

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KERRI HERTZOG AND)	CIVIL ACTION NO.	20-692
ASHLEY POLETINI)		
)		
Plaintiffs,)		
)		
v.)		
)		
AARCON ENTERPRISES, INC.)		
)		
Defendant.)		

COMPLAINT

I. PRELIMINARY STATEMENT

By this action, Plaintiffs, Kerri Hertzog and Ashley Poletini, each seek wage loss, compensatory and punitive damages, and attorneys’ fees and costs for having their respective employment terminated by Defendant, Aarcon Enterprises, Inc., because of their pregnancies, in violation of the Pregnancy Discrimination Act (“PDA”), codified at 42 U.S.C. § 2000e(k), which is a 1978 amendment to Title VII of the Civil Rights Act of 1964, and the Pennsylvania Human Relations Act.

II. JURISDICTION

1. This Court has jurisdiction of this matter by virtue of 28 U.S.C. § 1331, in that this is a civil action wherein the matter in controversy arises under the laws of the United States.

2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), in that this is a civil action in which jurisdiction is not founded solely on diversity of citizenship and the acts

constituting a substantial part of the events and omissions giving rise to the claims occurred in the Western District of Pennsylvania.

3. On October 18, 2019, Plaintiff Hertzog filed a Charge of Discrimination with the EEOC against Defendant, alleging pregnancy discrimination. Hertzog's Charge was dual filed with the PHRC. On February 12, 2020, the EEOC issued to Hertzog a Notice of Right to Sue.¹

4. On October 18, 2019, Plaintiff Poletini filed a Charge of Discrimination with the EEOC against Defendant, alleging pregnancy discrimination. Poletini's Charge was dual filed with the PHRC. On April 23, 2020, the EEOC issued to Poletini a Notice of Right to Sue.²

III. PARTIES

5. Plaintiff, Kerri Hertzog ("Hertzog"), is an adult female who resides at 12520 St. Nikolai Drive, North Huntingdon, PA 15642. At the time of the incident complained of in this lawsuit and presently, she was and is a citizen of the Commonwealth of Pennsylvania and the United States of America.

6. Plaintiff, Ashley Poletini ("Poletini"), is an adult female who resides at 1206 9th Avenue, Irwin, PA 15642. At the time of the incident complained of in this lawsuit and presently, she was and is a citizen of the Commonwealth of Pennsylvania and the United States of America.

¹ Once the administrative requirements have been exhausted, Plaintiff Hertzog intends to amend this Complaint to include an additional count of pregnancy discrimination under the PHRA.

² Once the administrative requirements have been exhausted, Plaintiff Poletini intends to amend this Complaint to include an additional count of pregnancy discrimination under the PHRA.

7. Defendant, Aarcon Enterprises, Inc. (“Aarcon”), is a Pennsylvania corporation with its business headquarters located at 10891 Route PA-993, North Huntingdon, PA 15642. Aarcon provides excavating and land site preparation and development services to a variety of clients throughout Western Pennsylvania

IV. STATEMENT OF CLAIM

8. Hertzog worked at Aarcon Enterprises since April 2012 in various roles, including being promoted to Office Manager and Controller in 2015. She served in those roles until her employment was terminated.

9. Hertzog was a dedicated employee who was never disciplined and regularly received positive feedback during her tenure with Defendant.

10. Poletini worked at Aarcon Enterprises since January 25, 2016 doing payroll, HR and accounts payable. She even made some sales and earned two separate \$7,500 commissions for said sales. She served in those roles until her employment was terminated.

11. Poletini also was a dedicated employee who was never disciplined and regularly received positive feedback during her tenure with Defendant.

12. Poletini was laid off in January 2019 because Defendant’s business was slow, but Poletini still worked 1 to 2 days per week doing payroll. She was brought back full time during the first week of April 2019.

13. At the end of their employment, Plaintiffs were the only two female employees at Aarcon, which at the time was a 25-employee company.

14. On May 13, 2019, Aaron Brentzel, President of Aarcon (hereinafter “A. Brentzel”), met in his office jointly with Hertzog and Poletini. The following occurred at the meeting:

- a. At the start of this meeting, Hertzog announced that she was having a baby, and Poletini said that she was as well.
- b. In the same meeting, A. Brentzel reacted to that news by saying that he already knew about both pregnancies. He then pointed to Hertzog and said, “You’re nuts,” and asked how she was going to take care of four children while working full time.
- c. To Poletini, he said, “Well, who is the father?” Poletini replied, “His name is Tim.” Not satisfied, he pressed Poletini by asking, “Are you sure?” Stunned, Poletini told him that she was sure. A. Brentzel then threw his hands in the air and said sarcastically, “Well, I guess congratulations.” He followed that up by asking Poletini, “Is this Tim going to be in the picture?” She responded in the affirmative. He then pointed at her ring finger and said, “Are you going to get married?” Poletini said, “I don’t know.” His ridiculous response to that was, “Well, from a business perspective, it would just be a really big burden on someone in five or six months if it was someone else’s.”
- d. The conversation then turned to Plaintiffs’ due dates, and A. Brentzel asked Hertzog and Poletini how long they planned to take off. Hertzog and Poletini replied that their due dates were December 3rd and November 9th, respectively. Hertzog said that she planned to work from home during her leave. Poletini said that she was going to take the full 12 weeks of leave, but that she also

could do payroll from home during that time. In response to their leave requests, A. Brentzel said, “Well, we are going to need to get another person in here anyways to help me and Tom with the developments.”

