IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KATIA HILLS,

Plaintiff,

-against-

AT&T MOBILITY SERVICES LLC a/k/a AT&T MOBILITY LLC,

Defendant.

Civil No.: 3:17-cv-00556-JD-MGG

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

In the final 3 weeks of Plaintiff Katia Hills's ("Plaintiff" or "Hills") pregnancy, she visited her ob-gyn or the emergency room 10 times, sometimes causing her to miss work. Because of Hills's pregnancy-related absences, Defendant AT&T Mobility Services LLC ("AT&T") fired her. It did so because, under its attendance policy, Hills accrued too many "points" – demerits imposed due to absences AT&T deemed "unexcused."

On its face, AT&T's policy punishes pregnant workers more harshly than non-pregnant workers. Multiple other categories of absence, from jury duty to bereavement leave to disability accommodation, are automatically "excused," and therefore spared points, but pregnancy-related absences are not. Indeed, in the 15 months of Plaintiff's employment, she was the only pregnant person working at her AT&T store, and the only person at that store fired for attendance points.

AT&T's disparate treatment of pregnancy, and of Hills, violates the Pregnancy Discrimination Act ("PDA"). The PDA demands that pregnant workers be treated "the same" as non-pregnant people "similar in their ability or inability to work." Here, there is no genuine issue of material fact that AT&T's attendance policy does not treat pregnancy-related absences "the same" as numerous other categories of absence. There also is no genuine issue of material fact that, due to AT&T's disparate policy terms, Hills was *ineligible to have any pregnancy-related absences excused during most of her pregnancy*, while co-workers' absences due to disability, jury duty, bereavement, among others, were eligible to be automatically excused. There is no genuine issue of material fact that Hills in fact incurred points for pregnancy-related absences. And there is no genuine issue of material fact that, but for those points, AT&T would not have fired Hills in July 2015.

AT&T has not provided any justification for refusing to excuse pregnancy-related absences on the same terms as it excuses absences for reasons other than pregnancy. Accordingly, Plaintiff is entitled to summary judgment on her claim that AT&T's attendance policy violates the PDA.

FACTUAL BACKGROUND

Hills began working at AT&T's Cassopolis Street store in Elkhart, Indiana, on April 7, 2014, when she was 23 years old. *See* Local Rule 56.1 Statement of Undisputed Material Facts Regarding Plaintiff's Motion for Partial Summary Judgment (hereafter, "SMF"), ¶ 1. Although initially hired as a Sales Support Representative, Hills soon was promoted to Retail Sales Consultant ("RSC"). *Id.* ¶¶ 2-4. As an RSC, Hills' duties included selling cellphones and tablets to customers, as well as various phone and data plans, and handling "all administrative aspects of

the sale"; handling "service inquiries from customers"; and generally providing "efficient, courteous customer service. *Id.* ¶ 5. Hills loved sales and had hopes of eventually progressing to a management position with AT&T. *Id.* ¶ 6.

During Hills's employment, AT&T maintained a "Sales Attendance Guidelines" ("SAG") policy. The SAG policy in effect at the time Hills started with AT&T, dated October 11, 2011 (the "2011 SAG policy"), was supplanted as of May 1, 2015, by a revised version (the "2015 SAG policy"). SMF ¶¶ 8-9. Both versions of the SAG penalized employees' absences with "points," or fractions of points, for late arrivals, early departures, and full-day absences, unless AT&T deemed the absence "excused."[1] *Id.* ¶¶ 11-12, 29-30. Under the 2011 SAG, AT&T would discharge an employee once she reached 7 total points; the 2015 SAG increased the maximum point threshold to 8. *Id.* ¶¶ 23, 36.[2] Under both policies, interim point thresholds triggered other forms of discipline – first a counseling notice, then a written warning, and then a final written warning. *Id.*

The 2011 SAG listed 11 express categories of "excused" absences – that is, absences that would *not* trigger imposition of a point or fraction of a point:

> [A]pproved leave of absence, scheduled vacation, scheduled excused days with pay, jury duty, bereavement, court subpoenas, military leave, short term disability,

[1] Under both the 2011 and 2015 SAG policies, employees were assessed points for each unexcused absence, tardy, or early departure according to the following progression: 0 points for the first five minutes an employee is tardy, after 6–15 minutes .25 point accrues, after 16–30 minutes .5 point accrues, after 31–120 minutes .75 point accrues, after 121 minutes 1 point accrues, and a day of absence is also 1 point. SMF ¶¶ 20, 34.

