

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

ALICIA DREES,	:	
	:	Civil Action No.
Plaintiff	:	
	:	
v.	:	JURY TRIAL DEMANDED
	:	
STEVENS & LEE, P.C.,	:	
	:	FILED ELECTRONICALLY
Defendant	:	

COMPLAINT

PARTIES

1. Plaintiff, Alicia Drees (“Ms. Drees” or “Plaintiff”), is a female adult individual residing at 2315 Longwood Lane, Enola, Cumberland County, PA 17025.

2. Defendant, Stevens & Lee, P.C. (“Stevens & Lee” or “Defendant”), is a Pennsylvania professional corporation engaged in the practice of law in Pennsylvania with offices in various locations including 17 North Second Street, 16th Floor, Harrisburg, Dauphin County, PA 17101.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action because Ms. Drees's claims arise under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e, as amended by the Civil Rights Act of 1991, 42 U.S.C. §1981a; the Pregnancy Discrimination Act ("PDA"), 42 U.S.C. § 2000e-2(a); the Americans with Disabilities Act of 1990, *as amended* ("ADA"), 42 U.S.C. §12101, *et seq.*; and the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, *et seq.*

4. At all relevant times, Stevens & Lee employed in excess of 50 individuals and was subject to the above-quoted federal statutes.

5. This is a civil action involving claims in excess of \$75,000, exclusive of interest and costs. Jurisdiction is based on 28 U.S.C. §1331 (federal question).

6. Ms. Drees received EEOC's notice of right to sue fewer than 90 days before the filing of this complaint.

7. Venue over this action lies with the United States District Court for the Middle District of Pennsylvania.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. On or about July 27, 2015, Ms. Drees was hired by Stevens & Lee as a legal assistant ("Legal Assistant") in its Harrisburg, PA office.

9. At all relevant times during her employment, Ms. Drees was qualified to work as a Legal Assistant and was able to perform her essential job functions with or without accommodation.

10. In approximately May 2016, Ms. Drees informed her supervisors, Tammy Arner and Kim DuBois, that she was pregnant with a due date in December 2016. (Ms. Arner and Ms. DuBois worked in a department known to employees as “Support Services” or “HR.”)

11. In August 2016, Ms. Drees timely applied for FMLA maternity leave with her employer, Stevens & Lee.

12. On or about September 1, 2016, Stevens & Lee approved Ms. Drees’s FMLA maternity leave.

13. Ms. Drees’s last day of work before her FMLA maternity leave was Friday, December 16, 2016.

14. Ms. Drees went into labor the following night and gave birth to her daughter, Natalia (“Natalia”), on Sunday, December 18, 2016.

15. On January 31, 2017, Ms. Drees’s two-year-old daughter, Sophia (“Sophia”), underwent surgery to have an atypical lesion removed from her right cheek.

16. On January 31, 2017, while on FMLA maternity leave, Ms. Drees underwent an operation to remove two moles on her leg and a potentially malignant lesion, which was subsequently biopsied.

17. In February 2017, Ms. Drees's surgeon, Dr. Beth McCampbell, informed her that she needed to perform another surgery on her leg within 30 days because she had not been able to remove all of the affected area during her January 31 surgery.

18. Ms. Drees scheduled the surgery for March 16, 2017, the first available date for Dr. McCampbell.

19. Shortly thereafter, in February 2017, during her FMLA maternity leave, Ms. Drees called her supervisor, Tammy Arner, and requested an FMLA application for Natalia's kidney condition and related testing and treatment.

20. During such conversation, Ms. Drees informed Ms. Arner about Natalia's scheduled surgery on February 21, 2017, Ms. Drees's recently scheduled surgery on March 16, 2017, and Natalia's post-surgery appointment in April 2017.

21. Ms. Drees specifically informed Ms. Arner about Natalia's medical condition and shared with her the details of her and her daughter's previous treatment.

22. Ms. Drees further informed Ms. Arner that her family would find out at Natalia's April 2017 appointment whether her first surgical procedure on February 21, 2017 was successful or whether she would require further surgery.

23. Ms. Drees further notified Ms. Arner that any future surgery would take place at the end of 2017 or at the beginning of 2018 (which would be protected leave under her anticipated FMLA application and approval for Natalia).

24. Ms. Drees asked Ms. Arner whether Stevens & Lee could accommodate her family with additional medical leave if Natalia needed care during the first six months of 2017, noting that she would be exhausting her paid time off during her maternity leave (and would need to wait for additional FMLA leave to regenerate over the last four months of 2017).

