

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

JOHN LENNEX,

Civil Action No.

Plaintiff,

v.

WAL-MART STORES EAST, LP,

Defendant.

JURY TRIAL DEMANDED

**CIVIL COMPLAINT**

Plaintiff, John Lennex, by undersigned counsel files this Civil Complaint and alleges the following:

**I. Jurisdiction**

\_\_\_\_\_ 1. The Jurisdiction of this Court is invoked pursuant to Section 107 of the Americans with Disabilities Act, 42 U.S.C. §12117(a), incorporating by reference Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5; and 28 U.S.C. §§ 1331 and 1343(a)(4).

2. Plaintiff has satisfied all administrative prerequisites to suit under the Americans with Disability Act (ADA) in that:

- a. He filed a timely Charge of Discrimination and Affidavit with the EEOC alleging discrimination on August 1, 2005 and dual filed his Charge of Discrimination with the Pennsylvania Human Relations Commission on August 9, 2005;
- b. He filed an Amended Charge of Discrimination and Affidavit with the EEOC on October 12, 2005;
- c. The EEOC issued a Notice of Right to Sue on June 16, 2006; and
- d. This Complaint is filed within 90 days of receipt of that notice.

3. Defendant is a covered entity within the meaning of the Americans with Disabilities Act of 1990, 42 U.S.C. §12111(2) and (5)(A) in that it is an employer engaged in industry affecting commerce and has more than 15 persons employed for each working day in each of 20 or more calendar weeks in the current and/or preceding year.

## **II. Parties**

4. Plaintiff John Lennex is an adult individual who resides at 503 Second Street, Pittsburgh, PA 15088. At all times relevant hereto, he was employed by Defendant.

5. Wal-Mart Stores East, LP (Defendant), is a corporation doing business within the Commonwealth of Pennsylvania, with a place of business located at 2351 Century Drive, West Mifflin, PA 15122.

## **III. Factual Background**

6. Lennex was employed by Defendant as a Bicycle Assembler from September 7, 2004 until April 20, 2005. He was qualified for the position of Bicycle Assembler and was performing the duties of this job before Defendant discharged him.

7. Lennex has Coronary Artery Disease and Severe Ischemic Cardiomyopathy. He requires a defibrillator to regulate his heart beat. He is substantially limited in the performance of several major life activities.

8. In 2004, when Defendant hired Lennex, the manager of the West Mifflin store, Mike Phillips, was aware of Lennex's disability and offered him the Bicycle Assembler position because the position could easily accommodate Lennex's standing and lifting restrictions.

9. When Lennex began the Bicycle Assembler job, all Bicycle Assemblers sat on stools or chairs while working. Defendant did not object to this practice.

10. Lennex performed the essential duties of the Bicycle Assembler job, receiving a pay raise and excellent performance reviews.

11. On or about April 20, 2005, Lennex's new department manager, Tye Wilson, met with the Bicycle Assembly staff and informed them they were not permitted to use stools or chairs to sit on while assembling bicycles.

12. Wilson was aware of Lennex's disability.

13. Lennex requested a reasonable accommodation for his disability to allow him to sit on a stool while assembling bicycles. The requested accommodation consisted of Defendant allowing Lennex to continue to use the stool he had been using for the previous eight and one-half-month period.

14. Wilson instructed Lennex to submit a reasonable accommodation form to Defendant and told him he was required to take a leave of absence while Wal-Mart reviewed his request for reasonable accommodation.

15. Although the requested accommodation was readily available, Defendant required Lennex to stay out of work on an indefinite leave of absence.

16. At all times during this leave of absence, Lennex was able to perform the essential functions of the Bicycle Assembler job with reasonable accommodations.

17. During the leave of absence, Lennex visited Defendant's West Mifflin store numerous times to check on the status of his request and inquire when he could return to his job.

18. During these visits, Lennex made multiple requests to speak to Mr. Harrer, the store manager. Laura Hill, the personnel manager, did not permit Lennex to speak to Harrer and provided no information on the status of his reasonable accommodation request.

19. Eventually, Hill told Lennex Defendant had denied his request for reasonable accommodation. Defendant did not provide any reasons for this denial.

20. Defendant offered Lennex a People Greeter position at a pay cut; however, this was not an effective accommodation for Lennex. Performing the security duties of the People Greeter position would be risky for his heart should an altercation occur that could cause his defibrillator to overreact.

