

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

KELLY SCHWAN
3361 Reston Drive
The Villages, Florida 32162

Plaintiff,

v.

VISITING NURSING HOSPICE AND
HEALTH CARE
100 Madison Avenue
Toledo, Ohio 43604

SERVE ALSO:

VISITING NURSING HOSPICE
AND HEALTH CARE
c/o Registered Agent
CT CORP SYSTEM
4400 East Commons Way, Suite 125
Columbus, Ohio 43219

Defendant.

) CASE NO.

) JUDGE:

) **COMPLAINT FOR DAMAGES**
) **AND INJUNCTIVE RELIEF**

) **JURY DEMAND ENDORSED**
) **HEREIN**

Plaintiff, Kelly Schwan, by and through undersigned counsel, as her Complaint against Defendant Visiting Nursing Hospice and Health Care states and avers the following:

PARTIES AND VENUE

1. Schwan was a resident of Toledo, Lucas County, Ohio while employed by Defendant, and is currently a resident of the State of Florida.
2. At all times herein, Schwan was acting in the course and scope of her employment.
3. Defendant Visiting Nursing Hospice and Health Care is an Ohio non-profit corporation with its principal place of business at 100 Madison Avenue, Toledo, Lucas County, Ohio 43604.

4. Defendant does business under a variety of fictitious names registered with the Ohio Secretary of State, including ProMedica Ebeid Hospice (Sylvania) (hereinafter “ProMedica”).
5. Plaintiff worked at ProMedica in Sylvania, Lucas County, Ohio.
6. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 in that Schwan is alleging a Federal Law Claim under the Family & Medical Leave Act (“FMLA”), 29 U.S.C § 2601 *et seq.*
7. All material events alleged in this Complaint occurred in Lucas County, Ohio.
8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTS

9. Schwan began working for ProMedica in or around June 2015.
10. Schwan was employed by ProMedica as an inpatient social worker.
11. ProMedica was, at all times hereinafter mentioned, engaged in commerce or in an industry or activity affecting commerce and employed 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year and therefore is an employer as defined in 29 U.S.C § 2611(4).
12. On or about January 29, 2020, Schwan applied for FMLA leave.
13. Schwan applied for FMLA leave because she was having hip surgery.
14. Schwan’s hip surgery was required due to arthritis and other issues with her hip.
15. Schwan’s arthritis and hip surgery constituted a serious health condition within the meaning of the FMLA.
16. Schwan sought FMLA leave from May 1, 2020, until August 1, 2020, to have and recover from surgery.
17. On or around April 17, 2020, just two weeks prior to the start of her FMLA leave, Schwan was informed by Senior Administrator, Keryn Werdehoff, and Social Worker Supervisor, Jennifer

Wilson, that her job duties were changing to include on-call outpatient duties if the beds were less than half full, and COVID-19 consults on weekends and evenings.

18. The duties of similarly situated employees who had not sought FMLA leave were unchanged.

19. Werderhoff and Wilson reprimanded Schwan for taking FMLA leave.

20. Werderhoff and Wilson told Schwan that her FMLA leave “really wasn’t working for [them].”

21. On or around July 30, 2020, just before returning from FMLA leave, Schwan sent a text to Resident Director Kate Hines asking for information related to her new job duties.

22. Instead of giving her any specifics about her new job duties, Hines told Schwan that by signing a sign-in sheet for the meeting, she had agreed to the new job duties and expectations, whatever they were.

23. Schwan was concerned about the lack of specifics regarding her new job duties.

24. Because of this concern, Schwan emailed human resources representative Colleen Alexander on or around July 31, 2020, and expressed her concerns.

25. Alexander called Kelly on or around August 3, 2020, and explained that ProMedica was entitled to change Kelly’s job duties at any time.

26. Alexander told Schwan that if she was unwilling to accept this, she could speak to Richard Russell to try and get another job within ProMedica.

27. Schwan was reluctant to do so, because, in the past, she believed Russell had intentionally prevented her from obtaining other jobs within ProMedica.

28. Around the end of October 2020, Hines spoke with Schwan about moving to part-time work.

29. Schwan had no choice but to accept this change.

30. Schwan requested that, if she was going to be required to move to part time, she be permitted to work three days a week.

31. Despite this, Schwan was presented with a work schedule consisting of four hours per day, five days per week.
32. Schwan was informed that the schedule was Russell's idea.
33. In early November 2020, Schwan was placed on an outpatient rotation program.
34. Schwan received no training or instructions for the outpatient rotation program.
35. Schwan was not informed by her superiors about her placement.
36. Schwan found about the change in her job duties from a coworker.
37. Concerned about the change in job duties with no notice, on or around November 11, 2020, Schwan sent an email to the CEO and President of ProMedica Hospice, Randy Oostra, to report the situation.
38. Oostra responded to Schwan that "we'll look into it."
39. On or around December 2, 2020, Schwan had a meeting with Hines and HR Support Supervisor, Dana Vore.
40. During that meeting, Schwan was told she had three options moving forward: (1) work part time; (2) work full time with more work and no extra pay; or (3) be laid off.
41. Schwan was unwilling to work inconsistent hours, contrary to the schedule she had requested, without any training or instruction.
42. Schwan always had been willing to work full time, but she was being asked to work an additional twenty hours per week, with no health benefits, and no additional pay.
43. Schwan believed the alternatives presented to her were insulting and in retaliation for her having taken FMLA leave.
44. Schwan was presented with no choice. Schwan felt forced to choose a layoff.

45. On or around December 8, 2020, Schwan reached out to the Regional HR Manager, Mona Kirkland, to inquire about how to file a grievance.
46. Kirkland did not respond until on or around December 10, 2020.
47. At that time, Kirkland asked Schwan to tell her what was going on.
48. Schwan responded that she merely wanted to know the process for filing a grievance.
49. Schwan was not provided the information she requested.
50. On or about December 30, 2020, Schwan was forced to resign and was effectively constructively discharged.
51. Schwan's termination was an adverse employment action.
52. Schwan's termination was an adverse action.
53. ProMedica knowingly terminated Schwan's employment.
54. ProMedica intentionally terminated Schwan's employment.
55. ProMedica willfully terminated Schwan's employment.
56. ProMedica knowingly took an adverse employment action against Schwan.
57. ProMedica knowingly took an adverse action against Schwan.
58. ProMedica intentionally to an adverse employment action against Schwan.
59. ProMedica intentionally took an adverse action against Schwan.
60. ProMedica willfully took an adverse employment action against Schwan.
61. ProMedica willfully took an adverse action against Schwan.
62. On or about December 30, 2020, ProMedica terminated Schwan's employment because of her use of qualified FMLA leave.
63. On or about December 30, 2020, ProMedica terminated Schwan's employment in order to interfere with her ability to use qualified FMLA leave.

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