

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

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

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Richard Pye, 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 Pye 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 Richard Pye, resides in Dresden, Maine. Plaintiff Pye was employed by Defendant BIW for over twenty-eight (28) consecutive years from October 1986 until he was terminated from his job as a pipe coverer on loan as an insulator on July 24, 2015. In the year preceding his termination, Plaintiff Pye worked more than 1250 hours. At all times relevant to this complaint, Plaintiff Pye performed his job in a satisfactory fashion.

6. 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 Pye has a Serious Medical Condition that Entitles him to FMLA Leave.

7. On October 20, 1986, Plaintiff Pye began working at BIW. He worked there continuously until his wrongful termination on July 24, 2015.

8. Since October 1, 2001, Plaintiff Pye has received psychiatric care from a medical doctor for serious health conditions including major depression and bipolar disorder.

9. As part of the treatment and management of his serious mental health condition, Mr. Pye has been certified to use intermittent family medical leave in accordance with the FMLA.

10. At least once per year, BIW required Plaintiff Pye's health care provider to complete a FMLA employee Medical Certification Form. Plaintiff Pye always complied with these requests and submitted the required paperwork to BIW.

11. Plaintiff Pye's use of intermittent leave under the FMLA has been certified by BIW every year since 2005.

B. In April of 2015, BIW certified Plaintiff Pye to Use Intermittent Leave Under the FMLA.

12. On April 16, 2015, Mr. Pye's psychiatrist, Lawrence Fischman, MD, completed BIW's FMLA certification form for Plaintiff Pye.

13. On the form, Dr. Fischman indicated that Plaintiff Pye has a chronic condition. Chronic conditions are defined as those that result in any period of incapacity which: (1) requires periodic visits for treatment (2) continue over an extended period of time (3) may cause episodic rather than continuous incapacity.

14. To support his determination that Plaintiff Pye has a chronic condition sufficient to support FMLA leave, Dr. Fischman noted that Plaintiff Pye suffered from insomnia, depression and anxiety, and that he may need leave for partial days and full days. He also indicated that Plaintiff Pye would need leave for exacerbation of his condition as well as for ongoing treatment.

15. On April 21, 2015, BIW sent a letter to Plaintiff Pye approving the continuation of his intermittent FMLA until April 16, 2016. BIW's letter states, in part, "Your health care provider indicated you may need to use FML up to **9 times per month** which includes partial and/or full day due to a flare up of your mental health condition and a partial day for medical visits and treatments related to the condition."

C. Plaintiff Pye's Legal Issues Exacerbate his Insomnia and Anxiety and he Takes Leave

16. Plaintiff Pye was dealing with a legal matter and believed he was to attend court in Lewiston, Maine on July 1, 2015.

17. This legal issue was troubling to Plaintiff Pye and it exacerbated his serious mental health condition. His insomnia flared up and he did not sleep for approximately four (4) days leading up to his court date. In addition, his anxiety and depression worsened significantly and the medication that typically manages these serious mental health issues was unable to manage the intensity of the anxiety and depression he suffered.

18. Plaintiff Pye approached his supervisor, explained his situation, and requested an excused day for the court date that was causing his mental health condition to flare up. His supervisor denied his request.

19. On July 1, 2015, Plaintiff Pye's insomnia, anxiety and depression were so pronounced that he decided to use his intermittent leave for these conditions. He attended court in the morning. After attending court he returned home to continue to manage and recover from the flare up of his serious mental health condition.

D. BIW Requests to Speak with Plaintiff Pye about his Use of Intermittent FMLA Leave

20. On July 2, 2015, BIW supervisor David Libby called a meeting with Plaintiff Pye. Members of BIW management also attended, as did Plaintiff Pye's union representatives.

21. At this meeting Mr. Libby grilled Plaintiff Pye about his use of Family Medical Leave the previous day.

22. Mr. Libby asked Plaintiff Pye if he had used FMLA the previous day and if he had attended court. Plaintiff Pye answered that he had taken a full day of FMLA, and that he had been at court until "maybe 10:30."

23. When asked why he called in FMLA, Plaintiff Pye responded because he was stressed out about going to court and that his FMLA is for stress, anxiety and depression. He also

explained to Mr. Libby that he thought he was using his right to FMLA leave the way it was supposed to be used.

24. During the July 2, 2015, meeting with Mr. Libby, Plaintiff Pye's mental health condition was still very poor. Mr. Pye's poor condition was so obvious that Mr. Libby stopped the meeting and instructed Plaintiff Pye to schedule an appointment with BIW's medical department to have his fitness for work evaluated.

25. On July 9, Plaintiff Pye met with Dr. Nia Foderington, MD, a BIW doctor. They discussed his condition and she declared him fit for work.

26. When Mr. Libby reconvened the meeting with Plaintiff Pye on July 24, 2015, he announced that he had concluded that Plaintiff Pye had committed FMLA fraud. Mr. Libby terminated Plaintiff Pye's employment at BIW.

27. On July 24, 2015, Lawrence Fischman, MD penned a letter to BIW on behalf of Plaintiff Pye responding and rejecting BIW's determination that Plaintiff Pye had fraudulently used his FMLA leave.

28. Dr. Fischman's letter stated that he had come to learn that Plaintiff Pye had been accused of fraudulently using his family medical leave. Dr. Fischman went on to explain that it was his understanding that Plaintiff Pye was candid with BIW about his situation and that "It is quite consistent with [Plaintiff Pye's] condition that he would be extremely anxious when facing a court date of this nature...and that he would have needed time off for stress related to the court appearance."

29. Dr. Fischman encouraged BIW to contact him if they had any questions. BIW declined to do so.

30. Plaintiff Pye has been out of work since July 24, 2015.

COUNT I
FMLA (Interference and Retaliation)

31. Plaintiff Pye re-alleges and herein incorporates by reference Paragraphs 1- 30 as if set forth in their entirety herein.

32. At all times relevant to this Complaint Plaintiff Pye was certified by BIW to take intermittent leave for insomnia, stress and anxiety.

33. In the days leading up to his July 1, 2015, court date, Plaintiff Pye's serious mental health condition deteriorated. He explained his situation to his supervisors, who declined to allow him time off from work for his condition.

34. Plaintiff Pye's mental health condition was so severe that on July 1, 2015 he exercised his right to take FMLA leave in accordance with the terms of his FMLA certification with BIW.

35. Defendant BIW discharged Plaintiff Pye for using his FMLA leave on July 1, 2015.

36. Defendant BIW discharged Plaintiff Pye 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.

37. Alternately, Defendant BIW discharged Plaintiff Pye to discriminate and/or retaliate against him because of his protected use of FMLA leave in violation of 29 U.S.C. § 2615.

COUNT II
(For Violation of the Maine Family Medical Leave Act)

38. Plaintiff re-alleges and hereby incorporates by reference Paragraphs 1-37 as if set forth in their entirety herein.

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

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

41. Defendant BIW interfered with and/or unlawfully discriminated against Plaintiff Pye 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: September 21, 2015

/s/ Samuel S. Riotte

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