

**MCKINLEY ANCHORAGE &
MOORAGE ASSOCIATION, UA,**
an unincorporated nonprofit association,
880 W. Canal Street
Milwaukee, WI 53233

Plaintiff,

Case No. _____

vs.

Personal Injury-Other 30108

MILWAUKEE COUNTY,
a political corporation,

7425 W. Harwood Ave.
Wauwatosa, WI 53213

and

Sally Sprenger
7425 W. Harwood Ave.
Wauwatosa, WI 53213

Defendants.

AMENDED COMPLAINT

NOW COMES Plaintiff Lisa K. Alberte, through her attorney, John D. Uelmen, and as and for a Complaint against Defendants Anew Health Care Services, Inc., and Sally Sprenger, alleges and shows to the Court as follows:

JURISDICTIONAL ALLEGATIONS

1. This is an action seeking actual damages, compensatory and punitive

damages, reinstatement with back pay, front pay, attorney's fees, and injunctive and equitable relief pursuant to the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12111, et. seq., and Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §2000(e), et. seq.

2. The unlawful employment practices and discrimination alleged below were at all times material committed within the County of Milwaukee in the State of Wisconsin.

3. Plaintiff Lisa K. Alberte ("Alberte") is a citizen of the United States and an adult female resident of the County of Milwaukee, State of Wisconsin.

4. Alberte has discharged the jurisdictional requirements under the ADA and Title VII in that a timely charge of discrimination was filed with the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations ("Equal Rights Division") and with the Equal Employment Opportunity Commission ("EEOC"), and on June 2, 1994, the EEOC issued a Notice of Right to Sue authorizing Alberte to commence this action. Said notice with the attached Charge of Discrimination has been attached hereto as Exhibit A. The allegations contained in the Charge of Discrimination are realleged as though stated in detail herein.

5. After duly investigating Alberte's charge of discrimination, on March 25, 1994, the Equal Rights Division issued an Initial Determination finding probable cause to believe that Anew Health Care Services, Inc., violated provisions of the Wisconsin Fair Employment Act which prohibit discrimination on the basis of handicap. Attached hereto as Exhibit B is a copy of said Initial Determination.

6. Defendant Anew Health Care Services, Inc., ("Anew") is a corporation existing

under and by virtue of the laws of the State of Wisconsin, with its principal place of business located in the City of Wauwatosa, County of Milwaukee, State of Wisconsin at 7425 W. Harwood Avenue, is engaged in the business of providing skilled nursing services to members of the public, has at all times material had twenty-five or more employees for each working day of each of twenty or more calendar weeks, and has at all times material been engaged in commerce and in activity that affects interstate commerce.

7. Alberte was employed by Anew from October 28, 1992 through December 10, 1992, when she was discharged. While employed by Anew, Alberte held the position of Administrator.

8. Defendant Sally Sprenger ("Sprenger") is an adult female resident of the County of Milwaukee, State of Wisconsin, and was at all times material acting within the scope of her employment as Alberte's immediate supervisor, serving in the position of President of Anew, and as such was Anew's agent within the meaning of Title VII and the ADA.

9. Alberte is a person with a "disability" within the meaning of the ADA because she suffers from the medically diagnosed back impairment of chronic musculoligamentous strain, which is a physical impairment that substantially limits her major life activities, and because she has a record of such an impairment and has been regarded as having such an impairment.

FIRST CAUSE OF ACTION

As and for a First Cause of Action against Defendants Anew Health Care Services, Inc., and Sally Sprenger, Plaintiff Lisa K. Alberte alleges and shows to the Court as follows:

10. Realleges as though stated in detail herein paragraphs 1 through 9 of the Jurisdictional Allegations.

11. Prior to being hired, Sprenger explained the essential functions of the position of Administrator to Alberte and also provided Alberte with a written job description describing the essential functions of the position of Administrator. Neither the oral description of the position, nor the written job description detailed any duties which Alberte could not physically perform. The job descriptions did not state that, as the Administrator, Alberte would have to perform any nursing functions such as serving as an on-call nurse or as a substitute nurse for home visits. The job descriptions also did not describe any duties which would require Alberte to make solo visits to inner city residents, which Sprenger knew Alberte was somewhat reluctant to do because of having been previously assaulted in the inner city. Prior to being hired, Sprenger assured Alberte that the position would not require the Administrator to perform direct patient nursing care.

12. On December 2, 1992, Alberte attended a seminar describing the provisions of the Americans with Disabilities Act ("ADA"). As the Administrator, Alberte was responsible for becoming familiar with state and federal regulations and of insuring compliance with these regulations.

