

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

RENEE WHEELER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-5079-CV-SW-RED
)	
WAL-MART STORES EAST, L.P.)	
R/A: CT Corporation System)	WITH JURY DEMAND
120 S. Central Ave.)	
Clayton, MO 63105)	
AND)	
)	
WAL-MART STORES EAST 1, L.P.)	
R/A: CT Corporation System)	
120 S. Central Ave.)	
Clayton, MO 63105)	
)	
Defendant.)	

COMPLAINT

COMES NOW, Plaintiff, Renee Wheeler, by counsel, and for her claims against Defendants, Wal-Mart Stores East, L.P. and Wal-Mart Stores East 1, L.P (hereinafter collectively referred to as “Wal-Mart”), Missouri, states and alleges as follows:

NATURE OF PLAINTIFF’S CLAIMS

Plaintiff, Renee Wheeler, seeks monetary damages, including back pay and future lost wages, declaratory relief, punitive damages, costs and legal fees based upon Defendants’ discrimination in the form of disability discrimination and retaliation. Plaintiff’s claims are brought pursuant to the Americans With Disabilities Act of 1990 (“ADA”) 42 USC § 12101 et seq., the Family Medical Leave Act of 1993 (“FMLA”) 29 USC 2601 et seq. and 29 CFR 825.214 et seq .,

and a state tort claim for Intentional Infliction of Emotional Distress.

PARTIES

1. Plaintiff, Renee Wheeler (hereinafter “Wheeler”), is an individual residing at P. O. Box 682, Alba, Missouri 64830. Plaintiff Wheeler is a female and, at all times pertinent, has been a resident of the State of Missouri.
2. Defendant Wal-Mart Stores East, L.P. is a foreign limited liability partnership, organized under the laws of the State of Missouri that employs over 50 employees and is duly authorized to transact business in the State of Missouri.
3. Defendant Wal-Mart Stores East 1, L.P. is a foreign limited liability partnership, organized under the laws of the State of Missouri that employs over 50 employees and is duly authorized to transact business in the State of Missouri.

JURISDICTION

4. Jurisdiction and venue are proper in this court pursuant to 28 U.S.C. 1331, 28 U.S.C. 1343 and 1367 and 28 U.S.C. 1391 in that both federal questions are involved, and because unlawful employment practices and all other relevant transactions occurred within this judicial district founded upon 42 USC § 2000(e) under Title VII of the Civil Rights Act of 1964.
5. Defendant Wal-Mart Stores East L.P., at all times relevant herein, has been an “employer” within the meaning of 42 U.S.C. 2000(e) et seq.
6. Defendant Wal-Mart Stores East 1 L.P., at all times relevant herein, has been an “employer” within the meaning of 42 U.S.C. 2000(e) et seq.
7. Supplemental jurisdiction over Plaintiff Wheeler’s state law claim is founded upon 28 USC

§1367 because Plaintiff Wheeler's claim is part of the same case and controversy as her federal claim, and is so related to Plaintiff Wheeler's federal claim as to constitute one case and controversy.

VENUE

8. Venue is proper in the United States District Court for the Western District of Missouri, Southern Division pursuant to 28 USC § 1391 because Wal-Mart is located in the Southern District of Missouri where Defendant operates a Wal-Mart store at 2623 W. 7th St., Joplin, Jasper County, Missouri and the acts and omissions which are the basis for Plaintiff Wheeler's claims arose in Jasper County, Missouri.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. On or about March 25, 2005 Plaintiff Wheeler filed her charge number 281-2005-02014 with the Equal Opportunity Employment Opportunity Commission (hereinafter "EEOC") and the Missouri Commission on Human Rights (hereinafter "MCHR"). A copy of Plaintiff's charge is attached as Exhibit A and is incorporated herein by reference.
10. On or about June 7, 2005, Plaintiff Wheeler amended her charge to include gender discrimination regarding Wal-Mart's refusal to provide contraceptive coverage for females employees in violation of Title VII of the Civil Rights Act. A copy of Plaintiff's amended charge is attached as Exhibit B and is incorporated herein by reference.
11. On or about January 4, 2006, Plaintiff Wheeler amended her charge to include retaliation in that Ms. Wheeler was not marked as eligible for rehire in retaliation for requesting a reasonable accommodation in violation of the American Life Disabilities Act. A copy of

the amended charge is attached as Exhibit C and is incorporated herein by reference.

