

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

-----X
Ms. Betzaida Cruz Cardona, Claimant

CHARGE

-against-

TVI, Inc. (d/b/a Savers) and Savers, Inc., Respondents
-----X

Ms. Betzaida Cruz Cardona, by her attorneys A Better Balance: The Work and Family Legal Center and Emery Celli Brinckerhoff & Abady LLP, brings these claims against Respondents TVI, Inc. (d/b/a Savers) and Savers, Inc. (collectively “Savers”) for discrimination on the basis of her pregnancy and disability (or apparent disability) in violation of the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*¹ Savers employs more than 15 individuals, and is therefore covered by the applicable federal laws.

1. **Claimant:** Ms. Betzaida Cruz Cardona

Address:



Telephone:



2. **Respondents:** TVI, Inc. (d/b/a Savers) and its parent Savers, Inc.

Address: TVI, Inc. (d/b/a Savers)
1175 Marketplace Dr.
Henrietta, NY 14605

Telephone: (585) 424-4487

Address: Savers, Inc.
11400 S.E. 6th St., Suite 220
Bellevue, WA 98004

DOS Process: c/o CT Corporation System
111 8th Ave.
New York, NY 10011

Telephone: (425) 462-1515

¹ Ms. Cruz has other claims that she need not exhaust in this forum, which are not asserted here. *See* N.Y. Exec. Law § 296(1)(a); N.Y. Exec. Law § 296(1)(g); N.Y. Exec. Law § 296(3).

3. Description of Violations: Ms. Cruz seeks redress for Savers' unlawful and discriminatory treatment of her due to her pregnancy and disability (or perceived disability) in violation of the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k); the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq*; and the New York State Human Rights Law, N.Y. Exec. Law § 296.² Respondents TVI, Inc. (d/b/a Savers) and Savers, Inc. (collectively "Savers") are for-profit corporations operating hundreds of retail stores, nationwide, selling used clothing and other merchandise under the names "Savers," "Value Village," and "Unique Thrift." Claimant Betzaida Cruz Cardona is a pregnant woman who was terminated by a Savers store at 1175 Marketplace Dr., Henrietta, New York 14605 because of her pregnancy and disability (or perceived disability). While an employee, Ms. Cruz became pregnant and had complications, which required her to seek treatment at a hospital and to call in sick from work. Her pregnancy-related disability substantially affected at least one major life activity, namely lifting. Ms. Cruz notified her manager of her illness and brought doctors' notes so that Savers knew why she was not at work and when she would be able to return. After a brief weeklong period of being unable to work, Ms. Cruz called the store and asked to be returned to the schedule. Her manager told her she could not return to work until she obtained a note from her doctor stating she could work and noting any work restrictions. Her doctor wrote a note saying that her only work restriction was that she needed to avoid lifting over 25 pounds, something Ms. Cruz had never been asked to do in her four months working as a Savers cashier. In response to this note, her managers told Ms. Cruz that she could not work and that she should go home to take care of her pregnancy. After Ms. Cruz's managers consulted with Savers' corporate human resources department, Savers formally terminated Ms. Cruz without engaging in any attempt to accommodate her disability in violation of the Americans with Disabilities Act and state law.

Savers' actions also violate the Pregnancy Discrimination Act because Savers terminated Ms. Cruz due to her pregnancy even though she was able to perform all the necessary tasks of her job. In addition, Savers violated the Pregnancy Discrimination Act because it treated her worse than similarly situated non-pregnant employees. Specifically, Savers provided a non-pregnant worker with a light duty assignment to accommodate her disability, namely carpal tunnel syndrome.

On information and belief, Savers' actions in this case are part of a pattern and practice by the company of discriminating against and failing to accommodate pregnant women. As reported in the *New York Times*, a Savers' store terminated another pregnant woman in New York City and only reinstated her in response to negative press and pressure from A Better Balance.

4. Dates of Violations: Savers discriminated against Ms. Cruz on the basis of her pregnancy and disability from approximately August 6, 2014 to August 19, 2014. The effects of this discrimination continue to the present because Ms. Cruz is still unemployed.