25. Evading Ms. Drees's request for accommodation, Ms. Arner instead emphasized the high cost of daycare and questioned why it was financially worthwhile for Ms. Drees to return to work.

26. In response, Ms. Drees stated that medical insurance was critical for her family because her and her husband's daughters (Natalia and Sophia) had pre-existing conditions.

27. In response, Ms. Arner advised Ms. Drees that she should be looking for alternate healthcare coverage.

28. Ms. Drees reaffirmed that she remained committed to her job and to Stevens & Lee.

29. In March 2017, Stevens & Lee approved Ms. Drees's FMLA application for Natalia's kidney condition including tests and treatment.

30. In early March 2017, shortly after returning to work, Ms. Drees sent an email to Ms. Arner and Ms. DuBois (and fellow co-workers), reminding them about her scheduled March 16 surgery and explaining her need to take off a half day on March 16 and a full day on March 17.

31. On Sunday, March 5, 2017, Ms. Drees became extremely sick with what was later diagnosed as a sinus infection.

32. On the morning of March 6, 2017, Ms. Drees called off sick to her supervisor, Ms. Arner, and scheduled an immediate appointment with her primary care physician, Enola Family Practice, that same morning.

33. After diagnosing her with a sinus infection, Julie Paluch, PA-C, of Enola Family Practice, informed Ms. Drees that she was too sick to work the following day (March 7), but might be able to return to work on Wednesday, March 8, 2017.

34. After Ms. Drees returned from FMLA maternity leave in early March 2017, while battling her sinus infection, she was also experiencing complications from a recently implanted IUD.

35. She began having stomach pain with diarrhea and was vomiting.

36. Ms. Drees promptly scheduled an emergency appointment with her OB/GYN to have her IUD removed on March 16, 2017 (the same half day off she had previously confirmed in an email to her supervisors, Ms. Arner and Ms. DuBois).

37. On March 16, 2017, Ms. Drees was working her one-half day as previously confirmed with her supervisors, Ms. Arner and Ms. Kim DuBois.

38. On March 16, 2017, shortly before Ms. Drees was scheduled to leave for her scheduled surgery, Ms. Arner and Ms. DuBois arrived unannounced at her desk and asked that she meet with them in a conference room.

39. Ms. Arner informed Ms. Drees that Stevens & Lee was firing her because she was “unreliable.”

40. In response, Ms. Drees confirmed that she had not missed any days without a doctor’s excuse and that she had only recently returned from FMLA maternity leave.

41. Ms. Drees further affirmed that in February 2017, she had informed Ms. Arner by phone about her scheduled surgery on March 16.

42. In response, Ms. Arner asserted that Ms. Drees had not mentioned her scheduled surgery during their February 2017 telephone conversation.

43. Ms. Drees then stated that she would cancel her surgery immediately if she could keep her job.

44. Ms. Arner then changed the reason for Ms. Drees's termination from her being "unreliable" to her taking 30-minute breaks to nurse her infant daughter, Natalia.

45. Even though Stevens & Lee had granted Ms. Drees accommodation to take two 30-minute breaks to nurse her infant daughter (in lieu of taking one 60-minute lunch break), Ms. Arner accused Ms. Drees of adding time to her breaks.

46. Ms. Drees explained that she had always clocked in within the 30-minute period and then washed her hands and returned to work.

47. Ms. DuBois accused Ms. Drees of "stealing" time from Stevens & Lee and asserted that she should have nursed and washed her hands all within her permitted 30-minute break.

48. Ms. Arner then provided Ms. Drees with another purported reason for her termination: While Ms. Drees's co-worker, Deb Koons, was on FMLA leave, Ms. Drees's supervising attorneys realized that one floater/Legal Assistant could handle all 14 attorneys' and consultants' work and could simultaneously serve as the office manager and receptionist.

49. In response, Ms. Drees noted that, as a practical matter, the attorneys "hold back" work when floaters cover another Legal Assistant's desk.

50. While conceding Ms. Drees's point, Ms. Arner and Ms. DuBois asserted that, according to the attorneys, they should never have to wait for any secretary to complete their work based on their experience during Ms. Koons's and Ms. Drees's FMLA leave.

51. Ms. Drees then began to beg to retain her job, emphasizing that her supervising attorneys would confirm her diligence.

52. Ms. DuBois stated that everyone at Stevens & Lee (including the supervising attorneys) wanted Ms. Drees to be terminated.

