

Eads, located at 1 Courthouse Drive, suite 3100, Denton, TX 76208, or wherever he may be found.

4. Sheriff Tracy Murphree, in his official and individual capacity, is the head of the Denton County Sherriff's Office. Sheriff Murphree can be served at 127 N. Woodrow Lane, Suite 300, Denton, TX 76205, or wherever he may be found.

5. Venue is proper in this Court pursuant to the Texas Civil Practice and Remedies Code §15.002(a), and this Court has jurisdiction in that Plaintiff's damages are within its jurisdictional limits.

6. Plaintiff filed a "Charge of Discrimination" with the Texas Workforce Commission—Civil Rights Division ("TWC") and the Equal Employment Opportunities Commission ("EEOC") on April 30, 2021, alleging disability discrimination and retaliation. This action is being commenced within the required time limits of the Texas Commission on Human Rights Act ("TCHRA"), TEX. LABOR CODE. §§ 21.001 *et. seq.*, in that (a) the charge was filed with the TWC within 180 days of the actions being complained of in this lawsuit, (b) this action is being filed more than 180 days after the charge was filed with the TWC, and (c) this lawsuit is being filed within two (2) years of the date the Charge was filed with the TWC. Plaintiff's disability discrimination and illegal retaliation claims under the Americans with Disabilities Act (ADA) are being commenced within the required statutory time limits of ADA, in that (a) the charge was filed within 300 days of the discrimination/termination, and (b) this lawsuit was filed in state court within 90 days of receiving the Notice of Right to Sue issued by the EEOC, which was received on or about January 6, 2022.

III. REMEDIES REQUESTED

7. Texas Rule of Civil Procedure 47 requires an original petition select among specified ranges of potential relief. This original petition selects the range in Texas Rule of Civil Procedure 47(c)(3) and 47(c)(4). This range may change over time. Plaintiff is free to suggest more or less based on the evidence. The jury and judge are free to find more or less at trial based on the evidence. The rule is meant to identify any expedited actions and the nature of case at the time of filing. The rule does not affect a party's substantive rights.

IV. FACTUAL BACKGROUND

8. Milstead was previously employed by the Denton County Sheriff's Office ("DCSO") from 2014 until his termination on or about April 14, 2021.

9. Milstead began his employment as a jailer in 2014 and transferred to patrol in 2018.

10. Later in 2018, Milstead transferred from patrol to investigator.

11. As an investigator, Milstead performed pre-employment background checks for detention officers, deputies, etc. His primary job duties included reviewing intake paperwork, performing background checks, and conducting interviews.

12. In 2012, Milstead endured a series of traumatic events in his personal life.

13. Milstead was eventually diagnosed with depression and PTSD. He also suffers from migraines. These mental impairments substantially limit Milstead in the operation of major bodily functions, including the functions of the brain and neurological systems. Milstead's mental impairment also limits him in major life activities, that include but are not limited to, sleeping and concentrating.

14. Despite his mental health issues, Milstead was fully capable of performing his job duties as an investigator. He received excellent performance reviews and received various accolades for his work.

15. In 2020, Milstead began struggling with his depression and decided to check himself into an inpatient treatment for a few days. He then checked out of the hospital and started an intensive outpatient program.

16. Milstead informed DSCO and Sheriff Murphree about his issues and need for medical leave to complete this program. He was approved for medical leave for 12 weeks.

17. Milstead did not take the full 12 weeks to recover. He was released to return to work by his medical providers with no restrictions in December 2020.

18. While out on medical leave, Milstead ran out of paid sick leave. He asked his employer to withdraw from the sick pool program; however, he was denied.

19. Prior to returning to work in December 2020, Milstead was in close contact with a family member who had COVID-19. Milstead began exhibiting symptoms and took a rapid test, which was negative. Thereafter, Milstead went to his doctor and explained his exposure, his symptoms, and his negative rapid test. Based on this information, his doctor believed he had COVID-19 and his rapid test yielded a false negative. Because of this, Milstead informed his supervisors that he needed additional time off to recover and quarantine before returning to work.

20. Milstead did not believe this would be an issue, as he had previously been approved for 12 weeks of leave, but did not take the full amount of leave. However, his supervisors became upset and annoyed that Milstead needed to extend his leave by a short period of time, and they began scrutinizing his doctor's notes.

21. After returning to work from his medical leave for his mental health issues and COVID-19, Milstead noticed a drastic change in treatment by his co-workers and supervisors.