12. On, or about, April 25, 2006, Plaintiff Wheeler received her Right to Sue from the EEOC regarding her ADA and retaliation claims against Wal-Mart. A copy of the Right to Sue is attached as Exhibit D.
13. Plaintiff Wheeler filed her charge with the EEOC within 300 days of Wal-Mart's discriminatory acts; and Plaintiff Wheeler has filed this Civil Suit within 90 days of the issuance of the Right to Sue letter by the EEOC.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

14. In 1995, Plaintiff Wheeler was hired as an Optician at the Vision Center at Wal-Mart, Store # 79, (hereinafter the "Wal-Mart Store") which is located at 2623 W. 7th St., Joplin, Jasper County, Missouri.
15. In her early teens, Plaintiff Wheeler was diagnosed with Type 1 Diabetes.
16. In May of 1998, Plaintiff's doctor put Ms. Wheeler on an insulin pump due to complications from her Type 1 Diabetes.
17. Plaintiff Wheeler also has hypoglycemia unawareness wherein she can not recognize when her blood sugars are too low and will go into a coma-like state.
18. In 1998, Plaintiff Wheeler gave Wal-Mart her doctor's restrictions that Ms. Wheeler required a set schedule so that she would be able to eat her meals at the same time every day or her blood sugar would become dangerously low.
19. In 2002, Plaintiff Wheeler reviewed her personnel file and discovered that her doctor's restrictions were not in her file.
20. On or about October 2, 2002, Plaintiff Wheeler obtained another note from her doctor concerning her work restrictions for her Type 1 Diabetes and gave it to Wal-Mart. A copy

of her doctor’s restrictions are attached as Exhibit E and are incorporated herein by reference.

21. According to her doctor’s restrictions, Plaintiff Wheeler “must maintain a set work schedule to keep diabetes regulated and under control.” (See Ex. E).
22. The Wal-Mart Store had accommodated Ms. Wheeler’s restrictions by providing a set work schedule for over six (6) years.
23. If Plaintiff Wheeler’s schedule needed to be changed, her previous Vision Center Managers, including Lee Ann James, would incorporate the new schedule on a piece meal basis by changing it one day at a time so that Ms. Wheeler could gradually adapt to her new hours and gradually change her meal times to fit her work schedule.
24. In October of 2004, Plaintiff Wheeler was pregnant with her second child and was put on bedrest until the baby was born pursuant to her doctor’s restrictions while employed at the Wal-Mart Store.
25. Plaintiff Wheeler took twelve (12) weeks of leave under the Family Medical Leave Act (“FMLA”), and was scheduled to return to work on December 27, 2004.
26. Before Plaintiff Wheeler left for FMLA Leave in October of 2004, she had a set schedule whereby she worked in accordance with her doctor’s restrictions.
27. Before Plaintiff Wheeler took FMLA leave in October of 2004, she worked the following set schedule:

Saturday	Sunday	Monday	Tuesday	Wednes.	Thursday	Friday
9-4 p.m.	off	9-4 p.m.	off	9-5 p.m.	9-5 p.m.	9-2:30 p.m.