53. Shortly thereafter, Ms. Arner and Ms. DuBois ushered Ms. Drees to the office elevator.

COUNT I
SEX DISCRIMINATION/RETALIATION
(TITLE VII AND PREGNANCY DISCRIMINATION ACT)

54. Ms. Drees incorporates by reference herein paragraphs 1 through 53 above.

55. Stevens & Lee's wrongful termination of Ms. Drees was motivated, in whole or in part, by the discriminatory and retaliatory animus of its supervisors' and/or other decision-makers.

56. One or both of Ms. Drees's supervisors were either authorized to fire her, participated in the decision, or influenced the ultimate decision-makers.

57. At all material times, Ms. Drees, a qualified employee, a pregnant female, and a nursing mother, was entitled to statutory protections under federal law including:

(a) Title VII, which prohibits an employer from discriminating against an employee on the basis of her sex; and

(b) the Pregnancy Discrimination Act, which codifies that discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title VII.

58. On behalf of herself and her daughter, Natalia, Ms. Drees was a member of a “protected class” and engaged in “protected activity” within the meaning of the Pregnancy Discrimination Act (“PDA”) and Title VII.

59. Stevens & Lee discriminated and retaliated against Ms. Drees, a female, and her infant daughter, Natalia, within the meaning of the Pregnancy Discrimination Act and Title VII, in that:

(a) she timely notified Stevens & Lee that she was pregnant, and Stevens & Lee approved her FMLA maternity leave;

(b) she gave birth to Natalia on December 18, 2016;

(c) when she returned to work in early March 2017, she was a qualified employee and had no performance-related issues warranting termination;

(d) Stevens & Lee treated Ms. Drees differently than her comparators including Legal Assistants who did not have pregnancy-related medical conditions including lactation-related needs;

(e) Stevens & Lee's adverse actions against Ms. Drees violated federal law, which requires employers to provide reasonable break time for its female hourly employees who are breast feeding and have lactation-related needs;

(f) Stevens & Lee discriminated against Ms. Drees on the basis of her past pregnancy, childbirth, or her and her daughter's related medical conditions;

(g) Ms. Drees was not accommodated and was not treated the same as other employees who were not affected by past pregnancy, childbirth, or related medical conditions, but who were similar in their ability or inability to work;

(h) Stevens & Lee permitted similarly situated workers with serious health conditions (or who had family members with serious health conditions) to take FMLA leave without being terminated;

(i) Ms. Drees was not afforded the same rights, leave privileges, and other benefits provided to similarly situated employees including job reinstatement;

(j) in contrast to its abrupt termination of Ms. Drees shortly after she returned to work, Stevens & Lee did not terminate similarly situated employees;

(k) Stevens & Lee's policy and/or practice and its enforcement thereof resulted in its disparate treatment of Ms. Drees, a pregnant woman and a nursing mother, as compared to her comparators;

(l) alternatively, assuming Stevens & Lee's policy and/or practice was facially neutral, Stevens & Lee's enforcement thereof had a disproportionate, adverse effect on Ms. Drees and other women affected by pregnancy, childbirth, and/or related medical conditions;

(m) Ms. Drees's pregnancy, childbirth, and her and/or her daughter's medical conditions were motivating factors in her wrongful termination;

(n) Stevens & Lee had no legitimate, non-discriminatory reason for terminating Ms. Drees;

(o) Stevens & Lee's ongoing antagonism reflected a pretext for discrimination and retaliation;

(p) Stevens & Lee's pretext and retaliatory motive are established by the close temporal proximity between Ms. Drees's protected activity for herself and her daughter and Stevens & Lee's wrongful termination;

(q) Stevens & Lee's shifting, inconsistent reasons for abruptly terminating Ms. Drees were not legitimate, were discriminatory and retaliatory, and were pretextual; and/or

(r) Stevens & Lee's unlawful motive was a substantial motivating factor in its decision to terminate Ms. Drees.

60. As a result of Stevens & Lee's unlawful conduct, Ms. Drees has sustained lost wages, lost retirement, and other benefits, attorneys' fees and costs, and other unliquidated losses and damages in excess of \$75,000, plus interest and costs.

61. Additionally, as a result of Stevens & Lee's intentional wrongdoing, which was committed with malice or with reckless indifference to Ms. Drees's and/or her daughter's rights, she is entitled to punitive damages under federal law in excess of \$75,000, plus interest and costs.

62. As a further result of Stevens & Lee's unlawful conduct, Ms. Drees has suffered emotional pain, suffering, inconvenience, mental anguish, depression, anxiety, related medical and mental health conditions, and loss of life's enjoyment in an unliquidated amount in excess of \$75,000, plus interest and costs.