² While Claimant notes the violations of New York State law throughout this charge, Claimant brings only her federal claims here because she is not required to administratively exhaust the other claims.

FACTS

Introduction

This is an action seeking damages to redress the Respondents' unlawful and discriminatory treatment of Betzaida Cruz Cardona due to her pregnancy and disability (or perceived disability) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended by the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k); the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; and the New York State Human Rights Law, N.Y. Exec. Law § 296. In August 2014, while Ms. Cruz was an employee, Savers: (1) failed to reasonably accommodate her pregnancy-related disability; (2) treated her worse than non-pregnant individuals similar in their ability or inability to work; and (3) terminated her employment because she was pregnant and/or because she was disabled (or perceived as disabled).

Respondent Savers is a for-profit retail store chain selling used clothing (and other merchandise) at hundreds of stores nationwide. Savers is a corporation, registered with the State of New York, whose principal office is located at 11400 SE 6th St., Suite 220, Bellevue, Washington 98004.

Claimant Betzaida Cruz Cardona is a 20-year old woman who is pregnant with her first child. In April 2014, she was hired to work for Savers at its store located at 1175 Marketplace Dr., Henrietta, New York 14623. Ms. Cruz was hired as a customer service cashier. She held that position until she was terminated on August 19, 2014 because she was pregnant, disabled, or perceived to be disabled. As a cashier, Ms. Cruz predominately performed sales transactions and customer service, which did not require her to lift anything over five to ten pounds. She also occasionally cleaned the floor and bathrooms, activity that did not require any lifting, other than taking out the trash, which was very light. During her four months as a Savers cashier, Ms. Cruz

was never asked to lift more than 25 pounds. The standard practice for all cashiers was to ask someone in the furniture department to lift anything heavy. There were also always other employees available to help with lifting. Accommodating Ms. Cruz's disability, therefore, would not have been a burden on Savers.

Savers refuses to schedule Ms. Cruz for work because she is pregnant, has a disability, or is perceived to have a disability.

On or around August 5, 2014, Ms. Cruz felt extremely ill and went to the hospital. She was discharged the next day around 4:00 A.M. and went to her scheduled shift at Savers around 7:00 A.M. After experiencing continued illness, including shaking, dizziness, and a loss of balance, Ms. Cruz told the floor manager [REDACTED] that she was ill, had been treated at a hospital, and needed to go home. [REDACTED] excused her from work.

On or around August 7, Ms. Cruz returned to the doctor due to her continued illness and received a note, which excused her from work on August 8, the next day she was scheduled to work. The doctor's office faxed the letter (dated August 7, 2014) to Savers, and [REDACTED] confirmed with Ms. Cruz over the phone that she had received the note.

On or around August 11, on her next scheduled day of work, Ms. Cruz called in sick because she was not feeling well, due to her illness. [REDACTED] an assistant manager, told Ms. Cruz that another employee could cover her shift and that she was excused from work.

As a result of her absence, on or around August 12, [REDACTED] told Ms. Cruz that if she wants to keep her job, she needs an additional letter from the doctor excusing her absence. So, on or around August 13, Ms. Cruz went to a hospital, where her doctor informed her that she was seven weeks pregnant and had a pregnancy-related illness. Ms. Cruz's doctor wrote a note (dated August 13, 2014) explaining that Ms. Cruz was receiving care from a physician and

would be able to return to work on August 18. Ms. Cruz then called [REDACTED] to tell her she was pregnant, had a pregnancy-related illness, and that she would be able to come back to work on August 18.

On or around August 17, Ms. Cruz called Savers to find out when she was scheduled to work. She spoke with the assistant manager [REDACTED] who said that [REDACTED] did not put Ms. Cruz on the schedule and that she should speak with [REDACTED] directly the next day.

On or around August 18, Ms. Cruz called [REDACTED] as directed, to ask why she was not scheduled to work. [REDACTED] told Ms. Cruz that she must bring in a note that said she could work and that described any restrictions. Ms. Cruz explained that she was willing and able to work, as stated in the August 13 doctor's note. But [REDACTED] said she needed another note before she could be added to the schedule. Despite her willingness and ability to work, Savers stopped scheduling Ms. Cruz for work.

