

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

FRANK BERGMAN,)	
)	Cause No:
Plaintiff,)	
)	
v.)	
)	
ST. CLAIR COUNTY,)	
)	
Serve at:)	
10 Public Square)	
Belleville, IL 62220)	
)	
MARK KERN,)	
)	
Serve at:)	
10 Public Square)	
Belleville, IL 62220)	
)	
HERB SIMMONS,)	
)	
Serve at:)	
10 Public Square)	
Belleville, IL 62220)	
)	
And)	
)	
BOB JONES)	
)	
Serve at:)	
10 Public Square)	
Belleville, IL 62220)	
)	
Defendants.)	JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Plaintiff Frank Bergman, by and through his attorneys, and for his Complaint against Defendants St. Clair County, Mark Kern, Herb Simmons, and Bob Jones states as follows:

INTRODUCTION

1. This matter arises under the Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/1-101, et. seq., the Family Medical Leave Act, 29 U.S.C. § 2601, et seq., and Illinois common law. Plaintiff Bergman reported discrimination and harassment against other employees at Defendant St. Clair County. In consequence, Defendant removed Plaintiff from an investigation he was conducting, denied him additional medical leave that it allowed other employees, and terminated his employment. By denying him additional medical leave, Defendant retaliated against Plaintiff for taking medical leave and failed to provide reasonable accommodation to Plaintiff. Defendants Kern, Jones, and Simmons also made false statements about Plaintiff that caused harm to his reputation.

JURISDICTION AND VENUE

2. The Court has jurisdiction based on 28 U.S.C. §§ 1331 and 1367, as Plaintiff asserts claims for violations of federal and state law. Plaintiff's state law claims are so related to his federal question claims that they form part of the same case or controversy.

3. This Court has jurisdiction over this matter pursuant to the Illinois Constitution, as the events giving rise to this action occurred in the State of Illinois.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). Plaintiff is a citizen of the State of Illinois, and all events giving rise to Plaintiff's claims in this action occurred in the Southern District of Illinois.

ADMINISTRATIVE STEPS

5. On October 18, 2023, Plaintiff cross filed a charge of discrimination against St. Clair County with the Equal Employment Opportunity Commission ("EEOC") and the Illinois

Department of Human Rights (“IDHR”) alleging discrimination due to disability and retaliation. See Ex. 1 attached hereto.

6. The IDHR docketed Plaintiff’s charge as Charge No. 2024SR2678.

7. On August 13, 2024, the IDHR issued Plaintiff a Notice of Right to Sue for Charge No. 2024SR2678. See Ex. 2 attached hereto.

8. This Complaint is filed within ninety (90) days of August 13, 2024.

9. Plaintiff has complied fully with the administrative exhaustion requirements of the Illinois Human Rights Act.

PARTIES

10. Plaintiff Frank Bergman is a citizen of the State of Illinois, residing in the Southern District of Illinois.

11. Defendant St. Clair County is a duly organized County Government entity under the Illinois Constitution and Illinois state law. Defendant has the capacity to sue and be sued and is located in Belleville, Illinois. Defendant’s administrative offices are located at 10 Public Square, Belleville, Illinois, 62220.

12. Defendant Mark Kern resides in the State of Illinois. At all relevant times herein, Defendant Kern was the St. Clair County Board Chairman.

13. Defendant Herb Simmons resides in the State of Illinois. At all relevant times herein, Defendant Simmons was the Director of the St. Clair County Emergency Management Agency.

14. Defendant Bob Jones resides in the State of Illinois. At all relevant times herein, Defendant Jones was an Assistant State’s Attorney in St. Clair County.

FACTS APPLICABLE TO ALL COUNTS

15. On or about June 1, 2011, Plaintiff began his employment with Defendant as Director of Human Resources. He served in that role until his termination in 2023.

16. Plaintiff was also the EEO Investigator for the County from 2015 to approximately February 2023.

17. Plaintiff performed his job duties for Defendant in a satisfactory manner.

18. In or about January 2023, Plaintiff was nominated for reappointment by Chairman Mark Kern and unanimously reappointed to the positions of Human Resources Manager and Privacy Manager by the County Board.

19. Defendant's Board are officers and agents of Defendants and had supervisory power over Plaintiff.

20. In about Fall of 2022, employees at Defendant reported sexual harassment and discrimination to Plaintiff Bergman.

21. Plaintiff initiated an investigation into the employees' claims and uncovered other instances of discrimination, sexual harassment, and retaliation.

