

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:11-cv-01683-LTB-MEH

TONYA BORWICK,

Plaintiff,

v.

T-MOBILE WEST CORPORATION, d/b/a T-MOBILE, a Washington corporation,

Defendant.

FINAL PRETRIAL ORDER

1. DATE AND APPEARANCES

This conference was held on October 2, 2012.

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Attorneys for Plaintiff

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2. JURISDICTION

Jurisdiction is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337 and 1343. This action is authorized and instituted pursuant to §703, 704, and 706(f)(3) of Title VII, 42 U.S.C. §§2000e-2, 2000e-3 and 2000e-5(f)(3); 29 C.F.R. Part 825.

3. CLAIMS AND DEFENSES

PLAINTIFF:

Tonya Borwick began working at T-Mobile in July 2002. She was there for over nine years

until her pregnancy, and her desire to take the full twelve weeks of FMLA, was announced. She was then targeted for alleged poor performance and ultimately terminated. Borwick asserts that the Defendant violated 42 U.S.C. 2000e-2(a), by willfully and intentionally subjecting Borwick to disparate treatment because of her pregnancy. Borwick further asserts that the Defendant engaged in retaliation in violation of Title VII and interfered with her right to use the Family Medical Leave Act (29 U.S.C.A. §§ 2601-2654, 29 C.F.R. Part 825).

Borwick's claim is for \$517,428.00, comprised of the following: lost wages (\$84,000), lost health and other benefits (unknown at this time, but lost Social Security benefits are approximately \$1,428.00), and medical expenses (unknown at this time); liquidated damages including, but not limited to, future wage loss of approximately (\$202,000.00), loss of earning capacity, loss of reputation, and damages to career; compensatory damages including, but not limited to, those for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses (\$200,000); pre- and post-judgment interest, costs (\$5,000), attorneys' fees (\$25,000); and such other relief as is appropriate.

DEFENDANT:

Plaintiff Tonya Borwick was a Financial Care Representative (FCR) at T-Mobile's customer call center in Thornton, Colorado. Ms. Borwick's job duties included answering incoming calls from T-Mobile customers inquiring about billing issues and responding to such inquiries. Ms. Borwick's employment was terminated after T-Mobile discovered she was hanging up on customers. T-Mobile denies that Ms. Borwick's termination was related in any way to her pregnancy or was in retaliation for any legally protected conduct, as T-Mobile identified and began investigating Ms. Borwick's conduct before learning of her pregnancy. T-Mobile also denies that Ms. Borwick's manager had any knowledge of her leave plans and

denies that her termination was related in any way to Ms. Borwick's alleged plans to take twelve weeks of FMLA leave. T-Mobile was responsive to Ms. Borwick's complaint of pregnancy discrimination and responded with an impartial evaluation of Ms. Borwick's conduct. All actions with respect to Plaintiff's employment were taken in good faith and for legitimate, non-discriminatory reasons. Plaintiff was not treated less favorably than similarly situated employees of Defendant.

4. STIPULATIONS

1. Plaintiff began employment with T-Mobile in July 2002.
2. At the time of her termination Plaintiff was a Financial Care Representative II.
2. Plaintiff was terminated from T-Mobile on February 28, 2011.

5. PENDING MOTIONS

Defendant filed a Motion for Summary Judgment on August 3, 2012 [Doc. 23]. The Motion has been fully briefed.

6. WITNESSES

PLAINTIFF:

- a. Nonexpert witnesses
 - i. Will call
 - a. Plaintiff
 - b. Noah Borwick
 - c. Clara Diaz
 - ii. May call
 - a. Melissa Utschinski

- b. Helen Cordiner
- c. Janice Lopez
- d. Brent Felderman

b. Expert witnesses

i. Will call

- a. Jeffrey Opp

ii. May call

DEFENDANT

a. Nonexpert witnesses

i. Will call

- a. Plaintiff
- b. Melissa Utschinski
- c. Janice Lopez
- d. Helen Cordiner
- e. Jeffrey Winkelman

ii. May call

- a. Clara Diaz
- b. Brent Felderman
- c. Janis Ellsworth

b. Expert witnesses

i. Will call

ii. May call

7. EXHIBITS

Exhibits

Plaintiff: Please see attached.

Defendant:

- i. Timeline of Events, DEF 0024-25
- ii. Borwick letter, DEF 0026
- iii. Agent Trace Log 01/28, DEF 00027-00057
- iv. Agent Trace Log 02/14, 02/15, DEF 00058-00070
- v. Dead air script, DEF 00082
- vi. Code of Conduct, DEF 00098-00123
- vii. Samson screenshots, DEF 00176-00185
- viii. Short Call Report, Dec. 2010, DEF 01066
- ix. Short Call Report, Jan. 2011, DEF 00931-00932
- x. .Wav file 1, DEF 00847
- xi. .Wav file 2-1, DEF 00848
- xii. .Wav file 3-1, DEF 00849
- xiii. .Wav file 4-1, DEF 00850
- xiv. .Wav file MU-1, DEF 00851
- xv. Schedule Adjustment Process, DEF 00865-00869
- xvi. Borwick Schedule Adjustment, DEF 00872-00875
- xvii. Email, DEF 00881-00883
- xviii. .Wav 1 log, DEF 01125-01131
- xix. .Wav 2 log, DEF 01132-01135

- xx. .Wav 3 log, DEF 01136-01137
- xxi. .Wav 4 log, DEF 01143-01150
- xxii. .Wav 5 log, DEF 01138-01142
- xxiii. Sept. 2010 Short Calls, DEF 01177-01188
- xxiv. Oct. 2010 Short Calls, DEF 01189-01199
- xxv. Nov. 2010 Short Calls, DEF 01200-01210
- xxvi. Dec. 2010 Short Calls, DEF 01211-01221
- xxvii. Financial Care Representative II Job Description, BORWICK 0038-0039

b. Copies of listed exhibits must be provided to opposing counsel and any pro se party no later than 30 days before trial. The objections contemplated by Fed. R. Civ. P. 26(a)(3) shall be filed with the clerk and served by hand delivery or facsimile no later than 14 days after the exhibits are provided.

8. DISCOVERY

Discovery has been completed.

9. SPECIAL ISSUES

None.

10. SETTLEMENT

- a. Counsel for the parties and any pro se party met in person on June 29, 2012, to discuss in good faith the settlement of the case.
- b. The participants in the settlement conference included counsel and party representatives.
- c. The parties were promptly informed of all offers of settlement.
- d. Counsel for the parties and any pro se party do/do not intend to hold future

settlement conferences.

- e. It appears from the discussion by all counsel and any pro se party that there is:

No possibility of settlement.

- f. Counsel for the parties considered ADR in accordance with

D.C.COLO.LCivR.16.6.

11. OFFER OF JUDGMENT

Counsel and any pro se party acknowledge familiarity with the provision of rule 68 (Offer of Judgment) of the Federal Rules of Civil Procedure. Counsel have discussed it with the clients against whom claims are made in this case.

12. EFFECT OF FINAL PRETRIAL ORDER

Hereafter, this Final Pretrial Order will control the subsequent course of this action and the trial, and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. This Final Pretrial Order supersedes the Scheduling Order. In the event of ambiguity in any provision of this Final Pretrial Order, reference may be made to the record of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

13. TRIAL AND ESTIMATED TRIAL TIME; FURTHER TRIAL PREPARATION PROCEEDINGS

This is a four day trial to a jury.

Dated and entered at Denver, Colorado, this 3rd day of October, 2012.

BY THE COURT:



Michael E. Hegarty
United States Magistrate Judge

APPROVED:

s/ Elwyn F. Schaefer

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