

CIV-171106-CIV-DS1722149-CASEEN-130602



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System Code: CIV
Case Number: DS1722149
Case Type: CIV
Action Code: CASEEN
Action Date: 11/06/17
Action Time: 1:06
Action Seq: 0002
Printed by: SJAMI

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Complaint and Party information entered

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NEW FILE

BY FAX

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 06 2017

BY Sabrina Jamison
SARBRINA JAMISON, DEPUTY

1 Howard L. Magee (State Bar No. 185199)
2 Kristen Agnew (State Bar No. 247656)
3 **DIVERSITY LAW GROUP, A Professional Corporation**
4 515 South Figueroa Street, Suite 1250
5 Los Angeles, California 90071
6 (213) 488-6555
7 (213) 488-6554 facsimile

8 Attorney for Plaintiff
9 FATIMA GUTIERREZ

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 FATIMA GUTIERREZ, an individual,

13 Plaintiff,

14 vs.

15 KAISER FOUNDATION HEALTH PLAN,
16 INC., a California corporation; KAISER
17 FOUNDATION HOSPITALS, a California
18 corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.

Case No. CIVDS1722149

COMPLAINT FOR DAMAGES

1. PREGNANCY DISCRIMINATION IN VIOLATION OF FEHA-GOVERNMENT CODE SECTION 12940 ET. SEQ.;
2. DISABILITY DISCRIMINATION IN VIOLATION OF FEHA-GOVERNMENT CODE SECTION 12940 ET SEQ.;
3. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN GOOD FAITH IN VIOLATION OF FEHA-GOVERNMENT CODE SECTION 12940 ET SEQ.;
4. FAILURE TO MAKE REASONABLE ACCOMMODATIONS IN VIOLATION OF FEHA-GOVERNMENT CODE SECTION 12940 ET SEQ.;
5. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
6. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
7. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(DEMAND EXCEEDS \$25,000.00)

JURY TRIAL DEMANDED

Courthouse News Service

RECEIVED
NOV 06 2017
SUPERIOR COURT
SAN BERNARDINO COUNTY

1 Plaintiff Fatima Gutierrez (hereinafter referred to as "Plaintiff" or "Ms. Gutierrez"),
2 hereby submits her Complaint for Damages against Defendant Kaiser Foundation Health Plan,
3 Inc., a California corporation; Kaiser Foundation Hospitals, a California corporation (together,
4 "Kaiser"); and DOES 1 through 50 (collectively, "Defendants") as follows:

5 **GENERAL ALLEGATIONS**

6 1. At all times mentioned herein, Plaintiff was an individual residing in the State of
7 California.

8 2. At all times mentioned herein, Plaintiff is informed and believes and thereon
9 alleges that Kaiser Foundation Health Plan, Inc. is a corporation, which at all times relevant
10 hereto, was and is doing business in the County of San Bernardino, where the alleged acts of
11 wrongful termination, and other unlawful practices occurred.

12 3. At all times mentioned herein, Plaintiff is informed and believes and thereon
13 alleges that Kaiser Foundation Hospitals is a corporation, which at all times relevant hereto, was
14 and is doing business in the County of San Bernardino, where the alleged acts of wrongful
15 termination, and other unlawful practices occurred.

16 4. The true names and capacities of defendants named herein as Does 1 through 50,
17 inclusive, are unknown to Plaintiff, who therefore sues such defendants by their fictitious names.
18 Plaintiff will seek leave of this Court to amend this Complaint to include their names and
19 capacities when they have been ascertained. Plaintiff is informed and believes and thereon
20 alleges that the Doc defendants, and each of them, are responsible for the damages alleged by
21 Plaintiff in this Complaint.

22 **JURISDICTION AND VENUE**

23 5. Venue is proper because the alleged wrongs occurred in San Bernardino County.
24 Defendants are located within San Bernardino County.