21. Defendant never allowed Lennex to return from the leave of absence and go back to his job.

**COUNT I**  
**Americans with Disabilities Act**  
**42 U.S.C. §12112**

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22. Plaintiff incorporates paragraphs 1 through 21 as if fully restated.

23. As described above, Plaintiff has Coronary Artery Disease and Severe Ischemic Cardiomyopathy and requires a defibrillator, impairments that substantially limit several major life activities of Plaintiff.

24. Defendant also perceived Lennex as having physical impairments that substantially limited him in several major life activities.

25. As described in detail above, Lennex was qualified for the position of Bicycle Assembler.

26. Lennex was and is able to perform all essential functions of the position of Bicycle Assembler with reasonable accommodations.

27. Defendant removed Plaintiff from his Bicycle Assembler position because of his disability in violation of the Americans with Disabilities Act, 42 U.S.C. §12112(a).

28. Defendant also failed to make reasonable accommodations for Lennex in violation of the Americans with Disabilities Act, 42 U.S.C. §12112(b)(5)(A).

29. Defendant fired Lennex because of his disability in violation of the ADA, 42 U.S.C. §12112(a).

30. Defendant's violation of the Americans with Disabilities Act was intentional and with reckless disregard of Plaintiff's federally protected right to be free of discrimination on the basis of his disability.

31. As a direct and proximate result of Defendant's illegal and discriminatory actions, Plaintiff has suffered and continues to suffer damages, including not limited to:

- a. Lost wages and benefits;
- b. Emotional distress, anxiety, humiliation and inconvenience;
- c. Costs and expenses of litigation; and
- d. Attorneys fees.

WHEREFORE, Plaintiff demands judgment against Defendant for Defendant's violation of the Americans with Disabilities Act as follows:

- a. Defendant shall pay the amount of lost wages and benefits from April 20, 2005, until the time of trial, with interest;
- b. Defendant shall be enjoined from discriminating or retaliating against Plaintiff in any manner prohibited by the Americans with Disabilities Act;
- c. Defendant shall employ Plaintiff as a Bicycle Assembler with all salary, benefits, and seniority calculated from the date April 20, 2005;
- d. Plaintiff shall be awarded compensatory damages for his emotional distress, anxiety, humiliation and inconvenience;
- e. Plaintiff shall be awarded punitive damages for Defendant's reckless

disregard of Plaintiff's federally protected rights;

- f. Plaintiff shall be awarded reasonable attorneys fees and costs and expenses of litigation; and
- g. Such other legal and equitable relief as the Court deems just and proper.

**COUNT II**  
**Americans with Disabilities Act**  
**Retaliation**  
**42 U.S.C. §12203**

32. Plaintiff incorporates by reference the allegations in paragraphs 1 through 31 as if fully restated herein.

33. Defendant suspended and then fired Lennex in retaliation for requesting a reasonable accommodation under the ADA, in violation of 42 U.S.C. §12203(a).

34. Defendant's discharge of Lennex was undertaken with malice or reckless indifference to Lennex's federally protected right not to be retaliated against for requesting a reasonable accommodation.

35. As a direct and proximate result of Defendant's discharge of Lennex in retaliation for requesting a reasonable accommodation, he has suffered and continues to suffer damages, including not limited to:

- a. Lost wages and benefits;
- b. Emotional distress, anxiety, humiliation and inconvenience.
- c. Costs and expenses of litigation; and
- d. Attorneys fees.

WHEREFORE, Plaintiff demands judgment against Defendant for Defendant's violation of the Americans with Disabilities Act as follows:

- a. Defendant shall pay the amount of lost wages and benefits from April 20, 2005, until the time of trial, with interest;
- b. Defendant shall be enjoined from discriminating or retaliating against Plaintiff in any manner prohibited by the Americans with Disabilities Act;
- c. Defendant shall employ Plaintiff as a Bicycle Assembler with all salary, benefits, and seniority calculated from the date April 20, 2005;
- d. Plaintiff shall be awarded compensatory damages for his emotional distress, anxiety, humiliation and inconvenience;
- e. Plaintiff shall be awarded punitive damages for Defendant's reckless disregard of Plaintiff's federally protected rights;
- f. Plaintiff shall be awarded reasonable attorneys fees and costs and expenses of litigation; and
- g. Such other legal and equitable relief as the Court deems just and proper.

Respectfully submitted,

**OGG, CORDES, MURPHY & IGNELZI, L.L.P.**

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