

THE IOWA STATE BAR ASSOCIATION
Official Form No. 301

Matt J. Reilly

FOR THE LEGAL EFFECT OF THE USE OF
THIS FORM, CONSULT YOUR LAWYER



THE IOWA DISTRICT COURT

LINN COUNTY

Lionel McElroy

Plaintiff(s),

VS.

Wal-Mart Stores, Inc., Wal-Mart Associates, Inc. and
Daniel Speidel

Defendant(s).

LAW

EQUITY

No. LACV062045

DATE PETITION FILED: 6-25-08

ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANT(S):

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendant(s) in this action. A copy of the petition (and any documents filed with it) is attached to this notice.

The name(s) and address(es) of the attorney(s) for the plaintiff(s) (is) (are)

Jeffrey R. Tronvold and Matt J. Reilly

The attorney's(s) phone number(s) (is) (are) (319) 393-1020 ;

facsimile number(s) (319) 393-4000

You must serve a motion or answer within 20 days after service of this original notice upon you, and within a reasonable time thereafter, file your motion or answer with the Clerk of Court for Linn

County, at the county courthouse in Cedar Rapids

Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (319) 398-3920, extension 200

(If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

(SEAL)

SHARON K. MODRACEK

CLERK OF COURT

Linn

County Courthouse

Cedar Rapids, Iowa 52402

IMPORTANT: YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS

EXHIBIT

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IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

2008 JUN 25 AM 9:31
LINN COUNTY, IOWA

LIONEL MCELROY)
)
 Plaintiff,)
)
 v.)
)
 WAL-MART STORES, INC.,)
 WAL-MART ASSOCIATES, INC. and)
 DANIEL SPEIDEL)
)
 Defendants.)

LAW No. LACV 062045

PETITION AT LAW AND JURY DEMAND

COMES NOW, the Plaintiff Lionel McElroy, and for his cause of action against the Defendant Wal-Mart Stores, Inc., Wal-Mart Associates, Inc. and Daniel Speidel states:

PARTIES, JURISDICTION, AND VENUE

1. That Plaintiff Lionel McElroy is, and at all material times hereto, was a resident of Linn County, Iowa.
2. That Defendant Wal-Mart Stores, Inc. is a Delaware Corporation licensed to do business in the State of Iowa, whose registered agent is CT Corporation System 2222 Grand Ave., Des Moines, IA, 50312.
3. That Defendant Wal-Mart Associates, Inc. is a Delaware Corporation licensed to do business in the State of Iowa, whose registered agent is CT Corporation System 2222 Grand Ave., Des Moines, IA, 50312.
4. It is believed that Defendant Daniel Speidel is, and at all material times hereto, was a resident of Linn County, Iowa.

5. Venue in Linn County is appropriate as this is the county because the alleged illegal employment practice occurred in this county.

6. Damages exceed the statutory limits for small claims court.

7. Plaintiff has exhausted all administrative remedies. A right to sue letter has been issued by the EEOC and the Iowa Civil Rights Commission, and this action has been brought within the ninety (90) day time limit set forth in said Notice

FACTUAL ALLEGATIONS

8. In February 2006, Plaintiff Lionel McElroy began working for Defendant Wal-Mart Stores, Inc. and/or Wal-Mart Associates, Inc.

9. At all times up until his termination on or about June 13, 2007, Plaintiff was a full time employee of Defendant Wal-Mart Stores, Inc. and/or Wal-Mart Associates, Inc., was qualified for his employment position, and performed his employment duties such that he met or exceeded the requirements for his position. Plaintiff's employer will hereafter be referred to as Wal-Mart.

10. In July 2006, Plaintiff was diagnosed with diabetes. The diabetes affects Plaintiff's vision, and makes him dizzy when his blood sugar is low.

11. In October 2006, Plaintiff was transferred from a Wal-Mart store in Illinois to Wal-Mart Store # 3630 at 5491, Highway 151 in Marion, Iowa.

12. Following Plaintiff's transfer to the Marion Wal-Mart, Defendant Daniel Speidel was Plaintiff's supervisor.

13. Defendant Speidel referred to Plaintiff, an African American, and other African Americans as "nigger" and assigned African Americans less desirable and more

labor intensive jobs than he assigned others. Defendant Speidel also talked about getting rid of the “niggers.”

14. On occasion, Plaintiff would miss work to obtain necessary medical treatment related to his diabetes. In March 2007, Plaintiff filed for leave that was provided for by Wal-Mart policy and the Family Medical Leave Act.

15. As a result of filing for leave due to his disability, the harassment of Plaintiff intensified. For example, Plaintiff was targeted by Defendant Speidel for disciplinary write-ups.

16. On or about June 13, 2007, Plaintiff was fired. The employers stated reason for the termination, that Plaintiff took too many breaks and extended breaks, was pretextual.

COUNT I
FMLA

17. Plaintiff reasserts the allegations contained in paragraphs 1 through 16 as if fully restated herein.

18. Plaintiff Lionel McElroy was a full time employee that had been employed by the employer for at least 12 months. Plaintiff also suffered from diabetes, a serious health condition, as the term is defined under the Family Medical Leave Act [hereinafter referred to as “FMLA”], and was eligible for FMLA leave.