25 **FACTUAL ALLEGATIONS**

26 6. Kaiser Permanente is an integrated managed care consortium that is made up of
27 three distinct but interdependent groups of entities: the Kaiser Foundation Health Plan, Inc. and
28 its regional operating subsidiaries; Kaiser Foundation Hospitals; and the regional Permanente

1 Medical Groups. Kaiser Permanente is the largest managed care organization in the United
2 States.

3 7. Plaintiff Fatima Gutierrez began her employment with Kaiser as an Appointment
4 Clerk at the Inland Empire Appointment Center on or about July 24, 2017. On or about August
5 23, 2017, less than 30 days from her start date, Plaintiff was wrongfully terminated by
6 Defendants because of her pregnancy. Such conduct by Defendants was in violation of
7 California's Fair Employment and Housing Act, California Government Code section 12940 *et*
8 *seq.*

9 8. On or about July 27, 2017, several days after Plaintiff began working for
10 Defendants, Plaintiff informed management that she was pregnant, and of her need to schedule
11 time off for doctor's appointments in the near foreseeable future due to her pregnancy. Plaintiff
12 subsequently scheduled a doctor's appointment for on or about August 22, 2017.

13 9. During a training session held on or about August 8, 2017, Plaintiff started to feel
14 nauseous (morning sickness), exhausted, and fatigued, due to her pregnant condition. As a
15 result, Plaintiff rested her eyes in an effort to alleviate the discomfort that she was experiencing.
16 Upon seeing Plaintiff rest her eyes, the trainer reprimanded Plaintiff for "dozing off" and loudly
17 clapped her hands in front of Plaintiff's face. Plaintiff immediately explained to the trainer that
18 she was pregnant and was not sleeping, but was merely resting her eyes to make the discomfort
19 caused by her pregnancy more bearable.

20 10. During a subsequent training session held on or about August 14, 2017, Plaintiff
21 again experienced nausea (morning sickness), exhaustion, and fatigue stemming from her
22 pregnancy. As a result, Plaintiff rested her eyes to help ease the pain and discomfort that she was
23 feeling. Despite having explained to the trainer previously that she was pregnant and had no
24 control over the symptoms stemming from her pregnancy, Plaintiff was again reprimanded for
25 "dozing off." In fear of losing her job, Plaintiff immediately reiterated to the trainer that she was
26 not sleeping, but was merely resting her eyes to make her discomfort more bearable.

27 11. On or about August 22, 2017, Plaintiff met with her doctor per her scheduled
28 appointment, and was informed that she was 10 weeks pregnant.

1 12. Within less than 24 hours after Plaintiff learned that she was 10 weeks pregnant,
2 Defendants callously and wrongfully terminated Plaintiff's employment on or about August 23,
3 2017. The sole alleged reason given by Defendants for Plaintiff's termination was "failure to
4 pass probation." However, Plaintiff was terminated after only 29 days into her employment—
5 she was not even given an opportunity to fully complete her 75 day probationary period.
6 Additionally, Defendants made no attempt to articulate to Plaintiff the reasons as to how or why
7 she failed to pass probation. Defendants' alleged reason for Plaintiff's termination is clearly
8 pretext.

9 13. Defendants' afore-referenced conduct and act of unlawfully terminating
10 Plaintiff's employment amounted to illegal discrimination in violation of California's Fair
11 Employment and Housing Act, California Government Code section 12940 *et seq.*

12 14. Within one year of the last date of discrimination alleged by Plaintiff against
13 Defendants, Plaintiff filed charges of unlawful discrimination with the Department of Fair
14 Employment and Housing ("DFEH"). Attached hereto as Exhibit "A" is a true and correct copy
15 of Plaintiff's Complaint of Discrimination and DFEH Right to Sue Notice.

