

GL-16-18

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

JILL M. VERNEZZE,

Plaintiff,

-vs-

COUNTY OF KENOSHA, WISCONSIN

Defendant.

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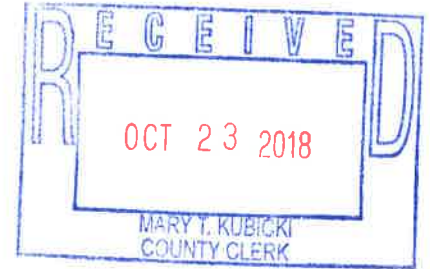
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Case No.

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**COMPLAINT**

Plaintiff Jill M. Vernezze, by her attorney, A. Steven Porter, for and as her  
Complaint against the above-named defendant, alleges, states, avers and shows the Court  
as follows:

**JURISDICTION AND VENUE**

1. This is an action to secure protection and redress deprivations of rights  
pursuant to Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. Section  
12101 et seq., as amended, [hereinafter, "ADA"], which provides legal and equitable  
relief for, inter alia, persons who have been subjected to unlawful discrimination in  
employment on the basis of disability. Jurisdiction over this action is vested in this Court  
pursuant to Section 107 of the ADA, 42 U.S.C. Section 12117, incorporating Section

706(f)(1) and 3 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(f)(1) and (3), as amended.

2. Venue of this action under the ADA is vested in this Court pursuant to Section 107 of the ADA, 42 U.S.C. Section 12117, incorporating Section 706(f)(3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 20003-5(f)(3), as amended.

3. The unlawful employment practices alleged herein were committed in the City of Kenosha, Kenosha County, in the Eastern Judicial District of the State of Wisconsin.

4. All conditions precedent to the institution of this lawsuit have been fulfilled: Plaintiff filed a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC) within 300 days of the commission of the unfair employment practices alleged; plaintiff received a Notice of Right To Sue letter pursuant to Section 107 of the ADA, 42 U.S.C. Section 12117, incorporating Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended.

## **PARTIES**

5. Plaintiff Jill M. Vernezze is an adult woman residing in the Eastern District of Wisconsin at 8321 14th Avenue, Kenosha, Kenosha County, Wisconsin 53143. At all times pertinent and material to this Complaint, plaintiff Vernezze was employed by defendant Kenosha County as an Admission/Release Specialist in the Kenosha County Sheriff's Department.

6. Defendant Kenosha County is a municipal corporation duly constituted under the Laws of the State of Wisconsin with its principal place of business located at 1010 56th Street, Kenosha, Wisconsin 53140, in the Eastern District of Wisconsin.

#### **ALLEGATIONS OF FACT AS TO ALL CAUSES OF ACTION**

7. Plaintiff Jill M. Vernezze has been continuously employed by Kenosha County in its Sheriff's Department as an Admission/Release Specialist in the Kenosha County Jail for twenty-four years. As an Admission/Release Specialist, Ms. Vernezze performed tasks relating to the booking and releasing of inmates in the Kenosha County Jail under the general supervision of the Admissions/Release Supervisor.

8. Plaintiff's performance evaluations always indicated that she met or exceeded the standards of performance expected of her. She has been commended on a number of occasions for her performance.

9. Plaintiff is diagnosed with coronary artery disease. On March 17, 2017, she suffered a myocardial infarction necessitating double bypass surgery.

10. Plaintiff's coronary artery disease involves the major blood vessels that supply her heart with blood, oxygen and nutrients (coronary arteries) having become damaged or diseased, due to cholesterol-containing deposits (plaque) in her arteries and inflammation. Coronary artery disease is a physical impairment which narrows the coronary arteries and decreases blood flow to the heart. It cannot be cured. Plaintiff's coronary artery disease substantially limits one or more of plaintiff's major life activities,

including her physical and mental stamina; her ability to breath; to handle physical, mental and emotional stress and to engage in physical and mental activity and exertion. Medical and other records recognize plaintiff as having this impairment. As such, her heart condition is a "disability" in the meaning of 42 U.S.C. Section 12102(2).

11. Plaintiff's job duties involve performing admissions/release tasks relating to inmates at the Kenosha County Jail, including investigating, reviewing, assessing, and drafting incoming referrals and determining the appropriate course of action for each inmate based on the level of the referral. These duties entail tasks such as obtaining inmates' personal histories and charge information and entering that data into a computer; interpreting various legal documents; preparing necessary forms and reports on visitors, bonds, and cell assignments; preparing necessary forms and files pertaining to issuance of bonds; receiving and processing incoming and outgoing inmate mail; maintaining financial records for inmate funds; monitoring the intake security area; processing mug shots and fingerprint information; acting as jail receptionist, answering the telephone, taking messages, and referring calls; working at the jail counter, assisting the public and giving information; and performing other duties as required or assigned.

