

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

KENNETH CRAWFORD,

Plaintiff

vs.

ALLEN KELLER CO. I, LLC, dba

ALLEN KELLER COMPANY

Defendant

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CIVIL NO. 1:20-CV-00774

PLAINTIFF KENNETH CRAWFORD’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES KENNETH CRAWFORD, Plaintiff, and files this his Original Complaint against ALLEN KELLER CO. I, LLC d/b/a ALLEN KELLER COMPANY (hereinafter referred to as “AKC,” “Defendant” or “the Company”), its affiliates, subsidiaries and other related entities, under any name by which they are known, and for his causes of action would show the Court as follows:

INTRODUCTION

1. Kenneth Crawford was fired from his job by the Allen Keller Company because his employer believed he was too old and too disabled to work and because they did not like the fact that he had taken medical leave due to a heart condition.
2. He was fired in the parking lot of a truck stop, where his boss and the company’s HR officer told him he should get on Social Security and Medicare. They took the keys to his company truck and handed him a booklet on how to apply for Social Security.
3. Plaintiff Kenneth Crawford brings suit against Allen Keller Co. I, d/b/a Allen Keller Company pursuant to the Age Discrimination in Employment Act, the Americans with

Disabilities Act, the Family and Medical Leave Act, and the Texas Commission on Human Rights Act.

THE PARTIES

4. Plaintiff, KENNETH CRAWFORD (“Plaintiff”), an individual, is a citizen of the State of Texas and a resident of Kendall County, Texas. Plaintiff is a former employee of Defendant.
5. Defendant, ALLEN KELLER CO. I, LLC d/b/a ALLEN KELLER COMPANY, is a Texas corporation that has its principal place of business in Gillespie County, Texas. Defendant may be served with citation by personal service or certified mail upon its registered agent for service, Kory A. Keller, 1125 STATE HIGHWAY 16 SOUTH, Fredericksburg, TX 78624.

FACTS OF THE CASE

6. Plaintiff, KENNETH CRAWFORD, brings this suit against Defendant, ALLEN KELLER CO. I, LLC d/b/a ALLEN KELLER COMPANY, for age discrimination, disability discrimination, in violation of the FMLA.
7. Crawford was employed by Defendant from approximately July of 2014 until his termination on or about June 7, 2019.
8. At the time of Crawford’s termination, he was 65 years old.
9. Crawford was employed as a foreman for Defendant. Defendant is an earthwork and paving contracting firm, headquartered in Fredericksburg, Texas.
10. In March of 2019, Mr. Crawford suffered some heart-related health issues. He was soon released to return to work and did so without incident.

11. Crawford was again hospitalized in early June of 2019 for 2-3 days due to his heart condition.
12. Mr. Crawford's condition constituted a serious health condition within the meaning of the FMLA.
13. Mr. Crawford was an "eligible employee" as that term is defined under the FMLA, who was entitled to leave under the Act. Mr. Crawford put the Company on notice of his medical leave.
14. Mr. Crawford had worked at least 1,250 hours for the Defendant in the 12-month period before he took FMLA-protected medical leave in June 2019.
15. Defendant is an "employer" as defined by the FMLA.
16. Mr. Crawford was discharged from the hospital on or about June 5, 2019.
17. Crawford called Defendant to report his ability to return to work. He was told that rather than return to work, he should meet his supervisor and Defendant's HR officer at a truck stop in Comfort, Texas the next day.
18. Crawford met with his supervisor and HR officer at the designated truck stop in Comfort, Texas on or about June 7, 2019. At this meeting Defendant's representatives told Crawford that this had been his second hospitalization in a year and that he needed to get his health under control. They informed Crawford that his employment was terminated and that he should go on Social Security and Medicare. They asked Crawford for the keys to his company truck and handed him two booklets discussing how to apply for Social Security benefits. They then left.

COUNT I – AGE DISCRIMINATION – ADEA

19. The Defendant’s discriminatory treatment of the Plaintiff and the termination of Plaintiff’s employment was motivated by and due to Plaintiff’s age (over forty). Defendant’s actions were willful. As such, Defendant’s conduct constituted unlawful employment practices in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq (“ADEA”).

COUNT II – AGE DISCRIMINATION – TCHRA

20. The Defendant’s discriminatory treatment of the Plaintiff and the termination of Plaintiff’s employment was motivated by and due to Plaintiff’s age (over forty). As such, Defendant’s conduct constituted unlawful employment practices in violation of the Texas Commission on Human Rights Act, TEX. LAB. CODE ANN. § 21.125(a) et. seq. (“TCHRA”).