FIRST CAUSE OF ACTION

17 **(AGAINST DEFENDANTS BY PLAINTIFF FOR VIOLATION OF GOVERNMENT**

CODE § 12940(a) – PREGNANCY DISCRIMINATION

18 15. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14 as
19 though fully set forth herein.
20

21 16. At all times herein mentioned, California Government Code §§ 12940 *et seq.*
22 were in full force and effect and were binding on Defendants. Under the Fair Employment and
23 Housing Act ("FEHA"), Government Code § 12940 *et seq.*, it is an unlawful employment
24 practice for an employer, because of the sex and/or pregnancy of a person, to refuse to hire or
25 employ the person, to refuse to select the person for a training program leading to employment,
26 to bar or discharge the person from employment or from a training program leading to
27 employment, or to discriminate against the person in compensation or in terms, conditions, or
28 privileges of employment.

1 17. As a direct, legal, and proximate result of Plaintiff's pregnancy, Defendants
2 discriminated against Plaintiff in the compensation, terms, conditions, and privileges of
3 employment by terminating Plaintiff due to her pregnancy in violation of California Government
4 Code § 12940.

5 18. As a proximate cause of the wrongful conduct by Defendants, Plaintiff suffered
6 the following damages according to proof at trial: (i) loss of wages; (ii) loss of work related
7 benefits; (iii) loss of future earning capacity; (iv) emotional distress including mental anguish,
8 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety; and (v) pain and
9 suffering.

10 19. Defendants committed the acts alleged herein maliciously, fraudulently and
11 oppressively with the wrongful intention of injuring Plaintiff, and with an improper and evil
12 motive amounting to malice and a conscious disregard of Plaintiff's rights. Defendants also
13 authorized their managing agent to terminate Plaintiff in conscious disregard of Plaintiff's rights.
14 Defendants also ratified their supervisor's action of terminating Plaintiff due to her pregnancy.
15 Plaintiff is thus entitled to recover punitive damages from Defendants and DOES in an amount
16 according to proof at time of trial.

17 20. Pursuant to California Government Code § 12965(b), Plaintiff requests an award
18 of attorney's fees and prejudgment interest, against Defendants, and DOES, under this cause of
19 action.

20 **SECOND CAUSE OF ACTION**

21 **(AGAINST DEFENDANTS BY PLAINTIFF FOR VIOLATION OF GOVERNMENT**
22 **CODE § 12940(a) – DISCRIMINATION ON THE BASIS OF DISABILITY)**

23 21. Plaintiff incorporates by reference as if fully set forth herein the allegations
24 contained in paragraphs 1 through 20.

25 22. The FEHA codified in Government Code §§ 12900 *et seq.*, makes it unlawful for
26 an employer to discriminate against an employee on the basis of the employee's disability.

27 23. Government Code Section 12926.1(b) also protects employees from disability
28 discrimination due to conditions that are perceived as a disability or potentially disabling.

1 Plaintiff informed Defendants of her pregnancy and need to schedule future doctor's
2 appointments to tend to said pregnancy. Plaintiff also communicated to Defendants the physical
3 difficulties she was experiencing from said pregnancy. As a result, Plaintiff was regarded as or
4 treated by Defendants as having a physical condition that made achievement of a major life
5 activity difficult.

6 24. Plaintiff is informed and believes and based thereon alleges that her perceived
7 "disability" was a motivating factor in Defendants' decision to terminate her employment in
8 violation of Government Code § 12940(a).

9 25. As a proximate result of Defendants' actions, Plaintiff has suffered and continues
10 to suffer substantial losses in earnings, employment benefits and medical expenses all to her
11 damage in an amount to be proven at trial.

12 26. As a further proximate result of Defendants' actions against Plaintiff, Plaintiff has
13 suffered and will continue to suffer emotional pain, humiliation, mental anguish, decline in
14 physical health and enjoyment of life all to her damage in an amount to be proven at trial.

15 27. Defendants' conduct as described above was willful, knowing and intentional and
16 done with reckless indifference to those statutorily protected rights of Plaintiff; accordingly,
17 Plaintiff seeks an award of punitive and exemplary damages in an amount according to proof.

18 28. Defendants' actions against Plaintiff have also caused and will continue to cause
19 Plaintiff harm in that Plaintiff has or will incur attorney's fees and costs of suit, including expert
20 witness fees, which will be claimed in an amount to be proven following trial.

