

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

DAVID BRADY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.:
)	
BATH IRON WORKS CORPORATION,)	
a SUBSIDIARY OF GENERAL)	
DYNAMICS CORPORATION,)	
)	
Defendant.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff David Brady, by and through the undersigned counsel, complains of Defendant Bath Iron Works Corporation, a Subsidiary of General Dynamics Corporation ("BIW" or "the Employer"), as follows:

INTRODUCTION

1. This action arises out of the unlawful employment actions taken by Defendant BIW against Plaintiff Brady in violation of the Family Medical Leave Act, 29 U.S.C. §2601 *et seq.* ("FMLA") and the Maine Family Medical Leave Act, 26 M.R.S.A. §843 *et seq.* ("MFMLA"). The illegal practices alleged below were committed within the state of Maine.

JURISDICTION AND VENUE

2. Jurisdiction properly lies in this Court pursuant to 28 U.S.C. §1331 and 29 U.S.C. §2617(a)(2) and pursuant to the doctrine of supplemental jurisdiction over the state-based MFMLA claim.

3. Venue properly lies in this Court pursuant to 28 U.S.C. 1391.

JURY DEMAND

4. Plaintiff demands trial by jury of all claims, to the extent allowed by law.

PARTIES

5. Plaintiff David Brady resides in Bath, Maine. Plaintiff Brady was employed by Defendant BIW for the better part of twenty-six (26) years. BIW hired Brady in March of 1989. BIW terminated Brady from his position as a carpenter on July 8, 2015.

6. In the year preceding his termination, Plaintiff Brady worked more than 1250 hours. At all times relevant to this complaint, Plaintiff Brady performed his job in a satisfactory fashion.

7. Defendant BIW is a wholly-owned subsidiary of General Dynamics Corporation. It is primarily located in Bath, Maine. BIW employs more than 500 employees.

FACTUAL ALLEGATIONS

A. Plaintiff Brady has a Serious Medical Condition and BIW Certified his Intermittent FMLA Leave.

8. On March 20, 1989, Plaintiff Brady began working at BIW. BIW wrongfully terminated him on July 8, 2015.

9. In November of 2014 Plaintiff Brady began to suffer from chronic, serious mental health conditions, including depression and anxiety.

10. Plaintiff Brady sought medical treatment for these conditions and BIW is aware that he has had them.

11. As part of the treatment and management of these serious mental health conditions, in 2014 BIW certified Mr. Brady's request for intermittent leave pursuant to the FMLA and MFMLA.

B. In June of 2015 Plaintiff Brady Requests Certification for Intermittent Leave Under the FMLA.

12. On June 23, 2015, Plaintiff Brady again requested certification for intermittent FMLA leave from BIW for his serious mental health conditions.

13. BIW requires employees requesting FMLA leave to complete BIW's Medical Certification Form (the "Form"). Alice Franklin, D.O. completed and signed the Form for Plaintiff Brady on June 23, 2015. Dr. Franklin is Plaintiff Brady's primary care physician.

14. On the Form Dr. Franklin noted that Plaintiff Brady suffered from depression and anxiety, that these conditions were partially related to work, that he had been prescribed a regimen of continuing treatment, that he would need leave for exacerbation of his condition as well as for ongoing treatment, and that he took prescription medication to manage his condition.

15. For persons like Plaintiff Brady who required intermittent FMLA leave, the Form asks medical providers to provide their best estimate of the frequency and duration of the leave needed. Dr. Franklin estimated that Plaintiff Brady would need 3 days or 24 hours per month, and that he may need either partial days or full days depending on his symptoms.

16. Dr. Franklin also checked a box on the Form to indicate that Plaintiff Brady's condition is a chronic and indefinite.

17. BIW's form defines a chronic condition as one that results in any period of incapacity which: (1) requires periodic visits for treatment (2) continues over an extended period of time (3) may cause episodic rather than continuous incapacity. Chronic conditions do not require medical visits for each period of incapacity requiring intermittent leave.

18. BIW's Family and Medical Leave Designation Form notifies employees requesting leave that "BIW may ask for a second or third opinion at BIW's expense if it

questions the medical certification.” BIW did not seek a second or third opinion about Dr. Franklin’s medical certification for Plaintiff Brady’s intermittent FMLA leave.

