

IN THE CIRCUIT COURT OF VERNON COUNTY, MISSOURI
CIRCUIT DIVISION

FILED

MAR 29 2002

CIRCUIT COURT - VERNON CO. MO.

HEATHER BAILEY,

Plaintiff,

VS

Case No. 02CV672563

MURPHY FARMS, INC.,

Defendant.

PETITION
COUNT I

COMES NOW Heather Bailey, Plaintiff for Count I of her cause of actions against Murphy Farms, Inc. hereinafter referred to as Murphy's states the following:

1. Plaintiff is a resident of Vernon County, Missouri.
2. The Defendant Murphy Farms, Inc. is a corporation of the State of North Carolina and is duly authorized to transact business in the State of Missouri and operates a business known as Murphy Farms, Inc. with it's principal office in Vernon County, Missouri. Defendant has several facilities physically and geographically located in Vernon and Barton Counties in Missouri. The registered agent for said corporation and where service can be obtained is CT Corporation, 120 South Central Avenue, Clayton, MO 63105.
3. All matters complained of and set out herein occurred in Vernon and Barton Counties in Missouri.
4. The Plaintiff was employed at Murphy Farms, Inc. in Vernon and Barton Counties in Missouri from January 28, 2000 until on or about 01-02-01.
5. Plaintiff suffered an injury while working at Murphy Farms, Inc. to her left and right arms. Plaintiff was released by her doctor to return to work with restrictions. During the month of April 2000 Plaintiff began

EXHIBIT

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experiencing ulnar nerve entrapment problems in both upper extremities. Plaintiff was placed and returned to work with restrictions. Dr. R. Brian Deem placed the original restrictions. Defendant repeatedly ordered Plaintiff to do work in violation of Dr. Deem's restrictions.

6. In September 2000 surgery was performed on Plaintiff's right upper extremity to release nerve entrapment and decompress the ulnar nerve. In October 2000 surgery was performed on the entrapped ulnar nerve of the left upper extremity to decompress the left arms ulnar nerve. In December 2000 the operating surgeon released Plaintiff to return to work with Defendant. On December 7, 2000 Dr. Brian K. Ellefsen, the operating surgeon, said Plaintiff has restrictions of no feeding, farrowing, sweeping, scraping, processing, castrating and no repetitive injections with lifting restrictions of no greater than twenty-five pounds (25#). Thereafter Defendant repetitively instructed and ordered Plaintiff to do work that violated the restrictions placed on Plaintiff by Dr. Brian K. Ellefsen.
7. Defendant's company policy is not to afford accommodation to injured or ill employees from requirement that Defendant's corporation could find no work other than working in the sow farms doing general labor.
8. On or about June 25, 2001 Plaintiff filed before the Missouri Commission on Human Rights, a Complaint of Discrimination, Compensation Number E-05/01-22044 and 28EA10985. Plaintiff requested timely her right to sue notice which is attached hereto marked "Exhibit A" to prosecute her complaint that Defendant failed to accommodate and provide work which Plaintiff was qualified to do but instead discriminated against Plaintiff and ordered Plaintiff to do work in violation of doctor's restrictions. Defendant Murphy Farms, Inc. on or about January 2, 2001 dismissed Plaintiff by discharging her from Defendant's employment.
9. Defendant is an employer employing more than six (6) or more persons with the State of Missouri.
10. Plaintiff has suffered a physical impairment which substantially limits one or more of her major life activities, but such handicap, with reasonable

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accommodation, does not interfere with performing Plaintiff's job and jobs that she has held with Defendant and other jobs Defendant has available in office, warehouse and breeding farms.

