et seq.

9. Venue is proper in this judicial district under 28 U.S.C. §1391 because Defendant does business in this judicial district, and the majority of the acts complained of took place in this judicial district.

PARTIES

10. At all times material hereto, Ms. Del Valle was a resident of Miami-Dade County, Florida.

11. At all times material to this action, Gastro Health, LLC f/k/a Gastro Health PL f/k/a Gastroenterology Care Centers, LLC ("Defendant") was and continues to be a Limited Liability Company, doing business in Miami-Dade County, Florida, and has continuously had at least 50 employees.

12. At all times material to this action, Defendant operated within Miami-Dade County, specifically at the Gastro Health, LLC located at 9500 South Dadeland Blvd. Suite 200, Miami Florida 33156.

13. At all times material to this action, Defendant was "engaged in commerce" within the meaning of §6 and §7 of the FLSA.

14. The FMLA defines the term "employer" to broadly include "any person acting directly or indirectly in the interest of an employer in relation to any employee". 29 U.S.C. 2611(4)(ii)(I).

15. Defendant is employer as defined under the FLMA.

16. "To be 'employed' includes when an employer 'suffer[s] or permit[s] [the employee] to work.'" *See Freeman v. Key Largo Volunteer Fire & Rescue Dept., Inc.*, 494 Fed. Appx. 940, 942 (11th Cir. 2012) cert. denied, 134 S.Ct. 62 (U.S. 2013).

17. From on or about March 12, 2018 to her termination on or about August 8, 2019, Plaintiff was employed as an Imaging and Infusion Manager employee, overseeing staff performing ultrasounds, CT's and administering injections on patients at Defendant's location in Dadeland, Florida.

18. Defendant employed Plaintiff as an Imaging and Infusion Manager employee.

19. Defendant is an employer under the FMLA because it is engaged in commerce or in an industry affecting commerce and employed 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

20. At all times relevant hereto, Plaintiff worked at a location where Defendant, employed 50 or more employees.

21. At all times relevant hereto, Defendant is an employer as defined by 29 U.S.C. 2611(4).

22. At all times material to this action Defendant directly or indirectly, jointly or severally, controlled and directed the day to day employment of Plaintiff, including: (i) timekeeping; (ii) payroll; (iii) disciplinary actions; (iv) employment policies and procedures; (v) scheduling and hours; (vi) terms of compensation; and (vii) working conditions.

23. At all times relevant hereto, Plaintiff was an employee entitled to leave under the FMLA, based on the fact that she was employed by the employer for at least 12 months and worked at least 1,250 hours during the relevant 12-month period prior to her seeking to exercise her rights to FMLA leave.

24. At all times material hereto, Plaintiff has a disability as defined by Fla. Stat. 760

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