21 **THIRD CAUSE OF ACTION**

22 **(AGAINST DEFENDANTS BY PLAINTIFF FOR VIOLATION OF GOVERNMENT**
23 **CODE § 12940(n) – FAILURE TO ENGAGE IN INTERACTIVE PROCESS)**

24 29. Plaintiff incorporates by reference as if fully set forth herein the allegations
25 contained in paragraphs 1 through 28.

26 30. Government Code § 12940(n) provides that it is unlawful for an employer to fail
27 to engage in a timely, good faith interactive process with an employee with a known (or
28 perceived) physical disability in order to identify and implement effective reasonable

1 accommodations if any.

2 31. California Government Code Section 12926.1(e) states, "The Legislature affirms
3 the importance of the interactive process between the applicant or employee and the employer in
4 determining a reasonable accommodation, as the requirement has been articulated by the Equal
5 Employment Opportunity Commission in its interpretive guidance of the Americans with
6 Disabilities Act of 1990."

7 32. Defendants were required to proactively engage in a good faith review of
8 Plaintiff's ability to continue to perform the essential functions of her job with or without
9 reasonable accommodations.

10 33. Defendants failed to engage in a proper good faith interactive process before they
11 decided to terminate Plaintiff from her job.

12 34. As a proximate result of Defendants' actions, Plaintiff has suffered and continues
13 to suffer substantial losses in earnings, employment benefits and medical expenses all to her
14 damage in an amount to be proven at trial.

15 35. As a further proximate result of Defendants' actions against Plaintiff, Plaintiff has
16 suffered and will continue to suffer emotional pain, humiliation, mental anguish, decline in
17 physical health and enjoyment of life all to her damage in an amount to be proven at trial.

18 36. Defendants' conduct as described above was willful, knowing and intentional and
19 done with reckless indifference to the statutorily protected rights of Plaintiff; accordingly,
20 Plaintiff seeks an award of punitive and exemplary damages in an amount according to proof.

21 37. Defendants' actions against Plaintiff have also caused and will continue to cause
22 Plaintiff harm in that Plaintiff has or will incur attorney's fees and costs of suit, including expert
23 witness fees, which will be claimed in an amount to be proven following trial.

24 **FOURTH CAUSE OF ACTION**

25 **(AGAINST DEFENDANTS BY PLAINTIFF FOR VIOLATION OF GOVERNMENT**
26 **CODE § 12940(m) – FAILURE TO ACCOMMODATE DISABILITY)**

27 38. Plaintiff incorporates by reference as if fully set forth herein the allegations
28 contained in paragraphs 1 through 37.

1 39. Government Code § 12940(m) provides that it is unlawful for an employer to fail
2 to consider a reasonable accommodation for the known physical or mental disability of an
3 employee.

4 40. Defendants failed to make reasonable accommodations for Plaintiff by
5 terminating her because of her perceived disability rather than determining what reasonable
6 accommodations could be given to Plaintiff to allow her to keep working.

7 41. As a proximate result of Defendants' actions, Plaintiff has suffered and continues
8 to suffer substantial losses in earnings, employment benefits and medical expenses all to her
9 damage in an amount to be proven at trial.

10 42. As a further proximate result of Defendants' actions against Plaintiff, Plaintiff has
11 suffered and will continue to suffer emotional pain, humiliation, mental anguish, decline in
12 physical health and enjoyment of life all to her damage in an amount to be proven at trial.

13 43. Defendants' conduct as described above was willful, knowing and intentional and
14 done with reckless indifference to the statutorily protected rights of Plaintiff; accordingly
15 Plaintiff seeks an award of punitive and exemplary damages in an amount according to proof.

16 44. Defendants' actions against Plaintiff have also caused and will continue to cause
17 Plaintiff harm in that Plaintiff has or will incur attorneys' fees and costs of suit, including expert
18 witness fees, which will be claimed in an amount to be proven following trial.