12. Plaintiff works first shift under a rotating schedule of five days on, then two days off, followed by four days on and then two days off. This periodically results in pay-periods in which plaintiff worked and was paid for only 72, instead of 80, hours of work.

13. On March 17, 2017, plaintiff suffered a myocardial infarction (heart attack) necessitating double bypass surgery. She was out of work on leave under the Family and

Medical Leave Act (FMLA) from March 17 until June 19, 2017, when she returned to work under medical restrictions limiting her to four hours of work per day.

14. On July 1, 2017, plaintiff was cleared by her physician to work her regular shift of eight hours per day performing all her job duties. However, her physician restricted her from working overtime. Initially, defendant accommodated plaintiff's medical restrictions and did not require her to work overtime.

15. With the accommodation of not being required to work overtime, plaintiff was able to perform the essential functions of her job according to her employer's reasonable expectations.

16. On August 18, 2017, plaintiff's physician extended plaintiff's work restrictions of eight hours per day with no overtime for one year, until August 20, 2018.

17. On August 30, 2017, plaintiff's manager, Jill O'Hanlon, told plaintiff just before her shift was to end that plaintiff was being summoned to attend a meeting with human resources personnel. Plaintiff's heart began to race, and her head began pounding. She called her husband who told her she should see the nurse immediately. When the nurse took plaintiff's blood pressure it registered 220/120. The nurse determined that plaintiff was experiencing a medical emergency and immediately released plaintiff from work. Plaintiff returned to work on September 8, 2017, her next scheduled work day.

18. On September 7, 2017, the meeting with human resources personnel originally scheduled for August 30 was held. Present were plaintiff and her husband, Randy Vernezze; Ashley Lutterman, a Human Resources Analyst for Kenosha County;

Robert Riedl, the Human Resources Director; Denise Bell, Correctional Classification Officer and union steward who was present at plaintiff's request; and Andy Burg, a member of the Kenosha County Board of Supervisors.

19. In the meeting Mr. Riedl told plaintiff that, according to County policy, defendant would only accommodate her medical restriction of no overtime for 90 days and that period would end on September 20, 2017. He told plaintiff that after September 20 defendant would remove the accommodation it was providing to her disability and she would have to be available to work overtime or go on medical leave until she was able to return at to work at "100% without restrictions."

20. At the time of the meeting on September 20, 2017, plaintiff was performing the essential functions of her job according to the employer's reasonable expectations. Neither Mr. Riedl nor anyone else on behalf of defendant indicated otherwise.

21. Neither Mr. Riedl nor anyone else on behalf of defendant offered plaintiff an explanation as to why it could not continue to accommodate plaintiff's no-overtime restriction after September 20. Defendant cited no undue burden or other justification for removing plaintiff's no-overtime accommodation.

22. On September 21, 2017, defendant placed plaintiff on medical leave for the one-year duration of her no-overtime medical restriction. Defendant understood that this meant that plaintiff would have to draw upon her short-term disability benefit which would pay her only two-thirds of her regular pay rate.

23. Defendant held plaintiff's position open for her during the entire time of her

medical leave and did not replace her or fill her position even temporarily. And, defendant did not reassign plaintiff's duties to anyone else. Plaintiff's work was simply picked up by the other ARS staff.

24. Defendant had not assigned any mandatory overtime to plaintiff for at least a year prior to her heart attack in March, 2017.

25. Defendant's removal of plaintiff's accommodation of no overtime after 90 days during which she performed the essential functions of her job to the employer's reasonable expectations was arbitrary and unreasonable.

26. Andrew Orth was an Admissions/Release Specialist on the first shift who defendant temporarily reassigned to a special project called the New World Project from approximately January 8 through October 8, 2017. During that period, defendant kept Mr. Orth's ARS position open though Mr. Orth did not perform any duties or overtime related to that position. Defendant did not hire or assign any additional personnel to pick up the ARS work or the overtime that Mr. Orth would have performed. That work and overtime was handled by the existing ARS staff.

27. Andrew Orth does not have a disability in the meaning of the Americans with Disabilities Act and he has not requested a reasonable accommodation to any disability.

28. In or about February, 2016, defendant reassigned ARS Lisa Lampada to a Pretrial Administrator position, but told Ms. Lampada that she would remain in the "mix" for overtime assignments related to her ARS position in Booking. However, defendant

has not required Ms. Lampada to perform any overtime in Booking to this date.

29. Ms. Lampada does not have a disability in the meaning of the Americans with Disabilities Act and she has not requested a reasonable accommodation to any disability.

30. In the meeting on September 7, 2017, plaintiff's husband asked whether defendant could accommodate plaintiff by providing her another job with the County on a temporary basis where she would not have to work overtime so that she would not have to go on a medical leave of absence. Human Resources Analyst Ashley Lutterman said she would be willing to alert plaintiff to the availability of possible jobs of that nature.

