

NO. \_\_\_\_\_

JEFFERSON CIRCUIT COURT  
DIVISION \_\_\_\_\_  
JUDGE \_\_\_\_\_

*Electronically Filed*

MARIA WILSON

PLAINTIFF

V.

SWIFT PORK COMPANY  
d/b/a JBS USA

SERVE:  
CORPORATION SERVICE COMPANY  
421 WEST MAIN STREET  
FRANKFORT, KENTUCKY 40601

DEFENDANT

**COMPLAINT**  
*Jury Trial Demanded*

Plaintiff Maria Wilson, for her complaint against Defendant Swift Pork Company, doing business as JBS USA, states as follows:

**PARTIES**

- 1) Plaintiff Maria Wilson is a resident of Louisville, Jefferson County, Kentucky.
- 2) Defendant Swift Pork Company is a Delaware for-profit corporation authorized to do business in Kentucky. Its principal office is located at 1770 Promontory Circle, Greeley, Colorado 80634. Its registered agent for service of process is Corporation Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

**JURISDICTION AND VENUE**

- 3) Plaintiff's causes of action are brought pursuant to the Kentucky Civil Rights Act, KRS Chapter 344 (KCRA); the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA),

as amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA); and the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq. (FMLA).

4) Jurisdiction is proper in the Jefferson Circuit Court pursuant to KRS 23A.010(1) and KRS 344.450.

5) Venue in this action is proper in the Jefferson Circuit Court pursuant to KRS 452.450 and KRS 452.460(1), because Plaintiff was employed by Defendant and the injury arising from these events was done to the Plaintiff in Jefferson County, Kentucky.

6) The KCRA does not require exhaustion of administrative remedies, nor does the FMLA. Plaintiff was issued a right-to-sue by the Equal Employment Opportunity Commission for her ADA claims on January 10, 2022.

7) At all times material to this action, Plaintiff was an “employee” as defined by KRS Chapter 344.030(5), and Defendant was an “employer” as defined in KRS Chapter 344.030(2).

8) At all times material to this action, Plaintiff was an “employee” as defined by the ADA, 42 U.S.C. § 12111(4), and Defendant was an “employer” as defined in the ADA, 42 U.S.C. § 12111(5).

9) At all times material to this action, Plaintiff was an “eligible employee” as defined by the FMLA, 29 U.S.C. § 2611(2), and Defendant was an “employer” under the FMLA, 29 U.S.C. § 2611(4).

**FACTS**

10) Maria “Resee” Wilson is a Licensed Practical Nurse.

11) Resee served Swift Pork Company as an Occupational Health Nurse from September of 2019 until her termination in late February of 2021.

12) In her Occupational Health Nurse role, Resee's general job duties included medical assistance to employees, health screenings and treatment, and documentation of health and safety information.

13) Resee is a disabled worker. She suffers from migraines, depression, anxiety, and a thyroid condition.

14) Resee's experience of her disabilities is that they substantially interfere with her major life activities, such as talking, conversing, balancing, bearing weight with her muscles, seeing clearly, and undergoing ordinary cognition functions.

15) While working at JBS, Resee disclosed her disabilities to various managers in order to get accommodations for her disability-related needs. These managers included Dave Stuppy (Health & Safety Manager), Denise Knemeyer (Occupational Health Manager), Mary Miller (Clerk), and Jim Deveary (Resee's supervisor, Health & Safety Manager).

16) Not long after Resee disclosed her medical conditions to Denise Knemeyer, Denise began to scrutinize and criticize Resee.

17) Resee tried to avoid suspecting bias from Denise, but after months of hostility from the Occupational Health Manager, Resee took her concerns to Dave Stuppy – consistent with the chain of command.

18) Dave told Resee he did not want to deal with it and sent Resee to Stacy Santillan in Human Resources.

19) Resee transmitted an email to Stacy to begin this discussion on September 17, 2020, advising Stacy that she had "some real issues that's scaring me that [I have to] address."

20) Resee discussed her complaints with Stacy, but it appeared that no corrective steps were being taken by the company.

21) Four days after Resee's email to Stacey, Human Resources Manager Jordan Dinkins wrote Resee up for her attendance.

22) The write-up, dated September 21, 2020, assessed "points" against Resee for January 20-21, 2020, March 25-April 7, 2020, June 26-29, 2020, and September 14-16, 2020.

23) Resee received no explanation as to why the write up occurred a week after the latest absence, but closer in time to her successive complaints to Dave Stuppy and Stacey Santillan.

24) Right after receiving the write-up, on September 22, 2020, Resee had her internist complete FMLA paperwork certifying that she had "lifelong" conditions that included anxiety, migraines, a thyroid condition, and depression, dating back to 2014.

25) Although this was not the first time Resee had made her managers aware of her disabilities, it was the first time the company could not ignore her needs.

26) Human Resources documented the receipt of the physician's paperwork as October 6, 2020.

27) The internist's certificate further reflected that a surgery had been performed in February of 2020 for a medically necessary hysterectomy related to Resee's conditions.

28) As to the other conditions, the provider advised that Resee would need behavioral health treatments once or twice a month, with one day off per treatment, and that three to four episodes requiring one to two days off for recovery were anticipated per month.

29) Other than time off to attend to her disability-related needs, Resee did not seek accommodations for her disabilities at that time. It was the same accommodation she had needed the entire time, but that the company's managers refused to consider.

30) Under the company's job description, Resee's work called for six-day work weeks of nine-to-ten-hour days. The twelve weeks of FMLA entitlement therefore totaled seventy-two days and 648-720 hours.

31) The FMLA acceptance paperwork, however, reflected that Resee was only being approved for 480 hours, and only for the six-month period from September 21, 2020 through March 20, 2021. The company's paperwork advised that Resee would only need to supply additional documentation if she was absent "more than 4 times per month."

32) There is no evidence that the company's Human Resources staff applied the FMLA/disability entitlement retroactively to any of Resee's absences that occurred before the October 6<sup>th</sup> receipt of paperwork, including those that were the subject of the September 21<sup>st</sup> written discipline, and including the February 2020 hysterectomy surgery that the internist specifically acknowledged in the FMLA paperwork.

33) Against this backdrop, a Performance Improvement Plan (PIP) was issued to Resee by James DeVary and Human Resources Director Stacey Freiberg on November 25, 2020.

34) The evaluation categories recited on the PIP form were Determination, Simplicity, Availability, Humility, Sincerity, Discipline, and Ownership, but in the itemized criticism, only Determination, Discipline, Ownership, and Availability were identified as improvement needs.

35) Critically, alongside a few other metrics that were ostensibly performance-rooted, the individualized "Availability" metric specified "**Attendance must improve.**"

36) The PIP's stated term was sixty days, making the natural expiration January 24, 2021.

37) On January 9, 2021, DeVary noted the following progress in each specified category:

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