22. Multiple instances of discrimination, harassment, and retaliation involved inappropriate actions by Jordan Simmons (grandson of Executive Director Herb Simmons) and Austin Thomas (a friend of Jordan Simmons).

23. Plaintiff reported the sexual harassment, discrimination, and retaliation he uncovered to multiple managers, supervisors, and attorneys for St. Clair County.

24. In or about February 2023, following Plaintiff's reports, Defendant instructed Plaintiff to cease his investigation.

25. On or about February 16, 2023, Plaintiff met with Chairman Mark Kern, Debra Moore, and outside counsel for the County.

26. At that meeting, Chairman Kern stated that Bob Jones, an attorney, recommended Plaintiff should be fired.

27. That day, Plaintiff learned he was to be removed from the investigation.

28. On or about February 21, 2023, Plaintiff informed Office Manager Lisa Pawlowski and Celene Enriquez (an HR assistant who handled FMLA paperwork) of Plaintiff's intent to take FMLA.

29. Plaintiff then went home and was unable to work until after his surgery in May 2023.

30. Plaintiff had hundreds of hours of sick leave and paid time off that he used during that time.

31. Plaintiff advised Defendant of his health issues during the time he was on leave.

32. On or about May 3, 2023, Plaintiff's physician completed FMLA paperwork indicating Plaintiff was required to be off work for a surgery until July 3, 2023.

33. Plaintiff had surgery in about May 2023 and planned to return to work in July 2023.

34. In early July 2023, before Plaintiff returned to work, Defendant terminated Plaintiff's employment.

35. Before Plaintiff's termination, Defendant had a regular practice of allowing additional time beyond 12 weeks for employees with specific return-to-work dates as a form of reasonable accommodation for health issues.

36. Defendant did not allow Plaintiff this same accommodation.

37. Following Plaintiff's termination, Defendant Mark Kern falsely reported that Plaintiff had a mental breakdown.

38. Defendant Kern published this false statement to employees of St. Clair County, including Defendants Jones and Simmons.

39. Following Plaintiff's termination, Defendants Bob Jones and Herb Simmons falsely reported that Plaintiff had a mental breakdown.

40. Defendants Jones and Simmons published this false statement to employees of St. Clair County, including Austin Thomas.

41. Austin Thomas then reported that Plaintiff had a mental breakdown to employees of St. Clair County, including Tony Fritz, Candice Cross, Blake Bumann, and Cameron Foster.

VIOLATIONS OF LAW

COUNT I

ILLINOIS HUMAN RIGHTS ACT – DISCRIMINATION DUE TO DISABILITY

42. Plaintiff brings Count I for Disability Discrimination against Defendant St. Clair County.

43. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth therein.

44. Defendant is an employer within the meaning of the IHRA, 775 ILCS 5/2-101(B)(1)(c).

45. Plaintiff is an employee within the meaning of the IHRA, 775 ILCS 5/2-101(A)(1)(a).

46. Plaintiff is disabled within the meaning of the IHRA and/or Defendant perceived Plaintiff to be disabled.

47. As described above, Defendant through its officers, employees and agents engaged in intentional disability discrimination in the terms and conditions of Plaintiff's employment and failed to provide reasonable accommodation to Plaintiff.

48. Plaintiff requested additional time off to recover from surgery beyond 12 weeks of leave, as other employees were permitted.

49. Additional time to recover would have constituted a reasonable accommodation for Plaintiff's disability.

50. Defendant denied Plaintiff's request for additional time off.

51. Defendant took negative employment actions against Plaintiff, up to and including terminating his employment, because of his disability, in violation of the IHRA.

52. Defendant's actions were in violation of the IHRA, 775 ILCS 5/2-102(A).

53. As a result of Defendant's actions, Plaintiff suffered lost wages and benefits of employment.

54. As a result of Defendant's actions, Plaintiff suffered emotional distress and mental anguish.

55. Defendant violated the IHRA with malice or reckless indifference to Plaintiff's rights.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendant St. Clair County and award him lost wages and benefits, emotional distress damages, compensatory damages, pre-and-post judgment interest, punitive damages, and attorney's fees and costs, as well as any other relief that this Court should find necessary and proper.