22. Prior to taking his leave, Milstead had no serious disciplinary actions. After returning from leave, he received a disciplinary action and was placed on administrative leave to perform an internal affairs investigation for insubordination because he asked why his father was rejected for a position with the DSCO.

23. Milstead had learned that his father, who had applied for a jailer position, was discontinued as a candidate in November 2020, just one week after he began his medical leave for his mental health issues.

24. Milstead had previously been assigned to perform background investigations for other relatives. Asking why his father was not hired should not have been an issue.

25. After receiving this disciplinary action, Milstead expressed that his disciplinary action was completely exaggerated because of his medical issues and his need for medical leave.

26. Milstead was placed on paid administrative leave pending the Internal Affairs investigation in January 2021. Milstead did not receive any updates on the investigation until he received a notice to perform a Fitness for Duty test two and a half months later.

27. DCSO requested a fitness for duty evaluation “due to observations by his department that his work has declined, his report to his department that he suffers from depression...” and “his use of 322 hours of leave since January 1, 2020.”

28. The negative treatment about his disability from DSCO after his return from medical leave and his placement on administrative leave due to the pending Internal Affairs investigation increased Milstead’s depression symptoms. Milstead informed the physician who performed the fitness for duty evaluation how he was feeling at that time. The physician recommended that he take additional medical leave and made various recommendations regarding a treatment plan.

29. At this time, Milstead had not exhausted his FMLA leave. Instead of allowing Milstead time to complete the physician's recommendations or discuss the findings with his own treating physicians, DSCO terminated Milstead with no right to appeal.

30. In his termination letter, Sheriff Murphree relied on Section 3.11 of the Denton County Sheriff's Civil Service policy, which states: "If the evaluation indicates that the employee is unfit for duty, the Sheriff may dismiss the employee.

31. However, the policy also states: "If the employee requests an accommodation that will render the employee fit for duty, and if the requested accommodation can be made, the Sheriff may return the employee to duty with the requested accommodation."

32. DSCO did not engage in the interactive process to determine if a limited amount of leave to complete the recommendations was reasonable so that Milstead could return to his Investigator duties. It terminated him without any further discussion in violation of the ADA, TCHRA, and FMLA.

33. After Milstead was terminated, he contacted the physician who performed the Fitness for Duty test to inform her that he was terminated. She was shocked and upset because that was not her recommendation. Milstead has contacted his own physicians who have opined that he is fully capable of working in any area, much less an office setting.

34. If DSCO had engaged in the interactive process, it would have discovered that all he needed was a limited amount of leave to discuss the recommendations with his medical providers and complete the recommendations, if necessary, to be fit for duty to perform his work as an investigator.

35. Milstead was placed on leave and terminated because (a) he had taken off work for time protected under the TCHRA, ADA, and FMLA, (b) he was about to take off work for time protected under the TCHRA, ADA, and FMLA FMLA, (c) he made complaints to Defendants that

his treatment by Defendants violated the TCHRA, ADA, and FMLA, (d) Defendants regarded him as being disable and/or (e) Defendants did not want to provide a reasonable accommodation for Milstead's disability.

V. CAUSES OF ACTION

VIOLATION OF TEXAS COMMISSION ON HUMAN RIGHTS ACT AND THE ADA

36. Plaintiff re-alleges and incorporates the allegations contained in Paragraphs 1 through 34 as if fully stated herein.

37. Plaintiff has satisfied all jurisdictional prerequisites in connection with his claims under the TCHRA and ADA.

38. Defendants are an "employer" as defined by the TCHRA and ADA.

39. Plaintiff is an "employee" as defined by the TCHRA and ADA.

40. During the time that Plaintiff was employed by Defendants, Defendants subjected Plaintiff to discrimination based on his disability and for engaging in protected activity. These acts affected the terms and conditions of Plaintiff's employment, and ultimately led to Plaintiff's termination by Defendant.

41. Defendant did not have adequate policies or procedures in place to address the discrimination, nor did it implement prompt remedial measures.

42. As described above, Defendant intentionally and willfully violated the TCHRA and the ADA by discriminating and retaliating against Plaintiff in violation of the TCHRA and ADA. In illegally discriminating and against Plaintiff, Defendants acted with malice and/or reckless indifference to the statutory-protected rights of Plaintiff. As a result, Plaintiff has suffered actual damages in the form of lost wages and benefits (past and future). As a result of these willful violations of the TCHRA and ADA, Plaintiff requests that he be awarded all compensatory and

punitive damages, to which he is entitled, equitable and/or injunctive relief, and attorney fees and costs.

