

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BETTYLYNN KOULES,	)	
	)	
Plaintiff,	)	
v.	)	Case No. :
	)	
NORTHWESTERN UNIVERSITY	)	
	)	
AND	)	
	)	
NANCY TIERNEY,	)	
	)	<b>Trial by Jury Demanded</b>
Defendants.	)	

**COMPLAINT**

COMES NOW the Plaintiff, by her attorneys The Case Law Firm, LLC, and for her Complaint against the Defendants states as follows:

**Introduction**

1. This action arises under the Americans with Disabilities Act (hereinafter “ADA”), the Family and Medical Leave Act (hereinafter “FMLA”), the Fair Labor Standards Act (hereinafter “FLSA”) and Illinois common law.

**Jurisdiction & Venue**

2. Jurisdiction is conferred on this Court by the above-named statutes, as well as by 28 U.S.C. § 1331 and § 1367. Venue of this action properly lies in the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. § 1391 (b) and (c).

3. Plaintiff filed a Charge of Discrimination and Retaliation with the Equal Employment Opportunity Commission on March 24, 2010 alleging that Defendant Northwestern University (“Northwestern”) had discriminated against her based on her age and disability, refused to accommodate her and retaliated against her. On February 17, 2011, Plaintiff amended

her Charge to include additional allegations of disability based on her age and disability as well as retaliation. On May 25, 2011, the EEOC issued Plaintiff her notice of Right to Sue. Plaintiff's Charges and Notice of Right to Sue are attached hereto as Group Exhibit A.

### **Factual Allegations**

4. Plaintiff BettyLynn Koules ("Plaintiff") is a citizen of the United States and resident of Wilmette, Illinois. Plaintiff's residence is located in Cook County, Illinois.

5. Defendant Northwestern ("Northwestern") is a private university qualified and doing business in Evanston, Cook County, Illinois.

6. Defendant Nancy Tierney ("Defendant Tierney") is a citizen of the United States and a resident of Kenilworth, Cook County, Illinois.

7. At all relevant times, Defendant Tierney worked as the Director of Fitness and Wellness for Northwestern and, for purposes of the allegations herein, acted as Defendant Northwestern's alter ego in that she had the authority to make decisions and set policy for Defendant Northwestern.

8. The relevant facts cited herein occurred at Northwestern's Evanston campus.

9. Plaintiff began working for Northwestern as a Master Fitness Trainer in 2005. Because of her hard work and dedication, she was asked to interview for the position of Assistant Director of Fitness and Wellness in May 2006. She was temporarily hired for this position from May 2006 to September 1, 2006 and on September 1 she was permanently promoted to this position. After her promotion, Plaintiff began reporting to Defendant Tierney, who was the Director of Fitness and Wellness.

10. At all relevant times, Plaintiff met or exceeded expectations and could perform the essential functions of her job either on her own or with the help of a reasonable

accommodation.

11. In or around September 2006, Plaintiff was diagnosed with Type 1.5 diabetes, a rare condition which is believed to be the adult onset of juvenile diabetes. After receiving this diagnosis Plaintiff had to attend numerous doctors' appointments.

12. Plaintiff told Defendant Tierney about her condition and, as an exempt employee, simply worked longer hours to make up for any missed time due to doctors' appointments. Despite being aware of her need for leave, Defendant Tierney never apprised Plaintiff of her right to FMLA leave.

13. Plaintiff's condition substantially limited her in a number of major life activities including but not limited to: eating, sleeping, vision, feeling in extremities, maintaining her blood sugar and hormone levels, restroom usage, and caring for herself due to lack of energy.

14. Defendant Tierney became extremely upset with Plaintiff for having to attend these doctors' appointments. The more Plaintiff had to attend doctors' appointments, the more frustrated Defendant Tierney became with her and the more critical and hostile she began to behave toward her. On one occasion, Defendant Tierney accused Plaintiff of having "too many issues..." with her "diabetes."

15. In September 2009, Defendant Tierney and Dan Bulfin, Director of Recreation Sports, undertook a retroactive investigation into Plaintiff's "attendance." This investigation resulted in Defendant Tierney and Mr. Bulfin warning Plaintiff about her attendance problems, including criticizing her for missing work on days which she had doctors' visits. Defendant Tierney and Mr. Bulfin did not similarly investigate other employees' absences.

16. After this meeting, Plaintiff spoke with Mr. Bulfin and told him about Defendant Tierney's hostility toward her and specifically about her statement regarding her "issues" and her

medical condition. Instead of addressing the problem head on, Mr. Bulfin responded in a hostile manner and threatened that if Ms. Koules “got an attorney” that he would obtain her computer logs and emails.