COUNT II
ILLINOIS HUMAN RIGHTS ACT – RETALIATION

56. Plaintiff brings Count II for Retaliation against Defendant St. Clair County.

57. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth therein.

58. At all relevant times herein, Plaintiff was an employee within the meaning of the IHRA, 775 ILCS 5/2-101(A)(1)(a).

59. At all relevant times herein, Defendant was an employer within the meaning of the IHRA, 775 ILCS 5/2-101(B)(1)(c).

60. As described above, Plaintiff reported instances of sexual harassment, discrimination, and retaliation to multiple managers, supervisors, and attorneys for St. Clair County.

61. Plaintiff's reports constituted protected activity.

62. After receiving Plaintiff's reports, Defendant removed Plaintiff from the investigation into sexual harassment, discrimination, and retaliation Plaintiff had been conducting.

63. Defendant refused to allow Plaintiff additional medical leave that other employees were allowed to take, because of Plaintiff's protected activity.

64. Defendant terminated Plaintiff's employment, because of Plaintiff's protected activity.

65. Defendant's actions were in violation of the IHRA, 775 ILCS 5/6-101(A).

66. As a result of Defendant's actions, Plaintiff suffered lost wages and benefits of employment.

67. As a result of Defendant's actions, Plaintiff suffered emotional distress and mental anguish.

68. Defendant violated the IHRA with malice or reckless indifference to Plaintiff's rights.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendant St. Clair County and award him lost wages and benefits, front wages, emotional distress damages, compensatory damages, pre-and-post judgment interest, and attorney's fees and costs, as well as any other relief that this Court should find necessary and proper.

COUNT III
FAMILY MEDICAL LEAVE ACT - RETALIATION

69. Plaintiff brings Count III for Family Medical Leave Act Retaliation against Defendant St. Clair County.

70. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth therein.

71. At the time of Plaintiff's termination, Plaintiff was an eligible employee within the meaning of the FMLA.

72. Plaintiff was eligible for and received FMLA leave from approximately February 2023 to about May 2023.

73. Defendant discharged Plaintiff in retaliation for his exercise of rights under the FMLA.

74. In discharging Plaintiff, Defendant willfully violated 29 U.S.C. § 2615.

75. As a result of Defendant's termination, Plaintiff suffered lost wages and benefits.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendant St. Clair County and award him lost wages and benefits, compensatory damages, pre-and-post judgment interest, liquidated damages, and attorney's fees and costs, as well as any other relief that this Court should find necessary and proper.

COUNT IV
DEFAMATION

76. Plaintiff brings Count IV for Defamation against Defendants Mark Kern, Bob Jones, and Herb Simmons.

77. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth therein.

78. Following Plaintiff's termination, Defendant Mark Kern falsely reported that Plaintiff had a mental breakdown.

79. Defendant Kern published this false statement to employees of St. Clair County, including Defendants Jones and Simmons.

80. Following Plaintiff's termination, Defendants Bob Jones and Herb Simmons falsely reported that Plaintiff had a mental breakdown.

81. Defendants Jones and Simmons published this false statement to employees of St. Clair County, including Austin Thomas.

82. Thomas then conveyed this false statement to employees of St. Clair County, including Tony Fritz, Candice Cross, Blake Bumann, and Cameron Foster.

83. Defendants' statements were defamatory per se as they falsely imputed to Plaintiff a want of integrity in the discharge of the duties of his employment.

84. Alternatively, Defendants' statements were defamatory per quod, as they were false and caused actual harm to Plaintiff's reputation and standing in the community.

85. Defendants published the defamatory statements, knowing the statements were false, or with reckless disregard as to their truth or falsity.

86. Defendants published the defamatory statements with malice.

87. As a direct and proximate result of Defendants' false statements, Plaintiff's personal and professional reputation has been severely harmed, causing loss of standing in the community and emotional distress.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants Mark Kern, Bob Jones, and Herb Simmons and award him lost wages and benefits, front wages, emotional distress damages, compensatory damages, pre-and-post judgment interest, punitive damages, and attorney's fees and costs, as well as any other relief that this Court should find necessary and proper.

JURY DEMAND

88. Pursuant to the Illinois Constitution, Plaintiff respectfully demands a trial by jury on all issues triable by a jury.

Respectfully Submitted:

KENNEDY HUNT P.C.

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