28. Wal-Mart had accommodated Plaintiff Wheeler's schedule pursuant to her doctor's work restrictions before Plaintiff Wheeler left for FMLA Leave in October of 2004.
29. Before Plaintiff Wheeler went on FMLA leave, she was told by her previous Manager, Lee Ann James, to keep her posted as to Ms. Wheeler's condition and expected date of return to work.
30. In November of 2004, Plaintiff Wheeler called her new manager, Michelle Davis (hereinafter "Manager Davis"), and asked her if her schedule would remain the same as before she left for FMLA Leave due to her Type 1 Diabetes and her doctor's restrictions.
31. Manager Davis told Ms. Wheeler that her schedule would change but that she would have to talk to her later about it.
32. Plaintiff Wheeler became worried about how the scheduling would affect her diabetes and tried to contact Manager Davis and District Vision Center Manager, Charlotte Miner (hereinafter "Manager Miner") several times before returning to work.
33. In November/December of 2004, Plaintiff expressed her concern to Manager Miner regarding the upcoming changes in her work schedule and that she had a doctor's note in her file stating that she must have a set schedule.
34. Manager Miner told Ms. Wheeler that she had read the doctor's note and that "it meant nothing."
35. Plaintiff Wheeler explained to Manager Miner how a fluctuating work schedule would upset her blood sugar levels and Manager Miner told Ms. Wheeler that if she needed a set schedule then she probably would not be able to work at the Vision Center.
36. Because Manager Davis and Manager Miner would not help Ms. Wheeler, she contacted

the Regional Vision Manager, Gene Wallace, who told Ms. Wheeler that she would be allowed to return to her old schedule for one week but that it would change again.

37. Plaintiff Wheeler continued to be concerned about the fluctuating schedules and proceeded to contact Greg Sanders, Wal-Mart's Store Manager, and asked him if Manager Miner could do that to her and he responded "yes."

38. Plaintiff Wheeler also asked Mr. Sanders if there were any other jobs available that would accommodate her diabetes and he responded "no."

39. Plaintiff Wheeler then contacted the Regional Personnel Manager, Lori Anderson, and she instructed Ms. Wheeler to fill out a reasonable accommodation form and see if the ADA Coordinator for Wal-Mart would approve it.

40. On or about, December 10, 2004, Plaintiff Wheeler turned in her form to the ADA Coordinator.

41. Plaintiff Wheeler also signed a Release for Medical Records and turned that form into the ADA Coordinator on, or about December 10, 2004. A copy of the document is attached as Exhibit F and is incorporated herein by reference.

42. During the week of December 27, 2004, Manager Miner verbally gave Ms. Wheeler her schedule for the next two weeks; however, she stated that it would change again after that time period.

43. After Plaintiff Wheeler returned to work on December 27, 2004, Manager Davis let Ms Wheeler work her previous schedule as set out in paragraph 25 for that week of December 27, 2004 and then Manager Davis told Plaintiff Wheeler that it would change on a regular basis.

44. In fact, Manager Davis told Ms. Wheeler that she would not have a set schedule and it

would change the next week which was the week of January 1- 7, 2005 to the following:

Saturday	Sunday	Monday	Tuesday	Wednes.	Thursday	Friday
12-9 p.m.	12-5 p.m.	9-5 p.m.	off	off	12-5:30 p.m.	11-5 p.m.

45. During this time period, Ms. Wheeler's approximate eating schedule was the following:
Breakfast at 7:00 a.m.; Lunch at 12:00 p.m.; and Dinner at 6:30 p.m.
46. If Plaintiff Wheeler did not eat at approximately the same time every day, her blood sugars would become dangerously low and Ms. Wheeler would be unaware that they were too low and would have a seizure and go into a coma-like state.
47. This new schedule for the week of January 1 through 7, 2005, disrupted Ms. Wheeler's eating pattern on the 12-9 p.m. shift for Saturday because she had to eat lunch before noon and then had to change her dinner time to between 4 p.m. and 5 p.m. because Wal-Mart management would not allow her to eat after 5 p.m.
48. This new schedule for the week of January 1 through 7, 2005, also disrupted Ms. Wheeler's eating pattern on the 12-5 p.m. shift on Sunday and 12-5:30 p.m. shift on Thursday as Ms. Wheeler would have to eat her lunch at a different time before coming into work.
49. This new schedule for the week of January 1 through January 7, 2005, also disrupted Ms. Wheeler's eating pattern on the 11-5 p.m. shift for Friday as she had to eat lunch at least an hour and a half earlier than her normal eating time which was at noon.
50. During the work week of January 1 through January 7, 2005, Plaintiff Wheeler was trying to adapt to her new eating schedule and was having to change her eating patterns on each shift.
51. During the work week of January 1 through January 7, 2005, Manager Davis told Plaintiff

Wheeler that in two (2) weeks her schedule would change again.