17. After this, on or around September 9, 2009, Plaintiff met with Steve Green, Associate Athletic Director, who is identified on Northwestern’s website as one of the its “Discrimination and Harassment Prevention Advisors.” Plaintiff told him about Defendant Tierney’s hostility toward her and, specifically, about her comments regarding her medical condition. Rather than addressing the problem, Mr. Green asked Ms. Koules if she had “documented” these issues and when she said she had not, he responded “then you can’t really prove anything.” Mr. Green elected not to take any action to remedy this harassment and it continued thereafter.

18. Less than two weeks later, on September 19, 2009, Defendant Tierney told Plaintiff that she would no longer be permitted a “flex schedule” and, instead, was expected to work a regular 8:30 to 5:00 schedule and record her time accordingly. Plaintiff was the only allegedly exempt employee in the Department on an hourly schedule and who was required to record her time.

19. On October 21, 2009, Ms. Koules met with Jim Phillips, Athletic Director, and complained about Defendant Tierney’s hostility and discrimination toward her. Mr. Phillips responded by saying, “tell me...what do you want me to do about this?” After asking this rhetorical question Mr. Phillips chose to take no further action.

20. Then, on or around November 1, 2009, Defendant Tierney began requiring Plaintiff to tell her any time she left her desk. No other employee, let alone managerial employee, was required to do this.

21. Finally, having run out of options, on November 9, 2009, Plaintiff met with Gail Higgins in Human Resources to formally complain about Defendant Tierney's discriminatory and retaliatory treatment of her. Ms. Higgins responded by saying that Defendant Tierney seemed like a "lovely" person and that she was within her rights to do what she has done.

22. By this time, Plaintiff's doctor believed that Plaintiff's hostile working environment had taken an extreme toll on her health and recommended that Plaintiff request FMLA leave which she did on January 4, 2010.

23. Plaintiff attempted to return to work part-time on March 1, 2010 but Defendant Tierney and Mr. Bulfin refused to return her to work part-time.

24. On March 24, 2010 Plaintiff filed her first EEOC Charge alleging both age and disability discrimination as well as retaliation.

25. On April 20, 2010, Plaintiff's doctor released her to return to work full-time with certain restrictions including working no more than 8 hours each day and breaks to monitor her and treat, if necessary, her blood glucose. Despite that these restrictions are extremely minor, human resources initially told Plaintiff that she could not return to work and that, instead, they had to research whether the accommodations could be implemented. Finally, on April 23, 2010, Ms. Koules was allowed to return to work but her accommodations were never addressed. After that, Plaintiff contacted Northwestern's Director of Disability Claims, Ms. Pamela Pirtle, by phone numerous times and by email yet Ms. Pirtle never responded to Plaintiff's requests.

26. Despite that Plaintiff was allowed to come back to work, she was not returned to the same position. Instead, Northwestern greatly diminished her responsibilities and, instead, assigned her several duties which had previously been assigned to her subordinates.

27. Additionally, after returning from FMLA leave, Defendant Tierney decided to

require Plaintiff to record her progress and completion of each of her responsibilities and submit a weekly schedule with a log of her time.

28. Despite that Plaintiff's responsibilities changed significantly upon her return and despite that Plaintiff was now required to track and document her time, Northwestern continued to treat her as an exempt employee and refused to pay her overtime when such overtime was required.

29. On July 26, 2010 Ms. Koules was issued a Corrective Action Plan which contained a number of false accusations regarding her performance and which criticized her for failing to get along with Defendant Tierney.

30. On August 17, 2010, Plaintiff was presented with her Final Written Warning.

31. Despite that Northwestern's policy is to provide employees with training and assistance in meeting the terms of a corrective action plan, no one ever met with or trained Plaintiff during her corrective action period.

32. On January 31, 2011 Dan Bulfin and Steve Green terminated Plaintiff.

33. On February 17, 2011 Plaintiff filed her second EEOC Charge alleging further discrimination on the basis of her age and disability as well as retaliation resulting from her termination.

**COUNT I**  
**DISCRIMINATION IN VIOLATION OF THE ADA**  
**AGAINST DEFENDANT NORTHWESTERN**

34. Plaintiff incorporates by reference paragraphs 1-33 as though fully set forth in this Count I.

35. At all relevant times, Plaintiff was a qualified employee entitled to the protections of the ADA.

36. Defendant Northwestern intentionally discriminated against Plaintiff on the basis of her disability.

37. Defendant Northwestern engaged in the aforesaid discriminatory acts with malice or with reckless indifference to Plaintiff's federally protected rights under the ADA.

38. As a direct and proximate result of said acts, Plaintiff has suffered loss of employment, loss of income and loss of other employment benefits, great expense, emotional distress, humiliation, embarrassment and future lost income and benefits.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter a finding that Defendant Northwestern violated the ADA;
- B. Award her lost wages in the form of back pay and front pay;
- C. Award her compensatory and punitive damages;
- D. Award her attorneys' fees and;
- E. Award any such further relief the Court may deem just and equitable.

