

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MAGALY BERNADOTTE,

Bernadotte,

v.

NEW YORK HOSPITAL MEDICAL
CENTER OF QUEENS,

Defendant.

ECF/CM Case

Case No. 13-CV-00965-MKB-RER

SECOND AMENDED COMPLAINT

JURY DEMAND

NATURE OF THE ACTION AND THE PARTIES

1. This is an action to redress unlawful employment practices under the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §12101 et seq., the New York State Human Rights Law (“NYSHRL”), N.Y. Exec. L. §290 *et seq.* and the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code §8 -101 *et seq.*

2. Plaintiff Magaly Bernadotte (“Bernadotte”) at all relevant times were an employee of the defendant and she is person living with diabetes which makes it difficult her to stand or walk for extended periods of time. Bernadotte was an emergency room medical technician Defendant New York Hospital Medical Center of Queens.

3. Defendant New York Hospital Medical Center of Queens, commonly known as New York Hospital Queens (“Queens Hospital”) is a private corporation that is engaged in the business of providing medical services in Queens County, New York.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Bernadotte’s claims pursuant to 28 U.S.C. §§ 1331,

1343 and 1367(a).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because all causes of action accrued within Queens County, New York.

6. Bernadotte has satisfied all necessary pre-suit administrative requirements in order for this Court to have jurisdiction over all causes of action.

FACTUAL ALLEGATIONS

7. Bernadotte worked for Queens Hospital for about five year and her last position was an emergency technician. Bernadotte, as a longtime employee of Queens Hospital, received full benefits, such as, sick-time, vacation-time, and overtime.

8. Bernadotte alleges that it is well known in the emergency medical field that an emergency room employee in an urban setting –like Queens Hospital- is more likely than not, to stand for extended periods of time given the vast number of emergency room visits by patients in need of emergency care.

9. On or about July 20, 2011, Bernadotte went on an approved from medical leave from Queens Hospital because she was suffering from a health related illness for which she was receiving medical treatment. Bernadotte was having difficulty standing for extended periods as result of a flare-up related to a diabetes symptom which caused a severe pain in her legs. Therefore, on the advice of her physician she took a few days of re accumulated sick leave time to recuperate.

10. Bernadotte’s supervisor, Suzanne Pugh, (“Pugh”) was dissatisfied with Bernadotte taking time off to recuperate as an accommodation for her disability.

11. Pugh also knew that Bernadotte was also attending an evening nursing program.

12. Pugh further knew that attendees of the nursing program participated primarily from the seated position as would Bernadotte. This knowledge, however, was used by Pugh for a nefarious reason: Pugh telephoned Bernadotte while she was away on sick leave –in her home– and accused her of lying to take time off to attend her nursing program.

13. Pugh demanded Bernadotte’s immediate resignation and if she refused she would make sure that she never graduate and that her reputation in the nursing community would be tarnished so that she would be unemployable.

14. Bernadotte, after vacillating, refused Pugh’s demands. Pugh then announced to Bernadotte that she was terminated from her position with Queens Hospital and she later follow-up with correspondence stating same.

COUNT I
Unlawful Discrimination under the ADA

15. Bernadotte repeats and realleges every allegation in paragraphs 1 through 14 and all subparts of this Complaint with the same force and effect as though fully set forth herein.

16. At all relevant times, Queens Hospital was an “employer” within the meaning of the ADA, 42 U.S.C. §12101 et seq.

17. At all relevant times, Bernadotte and Queens Hospital had an “employee” and “employer” relationship with the meaning of the ADA.

18. Queens Hospital’s conduct, as alleged herein, constituted unlawful employment practices and unlawful discrimination in violation of the ADA by terminating her employment because she is a person under the protection of the ADA.

19. Queens Hospital’s conduct, as alleged herein, was carried out without regard for Bernadotte’s right to be free from disability discrimination as outlawed under the ADA.

20. As a result Queens Hospital's unlawful conduct, Bernadotte has suffered and continues to suffer, damage to her good name and reputation, emotional distress, mental anguish, emotional pain, suffering, inconvenience, embarrassment and humiliation with resulting monetary and other damages, including lost wages, lost benefits, lost pension and retirement earnings.

COUNT III
Unlawful Discrimination under the NYSHRL

21. Bernadotte repeats and realleges every allegation in paragraphs 1 through 20 and all subparts of this Complaint with the same force and effect as though fully set forth herein.

22. At all relevant times Queens Hospital was an "employer" within the meaning of the NYSHRL.

23. At all relevant times, Bernadotte was an "employee" within the meaning of the NYSHRL and a "person" within the meaning of the NYSHRL.