COUNT III – DISABILITY DISCRIMINATION – ADA

21. The Defendant’s discriminatory treatment of the Plaintiff and the termination of Plaintiff’s employment was motivated by and due to Plaintiff’s disability and/or being regarded as having a disability, in violation of 42 U.S.C. § 12101, et seq., as amended by the ADA Amendments Act of 2008 (“ADA”).

COUNT IV – DISABILITY DISCRIMINATION – TCHRA

22. The Defendant’s discriminatory treatment of the Plaintiff and the termination of Plaintiff’s employment was motivated by and due to Plaintiff’s disability and/or being regarded as having a disability, in violation of Texas Labor Code § 21.051, et seq. (“TCHRA”).

COUNT V - FMLA INTERFERENCE AND RETALIATION

23. In violation of 29 U.S.C. sec. 2601 et seq., Defendant interfered with Plaintiff's FMLA leave and retaliated against Plaintiff for engaging in protected activities under the FMLA by refusing to return Plaintiff to the same position maintained prior to the FMLA leave and by terminating Plaintiff's employment because Plaintiff took FMLA-protected leave.
24. Plaintiff suffered an adverse employment action in the form of termination. There was a causal connection between Plaintiff's FMLA and the termination. Defendant's conduct was willful.

DAMAGES

25. The effect of Defendant's wrongful conduct as described above has been to deprive Plaintiff of equal employment opportunities and to otherwise affect Plaintiff's status as an employee.
26. As a proximate result of Defendant's actions, Plaintiff seeks damages and other relief for harms and losses as follows:
- a. back pay;
 - b. lost benefits in the past and in the future;
 - c. damages for non-pecuniary losses, including emotional pain, suffering, inconvenience, damage to his good name and reputation, mental anguish, and loss of enjoyment of life in the past and in the future;
 - d. equitable relief:
 - i) an order of reinstatement or, if reinstatement is impracticable, front pay in an amount the Court deems equitable and just to make Plaintiff whole;
 - ii) an injunction ordering Defendant to implement a new training program to train management on how to properly return employees to work following FMLA leave;
 - iii) an injunction ordering Defendant to include a copy of the verdict in Plaintiff's personnel file.
 - e. liquidated damages equal to the actual damages awarded plus interest pursuant to 29 U.S.C. § 2617(a)(1)(A)(iii) and 29 U.S.C. § 626(b);

- f. exemplary/punitive damages;
- g. reasonable attorney's fees, expert fees, other litigation expenses, and court costs; and
- h. pre-judgment interest.

VICARIOUS LIABILITY

27. Defendant is responsible for the acts and/or omissions of its agents and employees under the theory of *respondeat superior*, vice-principal, apparent/ostensible agency, and/or agency by estoppel as those concepts are understood under applicable law.

JURISDICTION & VENUE

28. The Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1367, based upon federal question subject matter jurisdiction. Personal jurisdiction over the Defendant is proper in Texas because the Defendant is a Texas resident incorporated in Texas and/or maintains its principal place of business in Texas.

29. Venue is proper in the Austin Division of the Western District of Texas under 28 U.S.C. § 1391 because the Defendant resides in Gillespie County in the Austin Division of the Western District of Texas.

ADMINISTRATIVE PREREQUISITES

30. Plaintiff has fulfilled all conditions precedent to filing of this suit under the applicable statutes and has duly exhausted all administrative prerequisites prior to instituting this action in accordance with the law. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission and Texas Workforce Commission – Civil Rights Division within 180 days of the date of his termination. Plaintiff has been issued a Right to Sue Letter by the EEOC and this suit is being filed within 90 days of Plaintiff's receipt of said Right to Sue Letter.

JURY DEMAND

31. Plaintiff respectfully requests that this Court impanel a lawful jury to hear this case.

PRAYER

32. WHEREFORE, PREMISES CONSIDERED, Plaintiff Kenneth Crawford prays that the Defendant be cited to appear and to answer herein and that upon final hearing, the Court enter judgment in favor of Plaintiff against Defendant for backpay, front pay or reinstatement, compensatory damages, exemplary damages, injunctive relief, expert fees, and attorney's fees, together with pre- and post-judgment interest at the highest rate allowed by law; costs of court; and all such other and further relief at law or at equity to which the Plaintiff may be entitled.

Respectfully submitted,

By: */s/ Christopher J. McKinney*
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