

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WARREN RIVERA-NIGAGLIONI, :
 :
 Plaintiff, :
 :
 v. : **Case No.:**
 :
 JOHN F. MARTIN AND SONS, LLC, :
 :
 Defendant. :
 :
 :

COMPLAINT

AND NOW, comes Plaintiff, Warren Rivera-Nigaglioni, by and through the undersigned counsel, J.P. Ward & Associates, LLC and, specifically, Joshua P. Ward, Esquire, who files the within Complaint in Civil Action against Defendant, John F. Martin and Sons, LLC, of which the following is a statement:

PARTIES

1. Plaintiff, Warren Rivera-Nigaglioni (hereinafter “Mr. Rivera”), is an adult individual who currently resides at 2503 Garfield Avenue, West Lawn, Pennsylvania 19609.
2. Defendant, John F. Martin & Sons, LLC, (hereinafter “John F. Martin & Sons”), is a company with a place of business located at 55 Lower Hillside Road, Stevens, Pennsylvania 17578.

JURISDICTION AND VENUE

3. Jurisdiction is proper as Mr. Rivera brings this lawsuit under the Family and Medical Leave Act of 1993 (hereinafter, the “FMLA”), 29 U.S.C. § 2601 *et seq.* and the Families First Coronavirus Response Act (hereinafter, the “FFCRA”).

4. This Court has supplemental jurisdiction over Mr. Rivera’s state law claims pursuant to 28 U.S.C. § 1367(a).

5. At all relevant times, upon information and belief, John F. Martin & Sons is a company with less than 500 employees and therefore is subject to the recently enacted Families First Coronavirus Response Act (FFCRA), which in turn is comprised of the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Act (EFMLA). John F. Martin & Sons is also subject to the Family and Medical Leave Act (FMLA).

6. The EPSLA and EFMLEA were two new emergency paid leave requirements passed by Congress and signed by the President under the circumstances of the unprecedented public health emergency of the COVID-19 pandemic. At the time the law was passed, numerous state governments, including Pennsylvania’s, had issued shut down orders requiring schools and workplaces to be closed and residents to remain at home except for essential life-sustaining activity.

7. Mr. Rivera is a resident and citizen of Pennsylvania, a substantial part of the events or omissions giving rise to the claims occurred in Eastern Pennsylvania, and, therefore, this action is within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and the venue is proper pursuant to 28 U.S.C. § 1391(b).

PROCEDURAL HISTORY AND FACTUAL ALLEGATIONS

8. On or about 2016, Mr. Rivera initiated employment with John F. Martin and Sons as an order picker and was ultimately promoted to a position working in shipping, receiving and inventory.

9. During Mr. Rivera's employment with John F. Martin & Sons, he received numerous positive performance reviews and was slated for a promotion prior to the onset of COVID-19 and his ultimate termination.

10. Mr. Rivera was known for his talent and versatility in the workplace, as he was able to transfer from position to position when needed.

11. Mr. Rivera was a full-time employee who regularly dedicated over 40 hours a week to John F. Martin & Sons.

12. Additionally, Mr. Rivera would visit the worksite on the weekends upon John F. Martin & Sons' request to complete workplace tasks outside Mr. Rivera's traditional workplace duties.

13. On or about March 2020, Mr. Rivera was unable to resume his regular work schedule due to Governor Wolf's statewide stay-at-home orders closing schools and childcare services. This left Mr. Rivera without any childcare options for his child.

14. Mr. Rivera exhausted all options to obtain childcare as so to not disrupt his work schedule but was ultimately unsuccessful due to COVID-19.

15. On or around March 2020, at the onset of the COVID-19 pandemic, John F. Martin & Sons placed a sign referencing the Families First Coronavirus Response Act (hereinafter, "FFCRA") on the bulletin board for employees.

16. Upon the notification of his FMLA and associated FFCRA rights, Mr. Rivera attempted to speak with Human Resources Representatives, Peter Santiago (hereinafter, Mr. Santiago”) and Jenny Rivera (hereinafter, Ms. Rivera”) regarding his options for leave to care for his child, but was informed they would get back to him with more information.

17. Mr. Rivera’s request for leave was ultimately denied, as Mr. Rivera was notified that his need for the leave was not applicable, as the company could only grant FFCRA leave for 5 of the 6 qualifying reasons.

18. John F. Martin & Sons intentionally excluded qualifying reason #5 of the FFCRA, which provided leave for an individual who, “...is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19”.

19. In response to receiving this information, Mr. Rivera asked Ms. Rivera why qualifying reason #5 was excluded from FMLA and its associated FFCRA leave. Ms. Rivera informed Mr. Rivera that she was unsure of the answer and would speak to Mr. Santiago regarding the justification for the exclusion.

20. Rather than attempting to reasonably accommodate Mr. Rivera, Mr. Santiago and Ms. Rivera informed Mr. Rivera that he must find a solution to his childcare dilemma and continue his normal work schedule.

21. Additionally, Mr. Rivera notified Supervisor, Keith Lehr (hereinafter, “Mr. Lehr”), of his lack of childcare options due to the closure of schools and childcare facilities relating to the COVID-19 pandemic. In response, Mr. Lehr informed Mr. Rivera that it was mandatory to continue working his regularly scheduled hours and dismissed Mr. Rivera’s dilemma.

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