52. Plaintiff Wheeler told Manager Davis that this was not acceptable because she could not abruptly change her schedule again because it would again change her meal times and make her blood sugars low.
53. In the past, before Plaintiff Wheeler went on FMLA leave, her previous manager had switched Ms. Wheeler from the night shift to the day shift and gradually switched her to the day shift by switching one night shift to day shift until Ms. Wheeler was completely on the day shift.
54. During the week of January 1, 2005, Plaintiff Wheeler contacted the Wal-Mart Human Resources Manager, Johnetta Harper, and asked if there were any jobs at Wal-Mart that would accommodate her work restrictions and Ms. Wheeler was told that there were no jobs available to accommodate her.
55. During the week of January 9, 2005, Plaintiff Wheeler contacted the Wal-Mart ADA Coordinator and asked her about the status of her Request for an Accommodation which was turned in on December 10, 2004.
56. The ADA Coordinator proceeded to tell Plaintiff Wheeler that they had no such request form from her in their office even though Ms. Wheeler had signed a Release of Medical Information to the ADA Coordinator on December 10, 2004 (See Ex. F).
57. On or about January 13, 2005, the ADA Coordinator faxed a letter to the Vision Center for Ms. Wheeler's doctor to complete.
58. That same day, Plaintiff Wheeler faxed the document to the ADA Coordinator. A copy of the document is attached as Exhibit G and is incorporated herein by reference.
59. On or about January 14, 2005, Plaintiff Wheeler's blood sugar went to low and she

had a seizure at approximately 3:00 p.m. that afternoon while working at the Wal-Mart Vision Center.

60. One of the employees at the Vision Center took her to the back room to sit, however, Plaintiff Wheeler was in a coma-like state and could neither speak, nor did she know where she was.

61. Manager Davis and two other employees, Arlene Anthony and Terry Hunt, were present at the Vision Center when Plaintiff Wheeler had her seizure on January 14, 2005.

62. Manager Davis did not contact 911 nor did she contact any physician or medical emergency provider to get Plaintiff Wheeler immediate medical attention..

63. At of around 4:00 p.m. that afternoon, one of the employees at the Vision Center did call one of her family members to come and pick her up.

64. Plaintiff Wheeler's grandmother was shopping at the Wal-Mart in Webb City, Missouri which was fifteen (15) minutes away from Ms. Wheeler's work, and came to pick her up from the Vision Center.

65. On or about the week of January 15 through January 21, 2005, Plaintiff Wheeler was placed on a different work schedule which was the following:

Saturday	Sunday	Monday	Tuesday	Wednes.	Thursday	Friday
12-9 p.m.	off	9-4 p.m.	off	9-5 p.m.	12-7 p.m.	11:30-5 p.m.

66. Plaintiff Wheeler tried to return to work Monday January 17, 2005, however, she was afraid to change her schedule again and contacted Manager Davis by phone on January 18, 2005 and gave her notice that she would have to leave her employment at Wal-Mart due to Wal-Mart's failure to accommodate her doctor's restrictions.

67. Manager Davis said that was fine.
68. Plaintiff Wheeler never received a response form Defendant to her ADA Request for Accommodation form.
69. Plaintiff Wheeler's last day at Wal-Mart was January 20, 2005.
70. On or about January 27, 2005, Wal-mart conducted an exit interview with Plaintiff Wheeler and she was not recommended as a Re-Hire. A copy of the document is attached as Exhibit H and is incorporated herein by reference.