11. Plaintiff currently works on a pig farm as a manager, managing two (2) 2,400 pig nurseries. In this capacity she does not do repetitive work in violation of her doctor's restrictions. Defendant has many such similar managing jobs for sow farms, on-sight nursery managers, team leaders, and warehouse and office positions. Plaintiff is qualified to fulfill positions.
12. Defendant Murphy Farms, Inc. has failed and refused to allow Plaintiff to work within her restrictions and has discharged Plaintiff from Defendant's employ because of Plaintiff's disability rating per Defendant's workers' compensation surgeon, Dr. Brian K. Ellefsen of ten percent (10%) of each upper extremity; and Defendant's have applied different conditions and privileges to other employees of Defendants.
13. The Plaintiff had to incur the services of an attorney to proceed forward with this claim against Defendant.
14. That Plaintiff's handicap created by her injury is defined under the regulations of Missouri Commission on Human Rights as a handicap, was so defined during all times said discrimination against Plaintiff occurred by Defendant.
15. That the actions and conduct of Defendants denying re-employment of Plaintiff were willful and wanton without just cause.
16. The following computations are the Plaintiff's rate of pay:
 - a. On the date of Plaintiff's discharge from employment on January 2, 2001 Plaintiff was working 40 hours per week at a rate of \$8.55 per hour. Her pay would have remained at this rate 40 hours week. Therefore, $(\$8.55 \times 40 \text{ hours}) \times 65 \text{ weeks} = \$22,230$ due and \$342 per week for each week after March 29, 2002.
17. Plaintiff has been damaged in excess of \$35,000.00.

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WHEREFORE, Plaintiff prays the Circuit Court of Vernon County, Missouri order Defendant to reinstate Plaintiff to her employment position formerly held with the Defendant, Murphy Farms, Inc., making an accommodation to her to the type of work that fits her disability, to pay back to Plaintiff back wages of \$22,230 from December 30, 2000 until filing date of said Petition, and order Defendants to pay Plaintiff's reasonable attorney fees; award Plaintiff actual damages in the amount of \$22,230 for lost wages up to March 30, 2002 and \$342 for each week thereafter; award punitive damages in the amount of One Hundred Thousand (\$100,000.00); and her costs herein.

COUNT II

COME NOW Heather Bailey, Plaintiff and for her cause of action for Count II against Murphy Farms, Inc. hereafter referred to as Murphy states the following;

1. Plaintiff is a resident of Vernon County, Missouri.
2. Defendant The Defendant Murphy Farms, Inc. is duly authorized under the laws of the State of Missouri to transact business in the State of Missouri and operates a business known as Murphy Farms, Inc. a corporation duly authorized under the laws of the State of Missouri with it's principal office located in Vernon County, Missouri. Defendant has several facilities physically and geographically located in Vernon and Barton Counties in Missouri.
3. All matters complained of and set out herein occurred in Vernon and Barton Counties in Missouri.
4. The Plaintiff was employed at Murphy Farms, Inc. in Vernon and Barton Counties in Missouri from January 28, 2000 until on or about January 2, 2001.
5. Plaintiff incurred an injury and filed her workers' compensation claim, Claim number 00-097124 on or about January 11, 2001. On or about December 6, 2000 Plaintiff was release by her doctor to return to work with restrictions not to lift over twenty-five pounds (25#) and not to do

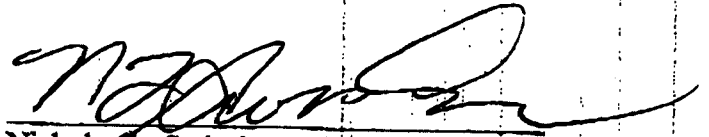
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- feeding, farrowing, sweeping, scraping, processing, castrating and no repetitive injections.
6. Defendant Murphy has numerous jobs at its farms located in Vernon County, Missouri in the office, warehouse, breeding farms, team leader positions, sow farm managers and nursery farm managers which Plaintiff is and remains qualified to do. Plaintiff presently manages two (2) 2,400 pig nurseries.
 7. Defendant through its workers' compensation adjusting process as a workers' compensation case Defendant Murphy arranged medical care and treatment, surgical operations on both the left and right upper extremity and physical therapy for Plaintiff.
 8. When Plaintiff returned to work after December 6, 2000, Plaintiff was ordered to do work in violation of restrictions placed upon Plaintiff by the insured carrier in workers' compensation Defendant Murphy's chosen surgeon, Dr. Brian K. Ellefsen.
 9. On or about January 2, 2001 Defendant Murphy discharged Plaintiff from her employment refusing to provide an accommodation to work Plaintiff was qualified and capable of performing that existed Defendants farms located in Vernon County, Missouri in violation of RSMo. 287.780. Plaintiff sustained damages.
 10. That the actions and conduct of Defendant were willful and wanton and caused injury to Plaintiff.
 11. The following computations are the Plaintiff's rate of pay:
 - a. On the date of Plaintiff's discharge from employment on January 2, 2001 Plaintiff was working 40 hours per week at a rate of \$8.55 per hour. Her last pay period was December 30, 2000. Her pay would have remained at this rate. Therefore, $(\$8.55 \times 40 \text{ hours}) \times 65 \text{ weeks} = \$22,230$ due and \$342 per week for each week after March 30, 2002.

