

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

_____	)	
ALICIA DREES,	)	
	)	
<i>Plaintiff</i>	)	Civil Action No.: 1:18-cv-01823-JEJ
	)	(Hon. John E. Jones III)
v.	)	
	)	
STEVENS & LEE, P.C.,	)	
<i>Defendant.</i>	)	
_____	)	

**ANSWER TO COMPLAINT WITH AFFIRMATIVE DEFENSES**

Defendant Stevens & Lee, P.C. (“Stevens & Lee”) hereby answers the Complaint of Plaintiff Alicia Drees (“Drees”) and avers as follows:

**PARTIES**

1. Admitted.
2. Admitted.

**JURISDICTION AND VENUE**

3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

**ANSWERS TO FACTUAL ALLEGATIONS**

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted. By way of affirmative answer, Ms. Drees exhausted her Family and Medical Leave Act (“FMLA”) leave entitlement prior to her scheduled return to work on March 7, 2017.

14. Admitted.

15. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

16. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

17. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

18. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted in part and denied in part. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint speculating that Ms. Drees would be entitled to protected leave under an anticipated FMLA application to occur at the end of 2017 or at the beginning of 2018 and the same are denied. The remaining averments of this paragraph of the Complaint are admitted.

24. Admitted.

25. Denied. By way of affirmative answer, Ms. Arner informed Ms. Drees that she would exhaust her FMLA leave entitlement prior to her scheduled return to work on March 6, 2017 and would not have additional leave available until later in 2017.

26. Denied.

27. Denied.

28. Denied.

29. Admitted in part and denied in part. It is admitted that on March 7, 2017, Ms. Arner, in an email to Ms. Drees, stated: "As we discussed on the phone a few weeks ago, when we spoke about your return to work, you have exhausted all of your FMLA leave. A few days will become available in September, with the majority of time regenerating in December of this year." Accordingly, while it is admitted that Ms. Drees' request for FMLA leave related to the care of her daughter was approved, that approval was subject to the availability of FMLA leave time which, as of March 3, 2017, had all been exhausted.

30. Admitted.

31. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

32. Admitted in part and denied in part. It is admitted that on the morning of March 6, 2017, Ms. Drees called off sick to her supervisor, Ms. Arner. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph of the Complaint and the same are denied.

33. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

34. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

35. Denied. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

36. Admitted in part and denied in part. It is admitted that Ms. Drees had requested a half-day off on March 16, 2017 in an email to her supervisors, Ms. Arner and Ms. DuBois. Defendant is without information or knowledge sufficient to form a belief as to the truth or falsity of the averments of this paragraph of the Complaint and the same are denied.

37. Admitted.

38. Admitted.

39. Admitted in part and denied in part. It is admitted that one of the four reasons provided by Ms. Arner and Ms. DuBois to Ms. Drees concerning the reason for her termination was that she was unreliable. To the extent that the averments of paragraphs 39, 44, and 48 of the Complaint plead or attempt to infer

that Ms. Arner and Ms. DuBois provided shifting reasons for Ms. Drees' termination, the same are denied. To the contrary, Ms. Arner and Ms. DuBois provided Ms. Drees four reasons for Stevens & Lee's decision to terminate Ms. Drees' employment:

- Ms. Drees was not reliable because her absenteeism (exclusive of her absenteeism protected under FMLA) was excessive and when she was present at work, the attorneys to whom she was assigned could not rely upon her to do her job properly.
- Even after being provided a specific directive to improve her conduct and performance during her year-end performance review in December 2016 prior to the start of her FMLA maternity leave, Ms. Drees continued to arrive for work, clock in, and then go somewhere other than her desk during the first ten to fifteen minutes of her working day; and absent herself from her desk and intervals during her working day thus rendering her unavailable and incapable of being located when attorneys to whom she was assigned needed her services.
- Ms. Drees took breaks, then clocked back in and continued her breaks while clocked in.

- Ms. Drees' inattentiveness to her job and unreliability during the work day (see above), resulted in other legal assistants needing to take time away from what they should have been doing to do Ms. Drees' work.

40. Admitted. It is admitted that Ms. Drees asserted that she had not missed any days without a doctor's excuse and that she had only recently returned from maternity leave. By way of affirmative answer, Stevens & Lee's conclusion that Ms. Drees was unreliable was partially due to Ms. Drees' attendance and partially due to Ms. Drees' performance and conduct while at work.

41. Admitted in part and denied in part. It is admitted that Ms. Drees claimed that she had informed Ms. Arner about her March 16 surgery in February. It is denied that Ms. Drees, in fact, informed Ms. Arner about her March 16 surgery in February.

42. Admitted.

43. Admitted.

44. Denied. It is denied that breaks taken by Ms. Drees to nurse her infant daughter was a reason that Stevens & Lee terminated her employment. Stevens & Lee incorporates by reference its above answer to paragraph 39 of the Complaint.

45. Admitted.

46. Admitted.

47. Admitted in part and denied in part. It is denied that Ms. DuBois accused Ms. Drees of “stealing” time from Stevens & Lee. It is admitted that Ms. DuBois and Ms. Arner told Ms. Drees that time spent washing her hands should have occurred during her unpaid break and should not have occurred after she had clocked back in to work following her unpaid break.

48. Denied. It is denied that the ability of one Legal Assistant to handle the work of attorneys during Ms. Drees’ leave was a reason for Stevens & Lee’s decision to terminate Ms. Drees employment. It is denied that attorneys employed by Stevens & Lee supervised Ms. Drees. Stevens & Lee incorporates by reference its above answer to paragraph 39 of the Complaint.

49. Admitted.

50. Admitted.

51. Admitted in part and denied in part. It is denied that attorneys employed by Stevens & Lee supervised Ms. Drees. All other averments of this paragraph of the Complaint are admitted.