WHEREFORE, Plaintiff, Alicia Drees, demands judgment in her favor and against Defendant, Stevens & Lee, P.C., including the following relief:

- A. reinstatement to her prior position or a comparable position with Defendant;
- B. compensation for back pay, front pay, lost retirement, lost wages, and other lost employee benefits;
- C. compensatory, statutory, and punitive damages in amounts to be determined at trial;
- D. attorneys' fees, costs, and interest; and
- E. such other relief as the Court deems appropriate.

COUNT II
FMLA VIOLATIONS (Interference and Retaliation)

63. Ms. Drees incorporates by reference herein paragraphs 1 through 62 above.

64. During her employment, Ms. Drees was an “eligible employee” under the FMLA, and Stevens & Lee was an employer subject to the FMLA.

65. Ms. Drees and her infant daughter, Natalia, each had a “serious health condition” which was known to her employer, Stevens & Lee.

66. During her employment, Ms. Drees separately applied for FMLA leave for herself and her daughter, Natalia, and Stevens & Lee approved their respective FMLA leave before Ms. Drees was terminated.

67. Ms. Drees notified Stevens & Lee of her intention to take leave, and she was denied benefits to which she and her daughter were entitled under the FMLA.

68. During her employment, Stevens & Lee interfered with, restrained, and/or denied Ms. Drees's exercise of, or attempt to exercise, her and her daughter's rights under the FMLA, 29 U.S.C. § 2601 *et seq.*, in that:

(a) in accordance with 29 C.F.R. § 825.302(c) and related provisions, Ms. Drees requested FMLA leave under separate circumstances indicating that she was eligible for leave for herself and for her daughter;

(b) after Ms. Drees requested leave for her daughter, Natalia, Stevens & Lee failed to timely provide certain required notices to her under FMLA including confirmation of her right to job restoration, as required by 29 C.F.R. §§ 825.208, 825.300(b)(1), and related provisions;

(c) shortly after she returned to work from approved FMLA maternity leave, Ms. Drees was terminated for no legitimate, non-discriminatory reason;

(d) Stevens & Lee violated the FMLA by impermissibly evaluating and disciplining Ms. Drees while she was on approved FMLA maternity leave;

(e) shortly before Ms. Drees was terminated, Stevens & Lee approved her daughter Natalia's FMLA leave;

(f) in violation of the FMLA, Stevens & Lee failed to restore Ms. Drees to her prior position or an equivalent job;

(g) as a result of Stevens & Lee's adverse actions, Ms. Drees was unable to exercise her and her daughter's rights including the right to take FMLA leave for Natalia's serious health conditions (and the right to request and receive anticipated leave later in 2017); and

(h) Ms. Drees and her daughter were entitled to FMLA leave and benefits, and Stevens & Lee interfered, restrained, and/or denied her attempt to exercise her and her infant daughter's rights under FMLA.

69. During her employment, Stevens & Lee retaliated against, discharged, and/or otherwise discriminated against Ms. Drees in violation of her rights under FMLA in that:

(a) Ms. Drees invoked her and her daughter's rights to FMLA-qualifying leave;

(b) shortly after she returned to work from FMLA maternity leave, and shortly after Stevens & Lee approved her daughter's FMLA leave, Ms. Drees was wrongfully terminated in violation of the FMLA;

(c) Ms. Drees's wrongful termination was causally related to her invocation of her and her daughter's rights under the FMLA;

- (d) Stevens & Lee had no legitimate, non-retaliatory reason for abruptly terminating Ms. Drees;
- (e) before and after she took FMLA leave, Ms. Drees had no performance-related issues warranting termination;
- (f) Stevens & Lee's and/or its supervisors' shifting, inconsistent reasons for termination reflected a pretext for retaliation;
- (g) Stevens & Lee's and/or its supervisors' ongoing antagonism represented a pretext for retaliation;
- (h) Stevens & Lee's and/or its supervisors' retaliatory motive and pretext are established by the close temporal proximity between Ms. Drees's and her daughter's protected activity and Stevens & Lee's wrongful termination of Ms. Drees; and/or
- (i) Stevens & Lee's unlawful motive was a substantial motivating factor in its decision to terminate Ms. Drees.

70. After interfering with Ms. Drees's and her infant daughter's rights under the FMLA, and after retaliating against them, Stevens & Lee failed to restore her to her position as a Legal Assistant and/or failed to restore her to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

71. As a result of Stevens & Lee's wrongful violation of her and her daughter's rights under FMLA, and as a result of Stevens & Lee's wrongful retaliation, Ms. Drees has sustained lost wages, benefits, liquidated damages, double damages, statutory interest, and other damages authorized by the FMLA, all of which are in excess of \$75,000, plus interest and costs.