24. Queens Hospital's conduct, as alleged herein, constituted unlawful discriminatory practices and unlawful discrimination on the basis of disability and family medical leave under the NYSHRL.

25. As a result of Queens Hospital's unlawful conduct, Bernadotte has suffered and continues to suffer injury, with resulting monetary and other damages, including without limitation, lost wages, lost back pay and front pay, lost bonuses, lost benefits, lost interest and attorney's fees and costs.

26. Bernadotte is entitled to recover, injunctive relief in the form of restoration of her employment and retroactive monetary relief and other damages, such as, actual losses, interest, and attorneys' fees and costs from Queens Hospital under the NYSHRL.

27. As a further result of Queens Hospital's unlawful conduct, Bernadotte has suffered and continues to suffer, among other items, impairment and damage to her good name and reputation, emotional distress, mental anguish, emotional pain and suffering, inconvenience, lasting embarrassment and humiliation. Bernadotte is entitled to recover damages for such injuries from Defendant Queens Hospital under the NYSHRL.

COUNT IV
Unlawful Discrimination under the NYCHRL

28. Bernadotte repeats and realleges every allegation in paragraphs 1 through 27 and all subparts of this Complaint with the same force and effect as though fully set forth herein.

29. At all relevant times, Queens Hospital was an "employer" within the meaning NYCHRL.

30. At all relevant times, Bernadotte was an "employee" within the meaning of the NYCHRL and a "person" within the meaning of the NYCHRL.

31. Queens Hospital's conduct, as alleged herein, constituted unlawful discriminatory practices and unlawful discrimination on the basis of disability and family medical leave under the NYCHRL.

32. As a result of Queen Hospital's unlawful conduct, Bernadotte has suffered and continues to suffer injury, with resulting monetary and other damages, including without limitation, lost wages, lost back pay and front pay, lost bonuses, lost benefits, lost interest and attorney's fees and costs.

33. Bernadotte is entitled to recover, injunctive relief in the form of restoration of her employment and retroactive monetary relief and other damages, such as, actual losses, interest, and attorneys' fees and costs from Queens Hospital under the NYCHRL.

34. As a further result of Queens Hospital's unlawful conduct, Bernadotte has suffered and continues to suffer, among other items, impairment and damage to her good name and reputation, emotional distress, mental anguish, emotional pain and suffering, inconvenience, lasting embarrassment and humiliation. Bernadotte is entitled to recover damages for such injuries from Queens Hospital under the NYCHRL.

PRAYER FOR RELIEF COMMON TO ALL COUNTS

WHEREFORE, Bernadotte demands judgment as follows and for the Court to grant further relief as may be necessary and proper as follows:

(1) enter a judgment declaring the acts and/or practices of Queens Hospital to be in violation of the above described laws against discrimination;

(2) award Bernadotte as against Queens Hospital, loss wages, including without limitation back pay, front pay, bonuses, benefits, pension and retirement earnings, and interest lost as a result of Queens Hospital unlawful acts of discrimination in accordance with the above described laws against discrimination;

(3) award Bernadotte as against Queens Hospital, consequential damages for losses resulting from Queens Hospital's unlawful acts of discrimination in accordance with the above described laws against discrimination;

(4) award Bernadotte as against Queens Hospital, compensatory and punitive damages for among other items, injury, impairment and damage to her good name and reputation, emotional distress, mental anguish, emotional pain, suffering, inconvenience, lasting embarrassment and humiliation, and other pecuniary and nonpecuniary losses, in accordance with the above described laws against discrimination; and

(5) award Bernadotte as against Queens Hospital, the cost of this action together with

the above described laws against discrimination; and

(5) award Bernadotte as against Queens Hospital, the cost of this action together with attorneys' fees in accordance with the above described laws against discrimination.

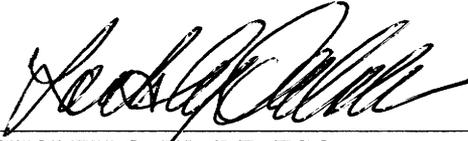
JURY DEMAND

Bernadotte demands a jury trial for all issues triable by jury.

February 24, 2014
New York, New York

Respectfully submitted,

LAW OFFICE OF
LOCKSLEY O. WADE, LLC
11 Broadway, Suite 615
New York, NY 10004
(212) 933-9180
(212) 253-4142 Fax

By: 

LOCKSLEY O. WADE, ESQ.
Attorney for the plaintiff