19 **FIFTH CAUSE OF ACTION**

20 **(AGAINST DEFENDANTS BY PLAINTIFF FOR WRONGFUL TERMINATION IN**
21 **VIOLATION OF PUBLIC POLICY)**

22 45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 44 as
23 though fully set forth herein.

24 46. As a result of the allegations as stated above, Defendants unlawfully terminated
25 Plaintiff due to her pregnancy and unlawfully terminated Plaintiff due to her disability and/or
26 perceived disability. Defendants' conduct in wrongfully terminating Plaintiff's employment in
27 this regard, was in violation of California Government Code § 12940 *et seq.*

28 47. As a proximate result of Defendants' unlawful discharge and discrimination

1 against Plaintiff in violation of California Government Code §§ 12940 *et seq.*, as alleged above,
2 Plaintiff has been harmed in the loss of wages, benefits, and other damages in an amount to be
3 proven at trial.

4 48. As a further proximate result of the Defendants' unlawful actions against Plaintiff,
5 as alleged above, Plaintiff has been harmed in that she has suffered humiliation, embarrassment,
6 disgrace, loss of reputation, loss of self-esteem, mental anguish, and emotional and physical
7 distress, and has been generally damaged, all in an amount to be proven at trial.

8 49. The above mentioned actions of the Defendants were done with malice, fraud,
9 and/or oppression, and in conscious disregard of Plaintiff's rights under Government Code §§
10 12940 *et seq.* The actions were also done with the intent to vex, injure, and annoy Plaintiff.
11 Such actions warrant the imposition of exemplary and punitive damages against Defendants, in
12 an amount sufficient to punish and deter others from engaging in similar conduct, in an amount
13 to be proven at trial.

14 **SIXTH CAUSE OF ACTION**

15 **(AGAINST DEFENDANTS BY PLAINTIFF FOR INTENTIONAL INFLICTION OF**
16 **EMOTIONAL DISTRESS)**

17 50. Plaintiff refers to and repeats the allegations set forth in paragraphs 1 through 49
18 above, and incorporates the same herein as though set forth in full.

19 51. When Defendants committed the acts described above, they did so deliberately
20 and intentionally to cause Plaintiff to suffer humiliation, mental anguish, and emotional distress.
21 The outrageousness of the above-described conduct is amplified due to upper management's
22 abuse of their positions with actual and apparent authority over Plaintiff, such as is commonly
23 found in employment relationships. The Defendants were aware of their unlawful acts, and that
24 the termination of Plaintiff would cause Plaintiff to suffer extreme emotional distress and other
25 consequential damages.

26 52. The above-said acts of the Defendants constituted intentional infliction of
27 emotional distress against Plaintiff and such conduct of the Defendants was a substantial or
28 determining factor in causing damage and injury to Plaintiff.

1 53. As a result of Defendants' intentional infliction of emotional distress, Plaintiff has
2 suffered and continues to suffer substantial loss and damages including, loss of salary, future
3 advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an amount
4 to be determined at trial.

5 54. The Defendants committed said intentional infliction of emotional distress alleged
6 herein against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of
7 injuring Plaintiff for an improper and evil motive which constitute a malicious and conscious
8 disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from the
9 Defendants in an amount to be determined at trial.

10 **SEVENTH CAUSE OF ACTION**
11 **(AGAINST DEFENDANTS BY PLAINTIFF FOR NEGLIGENT INFLECTION OF**
12 **EMOTIONAL DISTRESS)**

13 55. Plaintiff refers to and repeats the allegations set forth in paragraphs 1 through 54
14 above, and incorporates the same herein as though set forth in full.

15 56. When the Defendants committed the acts described above, they knew, or should
16 have known, that its failure to exercise due care in the performance of their role as employer,
17 manager, supervisor would cause Plaintiff to suffer emotional distress. The Defendants knew or
18 should have known that the termination under the alleged circumstances would cause Plaintiff
19 severe emotional distress.

20 57. The above-said acts of the Defendants constituted negligent infliction of
21 emotional distress against Plaintiff and such conduct of the Defendants was a substantial or
22 determining factor in causing damage and injury to Plaintiff.