19. At all material times hereto, Defendant Wal-Mart employed 50 or more people and was a covered employer under the FMLA.

20. Plaintiff gave Defendant Wal-Mart reasonable notice of his need for FMLA leave.

21. Plaintiff provided Defendant with adequate medical certification to justify being granted leave under the FMLA. At no time did Defendant provide Plaintiff with

notice under 29 C.F.R. § 825.305(b) that the medical certification was incomplete.

Additionally, Defendant did not seek a second opinion under 29 C.F.R. § 825.307(a)(2).

22. Plaintiff was discharged and otherwise illegally treated in violation of the FMLA, and in retaliation for seeking benefits under the FMLA as described above.

23. Plaintiff was damaged as a result of the improper dismissal and illegal treatment, entitling Plaintiff to all damages available under the FMLA, including but not limited to past and future lost wages and benefits as well as attorneys fees, costs and expenses.

24. Defendant Wal-Mart's conduct was willful and Plaintiff is entitled to liquidated damages under the FMLA.

COUNT II DISABILITY DISCRIMINATION

25. Plaintiff reasserts the allegations contained in paragraphs 1 through 16 as if fully restated herein.

26. Due to Plaintiff's diabetes, Plaintiff was disabled, and/or regarded as being disabled within the meaning of the American's with Disabilities Act and the Iowa Civil Rights Act in that Plaintiff was substantially limited, or regarded as being substantially limited in engaging in one or more major life activities.

27. Defendant Wal-Mart was aware that Plaintiff had diabetes, and Plaintiff sought to be accommodated for his disability. Defendant failed to reasonably accommodate Plaintiff.

28. Plaintiff's disability was a motivating factor in Defendant's decision to terminate Plaintiff's employment.

29. Defendant Wal-Mart can offer no valid lawful reason for the discriminatory conduct toward Plaintiff, and any proffered reason by the Defendant is merely a pretext for the Defendant's illegal actions.

30. Defendant Wal-Mart's action, as described above, were in violation of the American's with Disabilities Act and Iowa Code § 216.

31. As a result of Defendant Wal-Mart's unlawful employment practices, Plaintiff has suffered and will continue to suffer emotional distress and mental anguish, lost front and back pay and loss of enjoyment and of the ordinary pleasures of life.

32. Defendant Wal-Mart's actions were willful and wanton, and done in malice or in reckless disregard to the rights of Plaintiff, entitling him to exemplary or punitive damages.

**COUNT III
RACIAL DISCRIMINATION**

33. Plaintiff reasserts the allegations contained in paragraphs 1 through 16 as if fully restated herein.

34. At all times material hereto, Defendant Daniel Speidel was Plaintiff's supervisor.

35. Plaintiff was subjected to racially offensive and threatening conduct or conditions at the hands of Defendant Daniel Speidel. The Defendant Speidel's conduct included but was not limited to by referring to African American's including Plaintiff, as "niggers" and by repeatedly assigning African Americans less desirable tasks then those assigned to whites.

36. Such conduct was unwelcome and was based on Plaintiff's race.

37. Such conduct was sufficiently severe and pervasive that a reasonable person in Plaintiff's position would find the plaintiff's work environment to be hostile and abusive.

38. At the time such conduct occurred and as a result of such conduct, Plaintiff believed his work environment to be hostile and abusive.

39. Plaintiff reported this conduct to Wal-Mart, but Wal-Mart did not adequately respond.

40. Plaintiff's race was a motivating factor in Defendant's decision to terminate Plaintiff's employment.

41. Defendant Wal-Mart and Defendant Speidel intentionally discriminated against Plaintiff because of Plaintiff's race.

42. Defendant Wal-Mart's unlawful employment practices were in violation of Title VII and the Iowa Civil Rights Act.

43. Defendant Daniel Speidel's unlawful employment practices were in violation of the Iowa Civil Rights Act.

44. As a direct and proximate result of said discrimination, Plaintiff has suffered and will continue to suffer mental anguish, lost front and back pay, embarrassment, and loss of enjoyment and of the ordinary pleasures of life.

45. The conduct of the Defendant Wal-Mart was willful and wanton and done with malice or in reckless disregard of the rights of Plaintiff, entitling Plaintiff to punitive damages.

RELIEF

WHEREFORE, Plaintiff Lionel McEleroy prays that this Court order judgment against Defendants and award Plaintiff as follows: 1) back pay for the job position which

was foreclosed to him due to the Defendants illegal actions, 2) front pay, 3) prejudgment interest, 4) damages for all employment benefits he would have received but for the discriminatory practices by the Defendants, 5) an award of compensatory damages including emotional distress, 6) liquidated damages, 7) punitive damages, 8) reasonable attorneys' fees and costs incurred in pursuing this action, including expert witness fees, 9) and any other relief this Court deems just, equitable or in the public interest.

JURY DEMAND

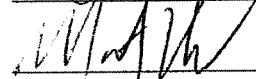
COMES NOW, the Plaintiff, Lionel McEleroy, by and through his attorneys, Eells & Tronvold Law Offices, P.L.C., and requests a trial by jury.

**EELLS & TRONVOLD LAW OFFICES
P.L.C.**

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