[2] The 2015 SAG policy also increased the length of time that an accrued point remained on an employee's record, from 6 months to a full year, thus largely negating any benefit to employees from the higher points threshold. SMF ¶¶ 22, 35.

> FMLA (or other federal or state mandated leave), contractual time off for union business and any other absence that is mandated by law or Company policy.

SMF ¶ 13.[3]

Under the 2015 SAG policy, the list of excused absences was even longer, and included certain new express categories (noted with italics, below):

- Approved Leave of Absence
- Scheduled/Approved Vacation
- Jury Duty
- Qualified Bereavement
- Military Leave
- Company recognized Holidays
- Approved Short Term Disability
- *Approved Job Accommodations*
- Federal/State/*Municipal* mandated Leaves (i.e., FMLA, *ADAAA*, etc.)
- *Company initiated closings (i.e., inclement weather, etc.)*
- Contracted Time Off (Union Business)
- Court Subpoena (excused to extent as outlined per Labor Agreement)
- *Approved/Company Mandated Time Off (i.e., [Excused Work Days with Pay] vacation, disciplinary time, etc.)*

SMF ¶ 31.[4]

Additionally, though the 2011 policy afforded supervisors the discretion "to consider extenuating/extreme circumstances where appropriate," and accordingly, to

[3] Under the 2011 SAG, absences caused by a qualifying disability under the Americans with Disabilities Act ("ADA") were excused under two of these categories: "[O]ther federal . . . mandated leave" and "any other absence that is mandated by law." SMF ¶ 14.

[4] Under this version of the policy, workers with ADA-qualifying disabilities fit under both the "Approved Job Accommodations" excused absence category and the "Federal/State/Municipal mandated Leaves (i.e., FMLA, ADAAA, etc.)" category. SMF ¶ 32.

decline to impose a point or fraction of a point, as well as any corresponding discipline, *id.* ¶¶ 15-16, the 2015 SAG eliminated this option. *Id.* ¶ 37.

As reflected by the above lists, while both versions of the SAG policy in place during Hills's employment expressly envision numerous bases for automatic excused absence, neither version recognize pregnancy as a reason for an automatic excused absence. Rather, as AT&T's corporate representative confirmed, the *only* way for a pregnancy-related absence to be deemed excused, and therefore spared punishment, is for the pregnant worker to shoehorn her absence into one of three other categories on the SAG policy list: short-term disability ("STD") leave, Family and Medical Leave Act ("FMLA") leave, or leave as an accommodation of disability under the ADA. *Id.* ¶¶ 39, 41. In other words*, pregnancy alone is never sufficient to avoid penalty*; instead, the pregnant worker must *also* qualify for protection under a separate statutory scheme (FMLA, ADA), or under an AT&T-created exemption (STD leave).

AT&T's approach imposes harsh consequences on pregnant workers, as Hills's experience reflects. For most of her pregnancy, which dated from the fall of 2014 until she gave birth on June 1, 2015, *id.* ¶¶ 7, 68, Hills *was ineligible to avoid punishment for a pregnancy-related absence*.

- The option to use **FMLA leave** only is available to pregnant workers who satisfy that statute's eligibility requirements, including having worked for the company for one year.[5] At the time Hills learned she was pregnant in October 2014, she had worked for AT&T

[5] *See* 29 U.S.C. § 2611(2)(A)(i) (defining "eligible employee"). Of course, a pregnant worker who satisfies the FMLA's eligibility requirements still might not qualify for an excused absence if she already has exhausted her 12 weeks of FMLA leave for another reason, such as to care for a seriously ill family member. *See* 29 U.S.C. § 2612(a)(1).

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