Savers refuses to accommodate Ms. Cruz's disability.

On or around August 19, Ms. Cruz returned to the doctor to get another note. She gave this additional note, dated August 19, 2014, to her supervisor [REDACTED]. This note stated that Ms. Cruz was pregnant but that she had only one work restriction: "[l]ifting must be limited to less than 25 lbs." Despite the fact that Ms. Cruz had never lifted anything as heavy as 25 pounds during her four months as a cashier, [REDACTED] told Ms. Cruz that due to this work restriction, she could not work at Savers. Ms. Cruz explained that she thought she was able to work and that she wanted to return to work.

Immediately afterwards, [REDACTED] led Ms. Cruz to an office, where they met with the store manager [REDACTED] and a female corporate or human resources representative of Savers who did not work in the store. At the meeting, [REDACTED] told Ms. Cruz in sum and substance that she "can't

work” and that she should “stay home, take care of her pregnancy, and rest.” The other women agreed. [REDACTED] then explained she would “consult with corporate and let [Ms. Cruz] know.” Toward the end of the conversation, [REDACTED] told Ms. Cruz that she should apply for her job again after she had the baby. Savers never offered to provide any reasonable accommodation even though Savers was on notice of Ms. Cruz’s pregnancy-related disability and little (if any) accommodation was needed.³

Savers terminates Ms. Cruz’s employment because she is pregnant.

On or around August 19, and within approximately one hour of this meeting, the store manager [REDACTED] called to inform Ms. Cruz that she was “terminated.” Ms. Cruz asked for her termination letter and [REDACTED] laughed and replied that the store “didn’t do that.”⁴

Savers treats Ms. Cruz differently from non-pregnant workers.

Upon information and belief, another Savers employee at the Henrietta location, [REDACTED] acquired carpal tunnel syndrome and was unable to perform many of her job duties. Savers accommodated [REDACTED] disability by changing her job duties to straightening merchandise and maintaining the neatness of the store displays. Savers treated Ms. Cruz worse by not providing her with a similar accommodation.

Savers’ employee handbook states that the corporation has a policy of providing reasonable accommodations to workers with disabilities, which is their legal duty under the Americans with Disabilities Act. Savers treated Ms. Cruz worse than workers with other disabilities, who are provided reasonable accommodations according to company policy. Savers

³ Savers also failed to engage in the interactive process, which is an independent violation of New York State law. *See Phillips v. City of New York*, 66 A.D.3d 170, 176 (N.Y. App. Div. 2009).

⁴ Refusal to provide a notice upon separation is a violation of New York State regulations. *See* N.Y. Comp. Codes R. & Regs. tit. 12, § 472.8. In addition, *Savers* later willingly made a false statement in paperwork filed with the New York Department of Labor by stating Ms. Cruz had voluntarily left her job. This false statement is also a violation of New York law. *See* N.Y. Lab. Law § 632.

does not have a policy that requires it to provide reasonable accommodations to workers with pregnancy-related limitations.

Savers' conduct violates federal and state pregnancy discrimination laws.

Savers' actions violate federal and state laws that prohibit discrimination in employment on the basis of pregnancy and disability.

Title VII of the Civil Rights Act of 1974 makes it unlawful for an employer “to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1). The Pregnancy Discrimination Act of 1978 amended Title VII by clarifying that the “terms ‘because of sex’” include “because of or on the basis of pregnancy, childbirth, or related medical conditions.” 42 U.S.C. § 2000e(k). The New York State Human Rights Law is governed by the same legal standards as Title VII. *See Debidat v. Marriott Int’l, Inc.*, 580 F. Supp. 2d 300, 305 (S.D.N.Y. 2008). The Human Rights Law also provides that it is discrimination “for an employer to compel an employee who is pregnant to take a leave of absence, unless the employee is prevented by such pregnancy from performing the activities involved in the job or occupation in a reasonable manner.” N.Y. Exec. Law § 296(1)(g).