COUNT I – VIOLATION OF THE ADA

71. Plaintiff hereby incorporates each and every allegation contained in paragraphs 1 through 70 above as if same were set forth at length herein.
72. Plaintiff Wheeler's Type 1 Diabetes is a physical impairment that substantially limits her daily activities in that it substantially limits the major life activities of eating and thinking.
73. Plaintiff Wheeler must maintain a set meal schedule each day or she will experience hypoglycemia unawareness, difficulty in concentration, slurred speech, seizures and/or will go into a coma-like state whereby Ms. Wheeler can not speak and is completely unaware of where she is.
74. If Plaintiff Wheeler does not receive treatment within a reasonable amount of time, she could go into a coma and would be hospitalized.
75. At all times mentioned herein, Plaintiff Wheeler was qualified to perform the essential functions of her job as an Optician at Wal-Mart with or without reasonable accommodation.

76. Plaintiff Wheeler's request for accommodation for her Type 1 diabetes had previously been accommodated for over six (6) years prior to her FMLA leave in October of 2004 with her previous Wal-Mart managers without any difficulties.
77. Therefore, her accommodation was possible since it had been done prior to her FMLA leave for many years.
78. Furthermore, prior to Ms. Wheeler's FMLA leave in October of 2004, Plaintiff had never been asked to complete and return an Accommodation form to approve her doctor's restrictions.
79. Plaintiff Wheeler requested on numerous occasions even while she was on FMLA leave that her set schedule be accommodated pursuant to her doctor's restrictions.
80. Management at Wal-Mart would not accommodate Plaintiff Wheeler's doctor's restrictions for a set schedule for her diabetic condition.
81. Therefore, Plaintiff Wheeler could no longer put her health in danger and had to quit her job.
82. Because Wal-Mart refused to accommodate Ms. Wheeler's disability under the ADA, Plaintiff Wheeler has suffered an adverse employment action in that she was constructively discharged from Wal-Mart.
83. Based upon all of Wal-Mart's actions in the above paragraphs, Defendants have violated the Plaintiff Wheeler's rights under the ADA.

WHEREFORE, Plaintiff Wheeler, prays this Court to enter judgment against Wal-Mart, for:

- (a) Monetary damages for past lost wages, future lost wages, medical expenses, and psychological expenses, all in an amount not less than \$100,000.00;

- (b) Damages for mental anguish and punitive damages in an amount not less than \$300,000.00;
- (c) An order enjoining Wal-Mart from continuing its pattern and practice of disregarding its obligations under the American with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964, and further enjoining Wal-Mart from engaging in similar abusive and retaliatory conduct;
- (d) Plaintiff's reasonable legal fees and expenses;
- (e) The costs of this action; and
- (f) Such further relief as this Court shall deem just and proper.

COUNT II – RETALIATION UNDER THE ADA

- 84. Plaintiff hereby incorporates each and every allegation contained in paragraphs 1 through 83 above as if same were set forth at length herein.
- 85. Wal-Mart discriminated against Plaintiff Wheeler in not accommodating Plaintiff's Type I Diabetes and constructively discharging her from her employment at Wal-Mart.
- 86. All of the above actions by Wal-Mart are in retaliation for Plaintiff Wheeler's request for a reasonable accommodation under the ADA.

WHEREFORE, Plaintiff Wheeler, prays this Court to enter judgment against Wal-Mart, for:

- (a) Monetary damages for past lost wages, future lost wages, medical expenses, and psychological expenses, all in an amount not less than \$100,000.00;
- (b) Damages for mental anguish and punitive damages in an amount not less than \$300,000.00;
- (c) An order enjoining Wal-Mart from continuing its pattern and practice of disregarding its obligations under the American with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964, and further

enjoining Wal-Mart from engaging in similar abusive and retaliatory conduct;

- (d) Plaintiff's reasonable legal fees and expenses;
- (e) The costs of this action; and
- (f) Such further relief as this Court shall deem just and proper.

