

KENNEDY BERKLEY YARNEVICH  
& WILLIAMSON, CHARTERED  
119 West Iron Avenue, 7<sup>th</sup> Floor  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

HEATHER WISEMAN, )  
)  
Plaintiff, )  
)  
vs. )  
)  
WAL-MART STORES, INC., )  
)  
Defendant. )  
\_\_\_\_\_)

Case No. 08 -1244-JTM-DWB

**COMPLAINT**

Plaintiff Heather Wiseman ("Heather"), for her cause of action against Defendant Wal-Mart Stores, Inc. ("Wal-Mart"), states and alleges as follows:

**Parties**

1. Heather is a resident of the State of Texas and resides in Whitney, Hill County, Texas, 76692.
2. Wal-Mart is an Arkansas corporation and is authorized to do business in the State of Kansas. The agent for service of process is The Corporation Company, Inc., 515 South Kansas Avenue, Topeka, KS 66603.

**Jurisdiction**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1343.

**Venue**

4. Venue is proper in the District Court for the District of Kansas pursuant to 28 U.S.C. § 1391.

**Allegations of Fact**

5. Heather is a 19-year-old white female.

6. Heather began working for Wal-Mart at its Salina, Kansas location on or about October 31, 2006. She was employed through November 6, 2007 as a sales floor associate.

7. In May 2007, Heather learned that she was pregnant and notified Wal-Mart management shortly thereafter.

8. During her pregnancy, Heather contracted urinary and bladder infections. Her doctor suggested that Heather carry a bottle of water at work to increase her fluid intake during her pregnancy in order to prevent continuing infections.

9. Heather then began carrying a water bottle at work, as Wal-Mart policy allowed employees to have water with them at all times.

10. Some time thereafter, Wal-Mart began prohibiting employees, other than cashiers, from carrying water bottles.

11. Heather continued to suffer from urinary and bladder infections secondary to her pregnancy due to her inability to obtain the recommended amount of water by using the store's water fountains.

12. Heather then asked an assistant manager at Wal-Mart if she could have an exception to carry a water bottle. The assistant manager advised Heather to get a doctor's note explaining her need for water.

13. In order to comply with Wal-Mart's request for a doctor's note, Heather's physician, Dr. Morgan, subsequently wrote her a note stating that she needed access to water at all times.

14. Upon submitting the above referenced doctor's note, the assistant manager denied her request for an exception on the premise that the note was "insufficient."

15. Heather then advised her physician's nurse of the situation, and she was subsequently provided with a second doctor's note specifically recommending the use of a water bottle at work.

16. Heather provided the second note to Wal-Mart and began carrying a water bottle while at work.

17. After being told to ignore her doctor's recommendations and cease carrying a water bottle, Heather attended a meeting with her department manager and the store manager. At said meeting, the store manager contacted Heather's doctor and discussed the water intake situation with the doctor's nurse.

18. Shortly thereafter, Heather was advised that Wal-Mart did not have to honor her doctor's note and that she would not be allowed to carry a water bottle on the sales floor.

19. Heather returned to work without using her water bottle for as long as possible, but when she was regularly asked to work the fitting room area where she was not

allowed to leave to access water as needed, she resorted to keeping a water bottle with her during those assignments.

20. On November 6, 2007, Wal-Mart terminated Heather's employment, claiming insubordination. The reason given for her termination was pretextual and she was actually terminated on account of her pregnancy and subsequent medical conditions.

21. As a result of her termination, Heather has suffered damages, including lost wages and non-pecuniary damages.

22. Heather has exhausted her administrative remedies.

**Theories of Recovery**

**COUNT I**  
**TITLE VII – PREGNANCY DISCRIMINATION**

23. Heather realleges and incorporates herein the allegations contained in paragraphs 1 through 22 above.

24. Wal-Mart's termination of Heather was in violation of Title VII, 42, U.S.C. §§ 2000e et seq., thereby entitling Heather to damages for lost wages, benefits, other damages, fees and costs.

**COUNT II**  
**FAMILY AND MEDICAL LEAVE**

25. Heather realleges and incorporates herein the allegations contained in paragraphs 1 through 24 above.

26. Wal-Mart's termination of Heather was in violation of the Family and Medical Leave Act, thereby entitling Heather to damages for lost wages, benefits, liquidated damages, fees and costs.

WHEREFORE, Heather respectfully requests that the Court enter judgment in her favor and against Wal-Mart for her damages in an amount in excess of \$75,000.00; that she be awarded her attorney fees; that the cost of this action be assessed against Wal-Mart; and, that the Court grant such other and further relief as it deems fair and equitable in the circumstances.

RESPECTFULLY SUBMITTED,

/s/ Larry G. Michel

Larry G. Michel #14067

Karen M. Quintelier #23178

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ATTORNEYS FOR PLAINTIFF

**DEMAND FOR TRIAL BY JURY**

Heather hereby requests pursuant to Fed.R.Civ.P. 38(b) that all issues of fact be tried to a jury.

/s/ Larry G. Michel  
Larry G. Michel

**DESIGNATION OF PLACE OF TRIAL**

Pursuant to D.Kan. Rule 40.2, Heather designates Wichita, Kansas as the place of Trial.

/s/ Larry G. Michel  
Larry G. Michel