Savers violated these federal and state laws when it discriminated against Ms. Cruz because she was pregnant. Ms. Cruz was terminated because she was pregnant and her pregnancy restricted her from lifting more than 25 pounds, even though she had never lifted more than 25 pounds at her job. The store manager’s comment that she should “stay home, take care of her pregnancy, and rest” demonstrates paternalistic, stereotypical assumptions about pregnant women and is evidence of discriminatory intent. And the comment that she could apply for her

job again only after having her baby, makes it clear that Savers did not want a pregnant employee in the store, even though Ms. Cruz was willing and able to do her job.

Savers discriminated against Ms. Cruz on the basis of her pregnancy by treating her worse than disabled employees similar in their ability or inability to work. The Pregnancy Discrimination Act requires that: “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work” 42 U.S.C. § 2000e(k). Savers violated the Pregnancy Discrimination Act by treating Ms. Cruz worse than similarly situated workers both in policy and in practice. Savers’ employee handbook states that Savers will provide reasonable accommodations to workers with disabilities, but the policy fails to specify that it will accommodate pregnant women. And in practice, Savers did not reasonably accommodate Ms. Cruz, a pregnant woman with a lifting restriction. Yet Savers accommodated one of Ms. Cruz’s non-pregnant coworkers, [REDACTED] who was given light duty at the store because of issues relating to carpal tunnel syndrome. In refusing to apply to Ms. Cruz the same policies and practices it uses for other, non-pregnant disabled employees, Savers violated the Pregnancy Discrimination Act.

On information and belief, Savers has a pattern or practice of discriminating against pregnant women. As reported in the *New York Times*, in 2013, Ms. Floralba Fernandez Espinal, an employee of a Unique Thrift, a subsidiary of Savers, located at 218 West 234th Street, Bronx, New York 10463, was discriminated against when she asked for a reasonable accommodation.⁵ Ms. Espinal’s doctor wrote a note restricting her to “[n]o lifting, pushing or carrying heavy objects or loads.” When she brought this note to Savers and asked for an accommodation, she

⁵ The February 2, 2014 New York Times article “Placed on Unpaid Leave, a Pregnant Employee Finds Hope in a New Law” is available at <http://nyti.ms/1kBcNCj>.

was told to go home and was placed on unpaid leave just three months into her pregnancy. Meanwhile, other non-pregnant disabled employees at the store where Ms. Espinal worked were accommodated through transfers to different positions, such as working the cash register or tagging and hanging clothing. Instead of providing Ms. Espinal the same accommodation they provided other similarly situated but non-pregnant employees, Savers discriminated against her based on her pregnancy by refusing to accommodate her. Ms. Espinal was permitted to return to work only after Savers received negative press and A Better Balance wrote a letter informing Savers that its practices violated the New York City Pregnant Workers Fairness Act. Ms. Espinal's and Ms. Cruz's experiences, as well as the complete lack of a pregnancy policy in the Savers' employee handbook, demonstrate a pattern or practice of discrimination by Savers against its pregnant employees.

Savers' conduct violates federal and state disability discrimination law.

According to the Americans with Disabilities Act of 1990 ("ADA"), "[n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to . . . discharge of employees . . . and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). The ADA's definition of "disability" includes both "a physical or mental impairment that substantially limits one or more major life activities of such individual; . . . or . . . being regarded as having such an impairment." 42 U.S.C. § 12102(1). "An impairment need only substantially limit one major life activity to be considered a disability under the ADA." 29 C.F.R. § Pt. 1630, App. *citing* 42 U.S.C. 12102(4)(C). The federal regulations expressly provide that a person with a "disability" under the ADA includes "someone with an impairment resulting in a 20-pound lifting restriction that lasts or is expected to last for several months" 29 C.F.R. § Pt. 1630, App. Pregnancy-related impairments can be considered a "disability" under

the ADA. *See id.* (“a pregnancy-related impairment that substantially limits a major life activity is a disability under the first prong of the definition..., or may be covered under the ‘regarded as’ prong if it is the basis for a prohibited employment action and is not ‘transitory and minor.’”). The New York State Human Rights law is governed by the same legal standards as the ADA. *See Rodal v. Anesthesia Grp. of Onondaga, P.C.*, 369 F.3d 113, 117 n.1 (2d Cir. 2004).