23 58. As a result of Defendants' negligent infliction of emotional distress, Plaintiff has
24 suffered and continues to suffer substantial loss and damages including, loss of salary, future
25 advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an amount
26 to be determined at trial.

27 59. The Defendants committed said negligent infliction of emotional distress alleged
28 herein against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of

1 injuring Plaintiff for an improper and evil motive which constitutes a malicious and conscious
2 disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from the
3 Defendants in an amount to be determined at trial.

4 **PRAYER FOR RELIEF**

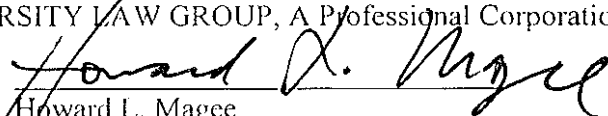
5 WHEREFORE, Plaintiff prays for and requests relief against Defendants as follows:

- 6 1. For lost wages, benefits, penalties and other monetary relief in an amount to be
7 proven at trial;
- 8 2. For general damages resulting from suffered humiliation, embarrassment,
9 disgrace, loss of reputation, mental anguish, and emotional and physical distress in an amount to
10 be proven at trial;
- 11 3. All general damages, according to proof at the time of trial.
- 12 4. For punitive and exemplary damages in an amount according to proof at the time
13 of trial;
- 14 5. For interest on the sum of the damages awarded, calculated from the date of
15 termination to the date of judgment;
- 16 6. For attorneys' fees and costs incurred, in an amount to be determined at trial; and
17 7. For such other and further relief as the Court may deem just and proper.

18 Dated: November 6, 2017

DIVERSITY LAW GROUP, A Professional Corporation

19 By:


Howard L. Magee
Attorneys for Plaintiff
FATIMA GUTIERREZ

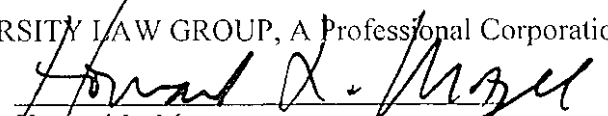
22
23 **DEMAND FOR JURY TRIAL**

24 Plaintiff Fatima Gutierrez hereby demands trial by jury.

25 Dated: November 6, 2017

DIVERSITY LAW GROUP, A Professional Corporation

26 By:


Howard L. Magee
Attorneys for Plaintiff
FATIMA GUTIERREZ

Courthouse News Service

EXHIBIT A



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN, JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

November 06, 2017

RE: Notice to Complainant or Complainant's Attorney
DFEH Matter Number: 867387-322581
Right to Sue: Gutierrez / Kaiser Foundation Health Plan, Inc.

Dear Complainant or Complainant's Attorney:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue. Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your attorney must serve the complaint. If you do not have an attorney, you must serve the complaint yourself. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

November 06, 2017

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 867387-322581

Right to Sue: Gutierrez / Kaiser Foundation Health Plan, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing

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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

November 06, 2017

Fatima Gutierrez
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 867387-322581
Right to Sue: Gutierrez / Kaiser Foundation Health Plan, Inc.

Dear Fatima Gutierrez,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective November 06, 2017 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

Enclosures

cc: Kaiser Foundation Hospitals

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1 COMPLAINT OF EMPLOYMENT DISCRIMINATION
2 BEFORE THE STATE OF CALIFORNIA
3 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
4 Under the California Fair Employment and Housing Act
5 (Gov. Code, § 12900 et seq.)

6 In the Matter of the Complaint of
7 Fatima Gutierrez, Complainant.
8 515 S. Figueroa Street, Suite 1250
9 Los Angeles, California 90071

DFEH No. 867387-322581

10 vs.