13. After attending the aforesaid seminar, Alberte met with Sprenger and described some changes that she thought Anew needed to make to insure compliance with the ADA. Alberte specifically discussed the "reasonable accommodation" provisions of the law and specifically told Sprenger about her prior history of back problems and about the physical limitations that her physician had placed upon her.

14. On December 3, 1992, Alberte received a new "orientation" schedule drafted by Sprenger which required her to make several solo home health care visits in the inner city as a nurse and required her to serve as the "on call" nurse on several occasions. After reviewing the medical records of the patients to whom she had been assigned, Alberte noted that one patient was a quadriplegic who needed assistance in making transfers and another patient was quite obese who also needed assistance. The care of these patients might involve lifting that exceeded the physical limitations placed upon Alberte by her physician. Because of this concern, Alberte telephoned Sprenger and told her that she would need reasonable accommodation if she was now to assume direct nursing care duties. Sprenger was upset when Alberte spoke with her and told Alberte that she should have told her about the physical limitations prior to being hired.

15. On December 4, 1992, Alberte drafted and sent to Sprenger a memorandum describing her concerns about the new duties assigned to her and requesting that Anew accommodate her disability. Attached to the memorandum was a description of Alberte's physical limitations which had been prepared by her physician.

16. Sprenger was not willing to meet with Alberte about her concerns until December 8, 1992. During their meeting on December 8, 1992, Sprenger told Alberte that she would not even attempt to accommodate Alberte by providing the assistance of another nurse or nurse's aid when needed.

17. On December 9, 1992, Alberte was placed on suspension after she returned from several home health care visits. The following day, on December 10, 1992, Alberte was terminated from her position as Administrator.

18. Anew and Sprenger discharged Alberte because she had opposed practices that were illegal under the ADA, because she requested reasonable accommodation, and because of her disability.

19. The aforesaid conduct of Anew and Sprenger were in violation of the ADA and Title VII because:

- a. Anew and Sprenger failed to reasonably accommodate Alberte's disability;
- b. Anew and Sprenger retaliated against Alberte by adversely changing the conditions of her employment and her job duties upon learning of her disability and her need for accommodation and upon learning of her opposition to employment practices that were illegal under the ADA;
- c. Anew and Sprenger discharged Alberte because of her disability, her opposition to illegal practices, and her request for reasonable accommodation.

20. As a direct and proximate result of the aforementioned conduct of Anew, Alberte has lost wages and fringe benefits in an amount not yet determined, has sustained great mental anguish and distress, has sustained a loss to her professional reputation in the community and has incurred attorney's fees and costs in an amount not yet determined.

WHEREFORE, Plaintiff Lisa K. Alberte prays for judgment against Defendant Anew Health Care Services, Inc., and Sally Sprenger, and each of them, that includes back pay and all fringe benefits lost from December 10, 1992 to the present, compensatory damages, interest, front pay if it is determined that reinstatement is not appropriate or feasible, reasonable attorney's fees and costs, and any other appropriate relief.

SECOND CAUSE OF ACTION

As and for a Second Cause of Action against Defendants Anew Health Care Services, Inc., and Sally Sprenger, Plaintiff Lisa K. Alberte alleges and shows to the Court as follows:

21. Realleges as though stated in detail herein paragraphs 1 through 20 of this Complaint.

22. The aforesaid conduct of Anew and Sprenger demonstrates that these parties engaged in illegal employment practices with malice and with reckless indifference to the federally protected rights of Alberte and other aggrieved individuals.

WHEREFORE, Plaintiff Lisa K. Alberte prays for judgment against Defendant Anew Health Care Services, Inc., and Sally Sprenger, and each of them, that includes back pay and all fringe benefits lost from December 10, 1992 to the present, compensatory damages, interest, front pay if it is determined that reinstatement is not appropriate or feasible, reasonable attorney's fees and costs, punitive damages in an amount that will effectively discourage these Defendants and others from engaging in such illegal conduct in the future, and any other appropriate relief.

Dated this ____ day of September, 1994.

John D. Uelmen
Plaintiff's Attorney
State Bar No. 1003004

2025 N. Summit Avenue
Suite 109
Milwaukee, WI 53202

(414) 277-1438

PLEASE TAKE NOTICE AS FOLLOWS:

1. Pursuant to Sec. 904.12, Stats., Plaintiff hereby requests the aforesaid Defendants to provide copies of all written or recorded statements taken from the Plaintiff.

2. Pursuant to Sec. 103.13, Stats., Plaintiff hereby requests the aforesaid Defendants to provide copies of all personnel records and documents relating to Plaintiff's employment with Defendant Anew Health Care Services, Inc.