WHEREFORE, Plaintiff, Alicia Drees, demands judgment in her favor and against Defendant, Stevens & Lee, P.C., including the following relief:

- A. reinstatement to her prior position as a Legal Assistant or an equivalent position;
- B. compensation for back pay, lost wages, lost retirement, and other lost employee benefits;
- C. compensatory, statutory, liquidated damages, and double damages in amounts to be determined at trial;
- D. attorneys' fees, costs, and statutory interest; and
- E. such other relief as the Court deems appropriate.

COUNT III
DISABILITY DISCRIMINATION,
FAILURE TO ACCOMMODATE, AND RETALIATION (ADA)

72. Ms. Drees incorporates by reference herein paragraphs 1 through 71 above.

73. At all material times and as averred more fully above, Ms. Drees and/or her infant daughter, Natalia, had legally protected disabilities within the meaning of the ADA, as amended, including:

- (a) a physical and/or mental impairment that substantially limited one or more major life activities;
- (b) a record of such an impairment or impairments; and/or
- (c) being regarded as having such an impairment or impairments.

74. As averred more fully above, Ms. Drees, a qualified employee and a member of a “protected class,” engaged in “protected activity” on behalf of herself and her infant daughter, Natalia, within the meaning of the ADA.

75. Stevens & Lee discriminated and retaliated against Ms. Drees based on her and/or her daughter’s disabilities and failed to accommodate them within the meaning of the ADA, in that:

- (a) shortly after Ms. Drees returned from FMLA maternity leave in early March 2017, Ms. Arner denied Ms. Drees’s request to have access to her cell phone during work hours (a reasonable, necessary accommodation due to daughter Natalia’s kidney condition);

- (b) Ms. Drees’s co-worker and comparator, Deb Koons, was granted accommodation to use her cell phone to call her elderly mother and adult daughter on a regular basis;

(c) Ms. Drees also sought but was denied accommodation for her past pregnancy, childbirth, her and Natalia's medical conditions, anticipated appointments, and/or lactation-related needs;

(d) Stevens & Lee accommodated other employees similar in their ability or inability to work due to an impairment, but denied Ms. Drees the same accommodations, rights, leave privileges, and benefits provided to her comparators;

(e) Stevens & Lee impermissibly evaluated and disciplined Ms. Drees while she was FMLA maternity leave (and while she was eligible for FMLA leave for her daughter);

(f) Stevens & Lee failed to engage in an interactive process to explore accommodation including unpaid medical leave for tests, treatment, surgery, and medical appointments for Ms. Drees and her daughter;

(g) rather than complying with its obligations under the ADA, Stevens & Lee was selfishly concerned about Ms. Drees's and her daughters' past and anticipated maternity and medical leave requests and the costs of their treatment;

(h) Stevens & Lee changed the terms, conditions, and privileges of Ms. Drees's employment while she and her daughter had known disabilities within the meaning of the ADA and after she had requested accommodation;

(i) in violation of 42 U.S.C. § 12203(b) and related provisions, Stevens & Lee coerced, intimidated, and/or interfered with Ms. Drees's exercise of or enjoyment of her and her daughter's rights under the ADA;

(j) based on the reasons alleged more fully in Count I above, Stevens & Lee's termination of Ms. Drees was not legitimate, was discriminatory and retaliatory, and was pretextual; and/or

(k) Stevens & Lee's unlawful motive was a substantial motivating factor in its decision to terminate Ms. Drees.

76. As a result of Stevens & Lee's unlawful conduct, Ms. Drees has sustained lost wages, lost retirement, and other benefits, attorneys' fees and costs, and other unliquidated losses and damages in excess of \$75,000, plus interest and costs.

77. Additionally, as a result of Stevens & Lee's intentional wrongdoing, which was committed with malice or with reckless indifference to Ms. Drees's and/or her daughter's rights, Ms. Drees is entitled to punitive damages under federal law in excess of \$75,000, plus interest and costs.

78. As a further result of Stevens & Lee's unlawful conduct, Ms. Drees has suffered emotional pain, suffering, inconvenience, mental anguish, depression, anxiety, related medical and mental health conditions, and loss of life's enjoyment in an unliquidated amount in excess of \$75,000, plus interest and costs.

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- B. compensation for back pay, front pay, lost retirement, lost wages, and other lost employee benefits;
- C. compensatory, statutory, and punitive damages in amounts to be determined at trial;
- D. attorneys' fees, costs, and interest; and
- E. such other relief as the Court deems appropriate.

Respectfully submitted,

KEEFER WOOD ALLEN & RAHAL, LLP

Dated: 09/17/2018

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