11 Kaiser Foundation Health Plan, Inc.,
12 Respondent.
13 17284 Slover Ave.
14 Fontana, California 92337

15 Complainant alleges:

- 16 1. Respondent **Kaiser Foundation Health Plan, Inc.** is a subject to suit under the
17 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).
18 Complainant believes respondent is subject to the FEHA.
- 19 2. On or around **August 23, 2017**, complainant alleges that respondent took the
20 following adverse actions against complainant: **Discrimination Denied a good faith
21 interactive process, Denied employment, Denied reasonable accommodation,
22 Terminated**, . Complainant believes respondent committed these actions because
of their: **Disability, Medical Condition - Including cancer or cancer related
medical condition or genetic characteristics, Sex - Pregnancy** .
3. Complainant **Fatima Gutierrez** resides in the City of **Los Angeles**, State of
California. If complaint includes co-respondents please see below.

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Co-Respondents:
Kaiser Foundation Hospitals

17284 Slover Ave.
Fontana California 92337

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1
2 **Additional Complaint Details:**

3
4 Complainant Fatima Gutierrez began her employment with Respondents as an
5 Appointment Clerk at the Inland Empire Appointment Center on or about July 24, 2017.
6 On or about August 23, 2017, less than 30 days from her start date, Complainant was
7 wrongfully terminated by Respondents because of her pregnancy. Such conduct by
8 Respondents was in violation of California's Fair Employment and Housing Act,
9 California Government Code section 12940 et seq.

10 On or about July 27, 2017, several days after Complainant began working for
11 Respondents, Complainant informed management that she was pregnant, and of her
12 need to schedule time off for doctors appointments in the near foreseeable future due to
13 her pregnancy. Complainant subsequently scheduled a doctors appointment for on or
14 about August 22, 2017.

15 During a training session held on or about August 8, 2017, Complainant started to feel
16 nauseous (morning sickness), exhausted, and fatigued, due to her pregnant condition.
17 As a result, Complainant rested her eyes in an effort to alleviate the discomfort that she
18 was experiencing. Upon seeing Complainant rest her eyes, the trainer reprimanded
19 Complainant for dozing off and loudly clapped her hands in front of Complainants face.
20 Complainant immediately explained to the trainer that she was pregnant and was not
21 sleeping, but was merely resting her eyes to make the discomfort caused by her
22 pregnancy more bearable.

During a subsequent training session held on or about August 14, 2017, Complainant
again experienced nausea (morning sickness), exhaustion, and fatigue stemming from
her pregnancy. As a result, Complainant rested her eyes to help ease the pain and
discomfort that she was feeling. Despite having explained to the trainer previously that
she was pregnant and had no control over the symptoms stemming from her
pregnancy, Complainant was again reprimanded for dozing off. In fear of losing her job,
Complainant immediately reiterated to the trainer that she was not sleeping, but was
merely resting her eyes to make her discomfort more bearable.

On or about August 22, 2017, Complainant met with her doctor per her scheduled
appointment, and was informed that she was 10 weeks pregnant.

Within less than 24 hours after Complainant learned that she was 10 weeks pregnant,
Respondents callously and wrongfully terminated Complainant's employment on or
about August 23, 2017. The sole alleged reason given by Respondents for
Complainant's termination was failure to pass probation. However, Complainant was
terminated after only 29 days into her employment -- she was not even given an
opportunity to fully complete her 75 day probationary period. Additionally, Respondents
made no attempt to articulate to Complainant the reasons as to how or why she failed to
pass probation. Respondents' alleged reason for Complainant's termination is clearly
pretext.

Respondents' afore-referenced conduct and act of unlawfully terminating Complainants employment amounted to illegal discrimination in violation of California's Fair Employment and Housing Act, California Government Code section 12940 et seq.

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1 VERIFICATION

2 I, **Howard L. Magee**, am the Attorney for Complainant in the above-entitled
3 complaint. I have read the foregoing complaint and know the contents thereof. The
4 same is true of my own knowledge, except as to those matters which are therein
5 alleged on information and belief, and as to those matters, I believe it to be true.

6 On November 06, 2017, I declare under penalty of perjury under the laws of the
7 State of California that the foregoing is true and correct.

8 Los Angeles, CA
9 Howard L. Magee
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SAN BERNARDINO COUNTY