FAMILY MEDICAL LEAVE ACT VIOLATION

44. Plaintiff re-alleges and incorporates the allegations contained in Paragraphs 1 through 42 as if fully stated herein.

45. Plaintiff has satisfied all jurisdictional prerequisites in connection with his claim under the Family Medical Leave Act (“FMLA”), 29 U.S.C. §§ 2601 *et. seq.*

46. Defendants are an “employer” as defined by the FMLA.

47. During the time that Plaintiff was employed by Defendant, he was an “eligible employee” as defined by the FMLA.

48. While Plaintiff was employed by Defendant, he had conditions that would be defined as a “serious health condition” under the FMLA.

49. Plaintiff was entitled to medical leave for his serious health conditions as provided for in the FMLA.

50. Prior to exhausting the twelve (12) weeks of medical leave allowed under the FMLA, (as discussed in 29 U.S.C. § 2612(a)(1)), Defendants terminated Plaintiff’s employment.

51. Defendant interfered with, restrained, and denied the exercise of, or the attempt to exercise, of an FMLA right by Plaintiff. In addition -- by terminating Plaintiff -- Defendant discriminated and retaliated against Plaintiff for (a) having exercised or attempted to exercise his FMLA rights, and (b) opposing or complaining about any unlawful practice under the FMLA. These actions by Defendant were willful and not in good faith, and they violate the protections of the FMLA.

VI. JURY DEMAND

Plaintiff requests trial by jury on all claims.

VII. PRAYER FOR RELIEF

Wherefore, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff have judgment against Defendants as follows:

- a. Judgment against Defendants for actual damages, including lost wages and benefits (both past and future), the sum to be determined at time of trial
- b. Judgment against Defendants for compensatory damages in the maximum amount allowed by law, (including mental anguish and loss of enjoyment of life);
- c. Judgment against Defendants for liquidated and/or punitive damages in the maximum amount allowed under law;
- d. A specific order requesting equitable or injunctive relief to prevent further discrimination and/or retaliatory practices such as terminating someone for making complaints of discrimination, including the following:
 1. Requiring Defendant to revise their discrimination policy to accurately reflect the law under the TCHRA, ADA and FMLA, including correction of each policy statement that (a) is not legally correct under the TCHRA, ADA and FMLA or (b) may materially mislead its employees;
 2. Requiring Defendant to revise their retaliation policy to accurately reflect the law under the TCHRA, ADA and FMLA, including correction of each policy statement that (a) is not legally correct under the TCHRA, ADA and FMLA or (b) may materially mislead its employees;
 3. Requiring Defendant to provide training on discrimination prevention and related compliance under the TCHRA, ADA and FMLA – with the training specifics to be tailored to the problems, deficiencies, and gaps that the evidence shows;
 4. Requiring Defendant to provide training on retaliation prevention and related compliance under the TCHRA, ADA and FMLA – with the training specifics to be tailored to the problems, deficiencies, and gaps that the evidence shows;
 5. Requiring Defendant to report on the manner of compliance with the terms of any final order for non-monetary equitable relief issued under the TCHRA, ADA and FMLA – with the reporting specifics to be tailored based on the evidence;

6. Requiring Defendant to place a copy of the jury verdict and trial court judgment in Milstead's personnel file;
 7. Requiring Defendant to electronically deliver to its employees who work under the same supervisors and decisionmakers, a copy of the jury verdict and trial court judgment
 8. All further non-monetary equitable relief that may be appropriate under the TCHRA, ADA and FMLA based on the evidence.
- e. Pre-judgment and post-judgment interest at the maximum amount allowed by law;
 - f. Costs of suit, including attorney's fees;
 - g. The award of such other and further relief, both at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Megan Dixon
Megan Dixon
Texas Bar No. 24079901
dixon@l-b-law.com
BRAZIEL DIXON, LLP
1910 Pacific Ave., Ste. 13300
Dallas, TX 75201
Telephone: (214) 749-1400
Telecopier: (214) 749-1010

ATTORNEYS FOR PLAINTIFF

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Megan Dixon
Bar No. 24079901
dixon@l-b-law.com
Envelope ID: 63295955
Status as of 4/6/2022 1:12 PM CST

Associated Case Party: JonTillmanMilstead

Name	BarNumber	Email	TimestampSubmitted	Status
Megan Dixon		dixon@l-b-law.com	4/5/2022 6:30:00 PM	SENT
Maria Ruiz		ruiz@l-b-law.com	4/5/2022 6:30:00 PM	SENT