In violation of the ADA, Savers fired Ms. Cruz because she had a disability or was regarded as a having a disability. Ms. Cruz has a “disability” under the ADA because her pregnancy-related impairment substantially limited the major life activity of lifting. Savers learned of Ms. Cruz’s pregnancy-related illness on August 13, 2014. On August 19, 2014, Savers was informed that Ms. Cruz’s illness was a disability that restricted her from lifting over 25 pounds. That same day, Savers terminated Ms. Cruz due to her disability. Ms. Cruz’s managers at Savers perceived her impairment as a disability. The managers repeatedly said that Ms. Cruz’s pregnancy-related illness and lifting restriction would not allow her to work. Despite the fact that both Ms. Cruz and her doctor thought she could perform her regular cashier duties, Savers regarded Ms. Cruz as disabled because of her pregnancy-related illness.

In violation of the ADA, Savers failed to reasonably accommodate Ms. Cruz’s pregnancy-related disability and refused to engage in a good faith interactive process about the job duties she could continue to perform. The ADA requires an employer to provide “reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an . . . employee, unless . . . the accommodation would impose an undue hardship.” 42 U.S.C. § 12112(b)(5)(A). Savers made no effort to find an accommodation that would allow Ms. Cruz to remain on the job. Instead of an accommodation, Ms. Cruz was told that she could not come to work, even though she was able to perform the essential, regular

functions of her job – such as performing sale transactions and providing customer service – because her doctor’s note said her only restriction was lifting more than 25 pounds. Savers violated federal and state law because it was aware of her pregnancy-related disability but would not provide a reasonable accommodation.

Savers’ failure to accommodate Ms. Cruz’s disability is particularly egregious because very little accommodation was necessary: Ms. Cruz had *never* been required to lift more than 25 pounds as a cashier and even if, for some reason, she would be asked to lift over 25 pounds, there were always at least five other employees in the store who could have lifted it for her. Indeed, before her pregnancy, Ms. Cruz had been told that if she had to lift anything heavy that she should call someone in the furniture department to do the heavy lifting for her.

Damages

Savers’ violation of federal and state law has caused Ms. Cruz substantial harm. As a result of her termination, Ms. Cruz was unable to pay her rent and was forced to leave her home. She is now homeless and living couch-to-couch, with her baby due in just a few months. Ms. Cruz has endured extreme stress, anxiety, and chronic insomnia. The immense financial and emotional struggle has devastated her relationship with the father of her child. Ms. Cruz has been unable to find alternative employment and has had to seek public assistance in order to survive. Ms. Cruz deserves to be adequately compensated for the unjust treatment she was subjected to at Savers. She seeks back pay, compensatory damages, damages for emotional distress, and attorneys’ fees and costs. In addition, she asks that Savers put into place a comprehensive pregnancy accommodation policy to ensure other pregnant workers will be protected from the treatment Ms. Cruz has experienced.

Conclusion

Savers discriminated against Ms. Cruz by taking her off the work schedule, refusing to accommodate her, and terminating her due to her pregnancy, disability, or perceived disability. Ms. Cruz deserves to be compensated for Savers' actions, which violated state and federal discrimination laws. Savers' pattern and practice of discrimination against pregnant employees should also be investigated and necessary injunctive relief, including but not limited to new pregnancy accommodation policies, should be mandated.

I swear under the penalty of perjury that the above is true and correct, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true.

Dated: February 23, 2015
Rochester, NY

By: Betzaida Cruz Cardona
Betzaida Cruz Cardona, Claimant

Sworn to before me this 24
day of February 2015
Alexandro
Notary Public



A BETTER BALANCE: THE WORK AND
FAMILY LEGAL CENTER

By: Dina Bakst

Dina Bakst
80 Maiden Lane, Suite 606
New York, New York 10038
(212) 430-5982

Co-counsel for Claimant

EMERY CELLI BRINCKERHOFF & ABADY LLP

Elizabeth Saylor
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Co-counsel for Claimant