

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

CIVIL ACTION
NO.

KERRY CONSIDINE,)
Plaintiff,)
)
v.)
)
BROOKDALE SENIOR LIVING, INC.,)
Defendant.)

COMPLAINT

INTRODUCTION

Plaintiff Kerry Considine brings this sex discrimination employment action against Defendant Brookdale Senior Living, Inc., for refusing to provide employment-based spousal health insurance benefits for her wife. Defendant refused to provide those benefits solely because Kerry is married to someone of the same sex, Renee Considine, and because Kerry does not conform to Defendant's gender-based stereotypes that a woman should only be married to man. If Kerry had been a man, or if Renee had been a man, Defendant would have provided such benefits. Instead, Defendant discriminated against Kerry on the basis of sex with regard to her employment compensation. Such discrimination violates Title VII of the federal Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*; the Equal Pay Act, 29 U.S.C. § 206(d); and the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 42 U.S.C. § 2000e-5(f)(3); 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331, 1343, 1367, and 2201.
2. Venue is proper in this district pursuant to 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391, because all parties reside or are deemed to reside in this district and because a substantial part of the events giving rise to Plaintiff's claims occurred in this district, including the unlawful employment practice alleged in this complaint.

PARTIES

3. Plaintiff KERRY CONSIDINE is a citizen of the Commonwealth of Massachusetts and the United States of America, and she resides in Northampton, Massachusetts.
4. Kerry is an employee of Defendant BROOKDALE SENIOR LIVING within the meanings of 42 U.S.C. § 2000e(f), 29 U.S.C. § 203(e), and Conn. Gen. Stat. § 46a-51(9).
5. Defendant BROOKDALE SENIOR LIVING, INC. is a publicly-owned corporation. It is the nation's largest owner and operator of senior living communities throughout the United States, with over 1,100 senior living communities in 47 states, including Connecticut. Its corporate headquarter is located in Tennessee.
6. Defendant is an employer within the meanings of 42 U.S.C. § 2000e(b), 29 U.S.C. § 203(d), and Conn. Gen. Stat. § 46a-51(10).

EXHAUSTION OF REMEDIES

7. Kerry filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) on January 17, 2014, for violation of Title VII of the Civil Rights Act and the Connecticut Fair Employment Practices Act.

8. On August 22, 2014, Kerry received a letter from the EEOC determining that there was “reasonable cause to believe that the Respondent [Brookdale] has discriminated against the Charging Party [Kerry] on account of her sex.”

9. On October 1, 2014, Kerry received a “Right to Sue” letter from the EEOC allowing her to pursue this matter in federal court, based upon its finding of reasonable cause and a determination that further conciliation would be futile or non-productive.

10. This complaint was filed within the required time limits set forth in 42 U.S.C. § 2000e-5(f)(1).

11. All other prerequisites to the filing of this suit have been met.

FACTS

12. Kerry Considine was hired by Defendant in October 2012 as a licensed physical therapist.

13. Kerry currently works for Defendants as an Ancillary Services Manager in three Brookdale facilities located in West Hartford and Farmington, Connecticut.

14. Kerry has performed her job in a satisfactory manner at all times.

15. As part of Kerry’s compensation, she receives employee health and dental insurance benefits.

16. Those benefits are self-insured through Defendant and administered through United Healthcare.

17. Defendant provides qualified employees with the option of obtaining health insurance coverage for their spouses.

18. Kerry is a qualified employee for purposes of spousal health insurance benefits.

19. On November 1, 2013, Kerry married her spouse Renee Considine in Massachusetts.

20. Renee is a school guidance counselor. At the time of the discriminatory acts described below, Renee was in graduate school and purchased student health insurance through her school. That plan had minimal coverage and did not cover many of her medical expenses. For example, Renee has a gastric band that requires periodic maintenance, which is not covered by her insurance plan.