31. In October and early November, 2017, plaintiff met with Human Resources Analyst Ashley Lutterman on two or three occasions to discuss possible jobs outside the sheriff's department that would not require overtime, but, although Ms. Lutterman identified one or two prospective jobs, the positions never actually materialized.

32. After November, 2017, Ms. Lutterman made no effort to contact plaintiff about jobs with the County that might have accommodated plaintiff's disability.

33. On November 1, 2017, defendant posted notice of six shift assignment openings which included three Admission/Release Specialist (ARS) positions – one on each shift – and three Classification Correctional Officer (CCO) positions – one on each shift. The positions were designated as “power shifts” because, unlike the 5-2, 4-2 shift rotations, these positions were scheduled Monday through Friday with weekends and holidays off.

34. Plaintiff applied for the first-shift ARS position the same day defendant posted it. Plaintiff was fully qualified for the first-shift ARS position because it was the same position she had been performing for defendant for years before defendant involuntarily placed her on medical leave. However, because this shift was a power-shift, affording 80 regular hours of work every pay period, it would provide more income to Ms. Vernezze than her regular 5-2, 4-2 shift.

35. Section VI of Policy No. 363 in the Kenosha County Sheriff's Department Policy & Procedures Manual pertaining to "Shift Postings" provides in pertinent part: "Length of service will be the prime consideration by the Department for filling vacated shift postings." In practice, defendant has always filled vacant shifts posted with the most senior employee applying for the position.

36. Plaintiff had the most seniority of the applicants for the first-shift ARS position. Nevertheless, though defendant filled all five of the ARS and CCO positions with the applicant who had the most seniority, it awarded the first-shift position to an applicant with less seniority than plaintiff.

37. Contrary to Policy 363 and defendant's usual practice, on the job posting for the ARS positions defendant stated: "Length of service will not necessarily be the prime consideration by the Department for filling these assignments."

38. On information and belief, defendant added this exception to its policy and usual practice to the position posting in anticipation of plaintiff applying for the first-shift ARS position so that it could deny her the position because of her disability.

39. The first-shift ARS position would have provided a pay increase to plaintiff over the amount she had earned in her rotating first-shift ARS position because she would not have had any pay periods in which she worked only 72 hours as periodically occurred with the rotating-shift position.

40. Plaintiff remained on the medical leave of absence until her physician cleared her to return to work without medically restricting her from working overtime on August 20, 2018. On that date, defendant allowed plaintiff to return to her first-shift ARS position.

### **FIRST CAUSE OF ACTION**

41. Plaintiff incorporates by reference and realleges herein Paragraphs 1 through 40, above.

42. Defendant unreasonably and unnecessarily removed the reasonable accommodation to plaintiff's disability of excusing her from having to perform overtime that it had been providing to her for approximately 90 days.

43. Defendant failed to provide plaintiff with a reasonable accommodation that would have allowed her to perform the essential functions of her job when it placed plaintiff on a medical leave of absence until she could return to work without restrictions.

44. Defendant's actions constitute unlawful discrimination against plaintiff because of her disability in the meaning of 42 U.S.C. Section 12112(a) and (b)(5)(A) and (B).

45. As a direct, foreseeable, and proximate result of defendants' unlawful discrimination as complained of herein, plaintiff has suffered injury and damages in the form of lost wages, lost employment benefits, and emotional distress. Plaintiff's emotional distress caused by defendant's unlawful actions continues into the present and will continue into the foreseeable future.

## **SECOND CAUSE OF ACTION**

46. Plaintiff incorporates by reference and realleges herein Paragraphs 1 through 45, above.

47. Defendant intentionally failed to place plaintiff in the first-shift ARS power-shift position because of her disability.

48. Defendant's actions in failing to place plaintiff in the first-shift ARS power-shift position constitute unlawful discrimination against plaintiff because of her disability in the meaning of 42 U.S.C. Section 12112(a) and (b)(5)(A) and (B).

49. As a direct, foreseeable, and proximate result of defendants' unlawful actions as complained of herein, plaintiff suffered injury and damages of lost wages and emotional distress. Plaintiff's emotional distress caused by defendant's unlawful actions continues into the present and will continue into the foreseeable future.

## **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff Jill M. Vernezze respectfully prays this Court enter

judgement on her behalf on her claims against defendant and Order the following relief:

A. Order defendant to pay to plaintiff an amount sufficient to compensate her for her lost wages and benefits proximately caused by defendant's unlawful actions.

B. Order defendant to pay to plaintiff an amount sufficient to compensate her for her past and future emotional distress proximately caused by defendant's unlawful actions.

C. Order defendant to pay plaintiffs' costs, disbursements and attorney's fees reasonably incurred in this action.

D. Order such other and further relief as the Court deems just and reasonable under the circumstances.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY OF SIX QUALIFIED PERSONS.

Dated at Madison Wisconsin, this 12<sup>th</sup> day of October, 2018.

/s/ A. Steven Porter

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Jill M. Vernezze

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