**COUNT II**  
**FAILURE TO ACCOMMODATE IN VIOLATION OF THE ADA**  
**AGAINST DEFENDANT NORTHWESTERN**

39. Plaintiff incorporates by reference paragraphs 1-38 as though fully set forth in this Count II.

40. At all relevant times, Plaintiff was a qualified employee entitled to the protections of the ADA.

41. Plaintiff requested and was denied reasonable accommodations.

42. Defendant Northwestern knowingly, intentionally and willfully failed to provide these accommodations.

43. As a result of Defendant Northwestern's refusal to accommodate her, Plaintiff

suffered damages, including but not limited to emotional distress, humiliation and embarrassment.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter a finding that Defendant Northwestern violated the ADA by refusing to implement reasonable accommodations;
- B. Award her lost wages in the form of back pay and front pay;
- C. Award her compensatory and punitive damages;
- D. Award her attorneys' fees and;
- E. Award any such further relief the Court may deem just and equitable.

**COUNT III**  
**RETALIATION IN VIOLATION OF THE ADA**  
**AGAINST DEFENDANT NORTHWESTERN**

44. Plaintiff incorporates by reference paragraphs 1-43 as though fully set forth in this Count III.

45. At all relevant times, Plaintiff was a qualified employee or reasonably believed she was a qualified employee entitled to the protections of the ADA.

46. Defendant Northwestern knowingly, intentionally and willfully retaliated against Plaintiff as a result of Plaintiff exercising her rights and/or requesting accommodations under the ADA.

47. As a direct and proximate result of said acts, Plaintiff has suffered loss of employment, loss of income and loss of other employment benefits, great expense, emotional distress, humiliation, embarrassment and future lost income and benefits.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter a finding that Defendant Northwestern retaliated against her in violation of



- the ADA;
- B. Award her lost wages in the form of back and front pay;
- C. Award her compensatory and punitive damages;
- D. Award her attorneys' fees and;
- E. Award any such further relief the Court may deem just and equitable.

**COUNT IV**  
**DISCRIMINATION AND INTERFERENCE WITH PLAINTIFF RIGHTS**  
**IN VIOLATION OF THE FMLA AGAINST DEFENDANT NORTHWESTERN**

48. Plaintiff incorporates by reference paragraphs 1-47 as though fully set forth in this Count IV.

49. Plaintiff was an eligible employee as defined by the FMLA. Defendant Northwestern interfered with Plaintiff's rights under the FMLA by 1) failing to inform her of her FMLA rights when she first became ill and began needing time off; 2) refusing to allow her to return to work part-time while using intermittent leave; and 3) refusing to return her to her same position upon her return from leave.

50. Defendant knowingly, intentionally, and willfully failed to provide Plaintiff with the leave to which she was entitled.

51. As a result of Defendant Northwestern's interference, Plaintiff suffered damages, including but not limited to emotional distress, humiliation and embarrassment.

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Enter a finding that Defendant Northwestern interfered with her FMLA rights;
- B. Award her lost wages in the form of back pay and front pay;
- C. Award her liquidated damages;
- D. Award her attorneys' fees and;

E. Award any such further relief the Court may deem just and equitable.

**COUNT V RETALIATION IN VIOLATION OF THE FMLA  
AGAINST DEFENDANT NORTHWESTERN**

52. Plaintiff incorporates by reference paragraphs 1-51 as though fully set forth in this  
Count V.

53. Plaintiff was an eligible employee as defined by the FMLA.

54. Defendant Northwestern retaliated against Plaintiff for using her rights under the  
FMLA leave by harassing her upon her return to work and by ultimately terminating her.

55. Defendant Northwestern knowingly, intentionally, and willfully retaliated against  
Plaintiff for exercising her rights under the FMLA.

56. As a direct and proximate result of said acts, Plaintiff has suffered loss of  
employment, loss of income and loss of other employment benefits, great expense, emotional  
distress, humiliation, embarrassment and future lost income and benefits.

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Enter a finding that Defendant Northwestern retaliated against her in violation  
of the FMLA;
- B. Award her lost wages in the form of back pay and front pay;
- C. Award her liquidated damages;
- D. Award her attorneys' fees; and
- E. Award her any such further relief that the Court may deem just and equitable.

**COUNT VI  
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST  
DEFENDANT NORTHWESTERN AND DEFENDANT TIERNEY**

57. Plaintiff incorporates by reference paragraphs 1-56 as though fully set forth in this  
Count VI.

58. Defendants' conduct toward Plaintiff was extreme and outrageous.

59. Defendants intended to cause, or had a reckless disregard of the probability of causing, emotional distress to Plaintiff.

60. As an actual and proximate cause, Plaintiff suffered severe and extreme emotional distress and damages.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Award her lost wages and compensation for lost benefits;
- B. Award her compensatory and punitive damages;
- C. Award her attorneys' fees;
- D. Award any such further relief the Court deems justice requires.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues herein.

**BETTYLYNN KOULES**

By: s/ Kristin M. Case

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