C. Plaintiff Brady’s Uses FMLA on June 26, 2015.

19. On the morning of June 26, 2015, Plaintiff Brady started his normal 7 am shift. At some point he began to experience debilitating and incapacitating exacerbation of his stress and anxiety.

20. Concerned that his June 23, 2015 request for FMLA certification had not yet been processed, Plaintiff Brady went to BIW’s FMLA office to ask if he was authorized to use intermittent FMLA leave in accordance with his June 23 request for certification. He spoke with a woman name Pam in the office and she confirmed that he could use his intermittent FMLA for stress.

21. At around 11 a.m. that morning Plaintiff Brady determined his condition warranted using his intermittent FMLA for the remainder of the day.

22. Plaintiff Brady called his “lead man” at BIW to report that he would be taking FMLA leave for the rest of the day. He reported the same information to his supervisor. Neither his lead man nor his supervisor objected to Mr. Brady’s use of FMLA.

23. Before leaving work that morning, Plaintiff Brady loaded his car with scrap wood that BIW makes available to employees.

24. When Plaintiff Brady arrived at BIW’s “clock out” house that morning, he ran into another BIW employee who was also leaving work. They decided to get lunch together.

25. At some point that morning, individuals employed by BIW in its labor relations department learned that Plaintiff Brady may be at a local restaurant. BIW ordered a labor relations specialist and a labor relations legal specialist (the “BIW Specialists”) to go to the restaurant to see if Plaintiff Brady was there.

26. The two BIW Specialists allegedly arrived at the restaurant at 12:09 p.m., and confirmed that Plaintiff Brady was there with another person.

27. The BIW Specialists stayed inside the restaurant observing Plaintiff Brady and his friend.

28. The BIW Specialists never approached Plaintiff Brady while he was in the restaurant. They surreptitiously watched him from a distance. They did not speak to Plaintiff Brady and neither was within earshot of him.

29. Although he and his friend had initially discussed getting lunch, Plaintiff Brady's anxiety, which necessitated his use of leave that morning, was severe and negatively affected his appetite and ability to eat. As a result, and consistent with how his stress normally affected his appetite during that period of time, Plaintiff Brady decided he would not eat.

30. Roughly ten minutes after the BIW Specialists arrived at the restaurant, Plaintiff Brady left. The BIW Specialists alleged that Plaintiff Brady consumed a beer at the restaurant.

31. After Plaintiff Brady left the restaurant, the BIW specialists took photographs of the location where he and his friend sat. They also took pictures of his vehicle.

32. When Plaintiff Brady left the restaurant, the BIW Specialists stopped surveilling him and no one attempted further surveillance that day. Plaintiff Brady did not return to BIW that day.

33. On June 26, 2015 at 4:15 p.m. a signed letter claiming to be from Nia Foderingham, MD, BIW's Industrial Physician, was faxed to Dr. Franklin seeking clarification of Dr. Franklin's intent with respect to Plaintiff Brady's intermittent leave. In fact, the letter could not have been sent from Dr. Foderingham because she was not at BIW that day. No doctor was present at BIW that day.

34. The letter asked how Plaintiff Brady's conditions are associated with his employment and falsely accused Plaintiff Brady of "utilizing his FMLA for the purpose of spending time at the local bar."

35. Dr. Franklin faxed her response to BIW's questions to Dr. Foderingham on June 30, 2015 and explained that stress at work aggravates Plaintiff Brady's condition.

D. Plaintiff Brady Returns to Work the Next Morning but BIW Blocks his Entrance.

36. The next morning Plaintiff Brady arrived at BIW to work a Saturday overtime shift. When he attempted to enter the yard he discovered his badge had been deactivated.

37. Plaintiff Brady had no idea what the problem was. When he asked security they had no idea what was going on either. Security told Plaintiff Brady that they could not allow him on the premises.

38. Plaintiff Brady returned home and called his union shop steward and president to report what had happened and see if either knew what might be going on. Neither had any idea why Plaintiff Brady's badge had been deactivated. They instructed him to come to the union hall first thing Monday morning and that they would find out what's going on at that time.