- e. At this point, Poletini left the meeting. To Hertzog, A. Brentzel stated, “I’m going to sit down and talk to my brother about the future of the company.”

After that comment, Hertzog left A. Brentzel’s office.

15. The May 13th meeting left Hertzog and Poletini deeply concerned about their job security due to A. Brentzel’s highly insensitive and biased comments.

16. Plaintiffs also realized that A. Brentzel must have known about their pregnancies prior to May 13th given the change in his demeanor in the weeks leading up to that meeting. During that time period, he changed from friendly and engaging when interacting with Hertzog and Poletini to cold and distant with them. He also used a disgusted tone of voice when speaking to them.

17. On Friday May 17, 2019, Brian Brentzel (“B. Brentzel”), estimator with Aarcon, approached Hertzog and Poletini and said that he needed to talk to them individually. B. Brentzel met with Hertzog first. He informed her that she was being laid off permanently because her position was being eliminated.

18. B. Brentzel claimed that he, along with A. Brentzel’s wife, were going to be handling Hertzog’s office responsibilities.

19. Further evidencing Defendant’s discriminatory bias, when Hertzog told B. Brentzel that it was going to be hard for her to find a job, he said, “You don’t have to tell them you are pregnant.”

20. Next, right after he spoke to Hertzog, B. Brentzel spoke to Poletini and similarly informed her that she was being laid off permanently because her position was being eliminated.

21. Poletini responded, “I don’t even know where to look for a job, no one is going to hire a pregnant lady.” B. Brentzel again said, “You don’t have to tell them you are pregnant.”

22. Following Plaintiffs’ terminations, Defendant brought back its former office manager, Karen Takacs, who is not pregnant, to fulfill one office role. Tammy Brentzel, Aaron Brentzel’s wife, filled the other office role. Tammy had been on Defendant’s payroll ever since Poletini started working there but never actually worked for Defendant prior to Plaintiffs’ terminations.

23. Following Plaintiffs’ terminations, Tammy Brentzel constantly texted and called Hertzog and Poletini with questions on how to do their jobs.

24. When Defendant terminated the employment of other non-pregnant employees, it paid those employees for their unused vacation days. On the contrary, Defendant failed to pay Plaintiffs for their unused vacation days following their terminations.

25. On the same day it terminated the employment of Plaintiffs and claimed the reason was due to financial hardship, Defendant purchased a triaxle for approximately \$200,000.

26. To summarize Defendant’s actions, it fired two pregnant employees just days after Plaintiffs told its President the news about their pregnancies and likely only one week after the company learned about it, and then transferred their responsibilities to non-pregnant individuals.

27. The close proximity in time between Plaintiffs revealing their pregnancies to Defendant and their terminations support an inference of Defendant’s discriminatory motive.

28. The reason given for Plaintiffs' terminations, that their jobs were eliminated, was pretext for the real reason, their pregnancies. In addition to the above comments from the company's President which evidence its discriminatory bias, Respondent replaced Plaintiffs with non-pregnant individuals.

29. As a result of Defendant's aforementioned conduct, Plaintiffs have suffered a loss of past and future wages and benefits, substantial mental anguish and emotional distress.

V. CLAIMS FOR RELIEF

COUNT I – VIOLATION OF PDA / TITLE VII – TERMINATION

Hertzog v. Aaron

30. Plaintiffs incorporate by reference the averments contained in the previous paragraphs as if set forth fully herein.

31. Defendant has intentionally and willfully engaged in a series of unlawful acts, practices, policies, and procedures in discriminating against Plaintiff Hertzog with respect to compensation, terms, conditions, or privileges of employment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e(k).

32. Defendants' unlawful acts, practices, policies and/or procedures in employment were induced in whole or in part by their intent to discriminate against Plaintiff Hertzog on the basis of her sex, and more specifically, her pregnancy.

33. Plaintiff Hertzog has been directly harmed as a result of these violations as is fully set forth above

COUNT II – VIOLATION OF PDA / TITLE VII – TERMINATION

Poletini v. Aarcon

34. Plaintiffs incorporate by reference the averments contained in the previous paragraphs as if set forth fully herein.

35. Defendant has intentionally and willfully engaged in a series of unlawful acts, practices, policies, and procedures in discriminating against Plaintiff Poletini with respect to compensation, terms, conditions, or privileges of employment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e(k).

36. Defendants' unlawful acts, practices, policies and/or procedures in employment were induced in whole or in part by their intent to discriminate against Plaintiff Poletini on the basis of her sex, and more specifically, her pregnancy.

37. Plaintiff Poletini has been directly harmed as a result of these violations as is fully set forth above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court will:

- (a) Assume jurisdiction herein;
- (b) Declare Defendant's conduct to be unlawful and an intentional violation of Plaintiffs' rights;
- (c) Award Plaintiffs wage loss damages, including back pay, front pay, damages associated with the increased tax burden of any award, and lost fringe and other benefits of employment;

- (d) Award Plaintiffs compensatory and punitive damages;
- (e) Award Plaintiffs pre-judgment and post-judgment interest;
- (f) Award Plaintiffs costs and attorneys' fees under all counts; and
- (g) Grant such other relief as the Court deems just and appropriate.

Respectfully Submitted,

JURY TRIAL DEMANDED

s/ David B. Spear

David B. Spear
PA Id. No. 62133

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