COUNT III - FMLA RETALIATION

- 87. Plaintiff hereby incorporates each and every allegation contained in paragraphs 1 through 86 above as if same were set forth at length herein.
- 88. Wal-Mart is engaged in commerce and employs fifty (50) or more employees for each working day during twenty or more calendar weeks at the work site where Plaintiff Wheeler was employed within the meaning of the FMLA and its accompanying regulations.
- 89. Plaintiff Wheeler had been employed with Wal-Mart for at least 1,250 hours of service prior for the twelve (12) month period preceding Plaintiff's FMLA leave.
- 90. Plaintiff Wheeler had a serious health condition within the meaning of the FMLA and its accompanying regulations.
- 91. Wal-Mart was aware of Plaintiff's serious health condition and her need for leave as a result of one or more of such serious health conditions.
- 92. Before Plaintiff Wheeler took FMLA leave for complications involving her pregnancy in October of 2005, she was working a set schedule to accommodate her Type 1 Diabetes.
- 93. While Plaintiff Wheeler was on FMLA leave, she tried to contact management at Wal-Mart to find out if her schedule would remain the same when she returned.

94. Pursuant to 29 CFR 825.215(e), an employee who has returned from FMLA leave is entitled to an equivalent position which “must have substantially similar duties, conditions, responsibilities, privileges and status as the employee’s original position.”
95. Pursuant to 29 CFR 825.215(e)(2), an employee who has returned from FMLA leave is “ordinarily entitled to return to the same shift or the same or an equivalent work schedule.”
96. When Plaintiff Wheeler returned from her FMLA leave in December of 2004, Wal-Mart changed the conditions of Plaintiff’s Wheeler’s employment in that it would no longer accommodate Ms. Wheeler’s Type 1 Diabetes in accordance with her doctor’s restrictions to have a set schedule.
97. When Plaintiff Wheeler returned from her FMLA leave in December of 2004, Wal-Mart would not return Ms. Wheeler to her same shift and hours as she had before she took FMLA leave.
98. Defendants actions are in retaliation for taking FMLA leave and are in violation of 29 CFR 825.215(e) and 29 CFR 825.215(e)(2).
99. Because Plaintiff Wheeler could not continue to endanger her Type 1 Diabetes due to the fluctuating schedules, Ms. Wheeler had to leave her job and was constructively discharged by Defendants.

WHEREFORE, Plaintiff Wheeler, prays this Court to enter judgment against Wal-Mart, for:

- (a) Monetary damages for past lost wages, future lost wages, medical expenses, and psychological expenses, all in an amount not less than \$100,000.00;
- (b) Damages for mental anguish and punitive damages in an amount not

less than \$300,000.00;

- (c) An order enjoining Wal-Mart from continuing its pattern and practice of disregarding its obligations under the Family Medical Leave Act and Title VII of the Civil Rights Act of 1964, and further enjoining Wal-Mart from engaging in similar abusive and retaliatory conduct;
- (d) Plaintiff's reasonable legal fees and expenses;
- (e) The costs of this action; and
- (f) Such further relief as this Court shall deem just and proper.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

100. Plaintiff hereby incorporates each and every allegation contained in paragraphs 1 through 99 above as if same were set forth at length herein.

101. Wal-Mart's conduct as stated in the above paragraphs was an intentional infliction of emotional distress upon Plaintiff and was outrageous, and displayed an evil motive and/or reckless indifference to the rights of Plaintiff, thereby justifying an award against Wal-Mart for exemplary and punitive damages in an amount sufficient to punish Wal-Mart, and to deter Defendants and others from like conduct.

WHEREFORE, Plaintiff Wheeler, prays this Court to enter judgment against Wal-Mart, for:

- (a) Monetary damages for mental anguish, psychological harm, past lost wages, future lost wages, and medical expenses, and psychological expenses, all in an amount not less than \$100,000.00;
- (b) Punitive damages in the amount of not less than \$300,000.00;
- (c) An order enjoining Wal-Mart from continuing its pattern and practice of disregarding its obligations under the American with Disabilities Act of 1990, the Family Medical Leave Act, and Title VII of the Civil Rights Act of 1964, and further enjoining Wal-Mart from engaging in similar abusive and retaliatory conduct;

- (d) An order requiring that Wal-Mart implement training and procedures to eliminate disability discrimination and FMLA retaliation in the workplace;
- (e) Plaintiff's reasonable legal fees and expenses;
- (f) The cost of this action; and
- (g) Such further relief as this Court shall deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all counts of this Complaint.

REYNOLDS, GOLD & GROSSER, P.C.

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