WHEREFORE, Plaintiff prays that the Circuit Court of Vernon County, Missouri order Defendants to reinstate Plaintiff to her employment position formerly held

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with Defendant Murphy Farms, Inc. and to pay Plaintiff back wages of \$22,230 from December 30, 2000 to the 30th day of March, 2002, and \$342 for each week thereafter; to pay Plaintiff's reasonable attorney fees; award Plaintiff actual damages in the amount of \$22,230 and award punitive damages in the amount of One Hundred Thousand (\$100,000.00); and her costs herein.



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Attorney for Plaintiff

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Missouri Department of Labor and Industrial Relations

MISSOURI COMMISSION ON HUMAN RIGHTS

Bob Holden
Governor

Catherine Leapheart
Department Director

Sterling Adams
Commission Chairperson

Donna Cavitt
Commission Executive Director



Heather Bailey
721 N. Cedar
Nevada, MO 64772

NOTICE OF RIGHT TO SUE

FEB 13 2002

RE: Heather Bailey vs. Murphy Farms, Inc.
E-05/01-22044; 28EA10985

Dear Ms. Bailey:

This is your NOTICE OF RIGHT TO SUE pursuant to Section 213.111 RSMo.

If, after one hundred eighty days from the filing of a complaint alleging an unlawful discriminatory practice pursuant to section 213.055, 213.065 or 213.070 to the extent that the alleged violation of section 213.070 relates to or involves a violation of section 213.055 or 213.065, or subdivision (3) of section 213.070 as it relates to employment and public accommodations, the commission has not completed its administrative processing and the person aggrieved so requests in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil action within 90 days of such notice against the respondent named in the complaint. Such an action may be brought in any circuit court in any county in which the unlawful discriminatory practice is alleged to have occurred, either before a circuit or associate circuit judge. Upon issuance of this notice, the commission shall terminate all proceedings relating to the complaint. No person may file or reinstate a complaint with the commission after the issuance of a notice under this section relating to the same practice or act. Any action brought in court under this section shall be filed within ninety days from the date of the commission's notification letter to the individual but no later than two years after the alleged cause occurred or its reasonable discovery by the alleged injured party (emphasis added).

The above-referenced complaint was filed on May 29, 2001; thus more than 180 days have elapsed since the filing and the Missouri Commission on Human Rights has not completed its administrative processing. Further, as you have duly requested in writing, you are hereby notified of your right to sue the Respondent(s) named in your complaint in state circuit court. **THIS MUST BE DONE WITHIN 90 DAYS OF THE DATE OF THIS NOTICE OR YOUR RIGHT TO SUE IS LOST.**

You are also notified that the Executive Director is hereby administratively closing this case and terminating all MCHR proceedings relating to it. No person may file or reinstate a complaint after the issuance of notice of right to sue.

On behalf of the Commission:

Teresa Farris

Teresa Farris
Administrative Support Services

February 8, 2002

CERTIFIED MAIL

C: Stacy Bond
Murphy Farms, Inc.
121 South Washington
Nevada, MO 64772

Nicholas L. Swischer
Attorney at Law
110 North Cedar Street
Nevada, MO 64772-0565