E. Plaintiff Brady is Suspended on June 29, 2015 After Meeting with BIW Labor Relations.

39. On Monday, June 29, 2015, Plaintiff Brady met with members of BIW's Labor Relations management team. BIW requested the meeting to investigate Plaintiff Brady's use of intermittent FMLA leave the previous Friday, June 26. Plaintiff Brady's union representatives were also present.

40. At this meeting, a BIW representative asked Plaintiff Brady about his use of leave. Plaintiff Brady honestly answered the few questions he was asked, admitting that he took

FMLA, loaded some wood into his car, and then went with a friend "to get a bit to eat." He explained that he believed what he did "was within my limits for FMLA."

41. In response, BIW suspended Plaintiff Brady "pending investigation for possible FMLA fraud."

42. At the meeting on June 29, 2015 no one from BIW asked Plaintiff Brady about his medical or mental health condition on June 26 and why he determined he needed to use FMLA leave. No one asked him questions about the mental health conditions that necessitated obtaining intermittent FMLA leave. No one from BIW explained to Plaintiff Brady what they believed he may have done wrong.

F. Plaintiff Brady is terminated for FMLA Fraud

43. On July 8, 2015, Dr. Nia Foderingham sent BIW's labor relations people an email concluding that Mr. Brady's use of FMLA was not "consistent with the temporary approval granted by the BIW office."

44. Dr. Foderingham never spoke to Plaintiff Brady about his medical condition and what prompted him to exercise his right to use FMLA on June 26, 2015. She never spoke to Plaintiff Brady's physician regarding the basis for his needing intermittent FMLA.

45. That same day, on July 8, 2015, BIW discharged Plaintiff Brady for using intermittent FMLA on June 26, 2015.

COUNT I
FMLA Retaliation

46. Plaintiff Brady re-alleges and herein incorporates by reference Paragraphs 1-45 as if set forth in their entirety herein.

47. Plaintiff Brady's mental health condition was so severe that on June 26, 2015 that it was incapacitating and in response he exercised his right to take FMLA leave in accordance with the terms of his FMLA certification with BIW.

48. On June 26, 2015, prior to taking his leave, Plaintiff Brady confirmed with BIW's FMLA office that he was certified to take intermittent leave for stress. He also told his lead man and supervisor that he was taking FMLA for stress that morning and neither objected.

49. Defendant BIW discharged Plaintiff Brady for using his FMLA leave on July 8, 2015.

50. Defendant BIW discharged Plaintiff Brady in order to interfere with, restrain or deny him the exercise of, or attempted exercise of, his rights under the FMLA, in violation of 29 U.S.C. § 2615.

COUNT II

(For Violation of the Maine Family Medical Leave Act)

51. Plaintiff re-alleges and hereby incorporates by reference Paragraphs 1-50 as if set forth in their entirety herein.

52. Plaintiff Brady suffers from a serious health condition as defined by 26 M.R.S.A. §843(6).

53. Plaintiff Brady was entitled to take intermittent leave under the MFMLA, 26 M.R.S.A. §844 for his serious health condition.

54. Defendant BIW interfered with and/or unlawfully discriminated against Plaintiff Brady because he exercised his rights to medical leave in violation of 26 M.R.S.A. § 847.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter an Order providing as follows:

A. On Count I, order Defendant BIW to reinstate Plaintiff, to remove all references in his personnel file to discipline for FMLA fraud, and order Defendant BIW to make Plaintiff whole for lost wages and benefits and to pay liquidated damages in an amount equal to the sum of lost wages and benefits;

B. On Count II, order Defendant BIW to reinstate Plaintiff, to remove all references in his personnel file to discipline for FMLA fraud, and order BIW to make Plaintiff whole for lost wages and benefits and to pay liquidated damages in an amount equal to \$100 per day that the violation has continued;

C. On both Counts, order Defendant BIW to pay prejudgment and post-judgment interest, costs, and reasonable attorneys' fees;

D. On all Counts, order Defendant BIW to pay front pay if reinstatement is not feasible; and

E. Grant such additional relief as this Court deems appropriate.

Respectfully submitted,

Dated: January 5, 2016

/s/ Samuel S. Riotte
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