52. Denied.

53. Admitted.

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

54. Stevens & Lee incorporates by reference paragraphs 1 through 53 above.



55. Denied.

56. Admitted.

57. Admitted.

58. Admitted.

59. Denied. The averments of the introductory clause of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(a) Admitted.

(b) Admitted.

(c) Admitted in part and denied in part. It is admitted that when Ms. Drees returned to work in early March 2017, she was a qualified employee. The remaining averments of this sub-paragraph of the Complaint are denied.

(d) Denied.

(e) Denied. The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(f) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(g) Denied.

(h) Admitted.

(i) Denied.

(j) Denied.

(k) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(l) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(m) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(n) Denied.

(o) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(p) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(q) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(r) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

60. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

61. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

62. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

WHEREFORE, defendant Stevens & Lee, P.C. respectfully requests that the Court dismiss Count I of the Complaint and enter judgment in its favor together with the costs of the action, including reasonable attorneys' fees.

**COUNT II**  
**FMLA VIOLATIONS (Interference and Retaliation)**

63. Stevens & Lee incorporates by reference paragraphs 1 through 62 above.

64. Admitted.

65. Admitted.

66. Admitted.

67. Admitted in part and denied in part. It is admitted that Ms. Drees notified Stevens & Lee of her intention to take leave. The remaining averments of this paragraph of Complaint are denied.

68. The averments of the introductory clause of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(a) Admitted.

(b) Denied.

(c) Admitted in part and denied in part. It is admitted that Stevens & Lee terminated Ms. Drees' employment shortly after she returned to work from approved FMLA leave. It is denied that Stevens & Lee terminated Ms. Drees for reasons that were not legitimate or that were unlawfully discriminatory.

(d) Denied.

(e) Admitted.

(f) Denied.

(g) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(h) Admitted in part and denied in part. It is admitted that Ms. Drees was entitled to FMLA leave and benefits. It is denied that Ms. Drees' daughter was entitled to FMLA leave and benefits. The remaining averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

69. Denied. The averments of the introductory clause of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(a) Admitted.

(b) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(c) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(d) Denied.

(e) Denied.

(f) Denied.

(g) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(h) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(i) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

70. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

71. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

WHEREFORE, defendant Stevens & Lee, P.C. respectfully requests that the Court dismiss Count II of the Complaint and enter judgment in its favor together with the costs of the action, including reasonable attorneys' fees.

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

72. Stevens & Lee incorporates by reference paragraphs 1 through 71 above.

73. Admitted.

74. Admitted.

75. Denied. The averments of the introductory clause of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(a) Denied. By way of affirmative answer, Ms. Arner and Ms. DuBois told Ms. Drees during her December 16 annual performance review that she was not permitted to have her personal cell phone lying on her desk while working and was not to engage in loud, personal conversations on her cell phone while at her work station.

(b) Denied. By way of affirmative answer, Ms. Koons was held to the same standard as Ms. Drees in that she was not permitted to have her personal cell phone lying on her desk while working and was not permitted to engage in loud, personal conversations on her cell phone while at her work station.

(c) Admitted in part and denied in part. It is admitted that Ms. Drees sought accommodation for her past pregnancy, childbirth, her and Natalia's

medical conditions, anticipated appointments, and/or lactation related needs. It is denied that Stevens & Lee denied such accommodations.

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

(e) Denied. By way of affirmative answer, Stevens & Lee evaluated Ms. Drees' work performance and warned Ms. Drees that she needed to change certain conduct and improve her work performance in December 2016, prior to her FMLA maternity leave.

(f) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

(g) Denied.

(h) Denied.

(i) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.



(j) The averments of this sub-paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

76. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

77. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

78. Denied. The averments of this paragraph of the Complaint set forth legal conclusions to which no response is required. If a response is deemed required, the same are denied.

WHEREFORE, defendant Stevens & Lee, P.C. respectfully requests that the Court dismiss Count III of the Complaint and enter judgment in its favor together with the costs of the action, including reasonable attorneys' fees.

**AFFIRMATIVE DEFENSES**

1. Ms. Drees fails to state a claim upon which relief can be granted.
2. Stevens & Lee terminated Ms. Drees' employment for legitimate and non-discriminatory reasons and did not interfere with her rights under the

Americans with Disabilities Act, the Family and Medical Leave Act, Title VII of the Civil Rights Act of 1864 or the Pregnancy Discrimination Act.

3. Stevens & Lee offered and provided Ms. Drees all leave to which she was entitled under the FMLA.

4. As of March 3, 2016, Ms. Drees had exhausted all leave to which she was entitled under the FMLA.

5. Stevens & Lee disciplined and discharged Ms. Drees for reasons that related to her work performance and unprotected absences from work.

6. Stevens & Lee disciplined and discharged Ms. Drees for reasons that were consistent with discipline issued to and discharges of other legal assistants employed by Stevens & lee.

7. Stevens & Lee did not terminate Ms. Dress' employment in retaliation for her asserting rights under the Americans With Disabilities Act ("ADA"), the FMLA, Title VII or the Pregnancy Discrimination Act.

8. Ms. Drees has a duty to mitigate damages and has not mitigated her damages.

9. Ms. Drees' claims for punitive damages must be stricken as the evidence will not support the same.

Dated: November 14, 2018

STEVENS & LEE

By: /s/ Joseph P. Hofmann

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**CERTIFICATE OF SERVICE**

I, Joseph P. Hofmann, certify that Defendant's Answer with Affirmative Defenses to Plaintiff's Complaint, has been filed electronically, is available for viewing and downloading from the ECF System, and has been served via the Court's electronic filing service on Plaintiff's counsel.

Dated: November 14, 2018

/s/ Joseph P. Hofmann

Joseph P. Hofmann