21. In October 2013, Kerry called Defendant's human resources department to ask whether Renee could be added to her health and dental insurance plans as her legal spouse. She was told on the phone that Defendant did not offer health insurance coverage to same-sex spouses.

22. On November 1, 2013, Kerry emailed Defendant's human resources department to request that Renee be added to her health and dental insurance coverage.

23. On November 4, 2013, Kerry received a response to her email informing her that Defendant would not add Renee to her health and dental insurance coverage, because Renee is a same-sex spouse.

24. As a result of Defendant's discriminatory conduct in refusing to provide spousal health and dental insurance coverage, Kerry has been denied compensation and benefits to which she would have been entitled absent discrimination, and she and her spouse have had pay for out-of-pocket medical expenses for Renee and suffered emotional distress and other compensable damages.

COUNT I: VIOLATION OF THE CIVIL RIGHTS ACT OF 1964, TITLE VII, 42 U.S.C. §§ 2000e, et seq.

25. Plaintiff Kerry Considine repeats and realleges the allegations set forth in Paragraphs 1-24 as if fully set forth herein.

26. Defendant refused to provide spousal health and dental insurance coverage for Kerry's spouse because Kerry is a woman married to another woman, even though they would have provided such coverage if she were a man married to a woman.

27. Defendant refused to provide spousal health and dental insurance coverage for Kerry's spouse because Kerry's spouse is a woman, even though they would have provided such coverage if Kerry's spouse were a man.

28. Defendant refused to provide spousal health and dental insurance benefits because of sex-based stereotypes and stereotyping that a woman should only be married to a man and not a woman.

29. Defendant's intentional discriminatory actions were taken either with malice or with reckless indifference to Kerry's rights under law.

30. Defendant has violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, by discriminating against Kerry with respect to her

compensation, terms, conditions, or privileges of her employment because of her sex, by denying her spousal health and dental insurance for her same-sex spouse.

CLAIM II: VIOLATION OF THE FAIR PAY ACT, 29 U.S.C. § 206(d)

31. Plaintiff Kerry Considine repeats and realleges the allegations set forth in Paragraphs 1-29 as if fully set forth herein.

32. Defendant has paid wages at a lower rate to women like Kerry who are married to women than to men who are married to women, for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

33. Defendant has violated the Fair Pay Act, 29 U.S.C. § 206(d), by refusing to provide spousal health and dental insurance benefits for Kerry's same-sex spouse.

CLAIM III: VIOLATION OF THE CONNECTICUT FAIR EMPLOYMENT PRACTICES ACT, Conn. Gen. Stat. § 46a-60

34. Plaintiff Kerry Considine repeats and realleges the allegations set forth in Paragraphs 1-29 as if fully set forth herein.

35. Defendant has violated the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60, by discriminating against Kerry in compensation or in terms, conditions, or privileges of employment based upon sex.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff Kerry Considine prays that this Court:

1. Grant declaratory relief, including but not limited to: (a) a declaration that Defendant has violated Title VII of the federal Civil Rights Act of 1964, as amended, 42

U.S.C. §§ 2000e, *et seq.*; (b) a declaration that Defendant has violated the Equal Pay Act, 29 U.S.C. § 206(d); and (c) a declaration that Defendant has violated the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60;

2. Enjoin the Defendants from further denying spousal health insurance benefits to Plaintiff to the extent that Defendant continues to make spousal health insurance benefits available to their employees;

3. Award compensatory and consequential damages to Plaintiff, including for emotional distress;

4. Award punitive damages;

5. Award attorney's fees and costs to Plaintiff to the extent allowable by law, including under 42 U.S.C. § 2000e-5(k); 29 U.S.C. § 216(b); and Conn. Gen. Stat. § 46a-104.

6. Grant such other relief as is just and appropriate.

DATED: October 28, 2014

Respectfully submitted,

Kerry Considine
By her attorney,

GAY & LESBIAN ADVOCATES &
DEFENDERS

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