

IN THE IOWA DISTRICT COURT IN AND FOR DUBUQUE COUNTY

DANIEL L. CARVER,
Plaintiff,

vs.

GLENN and LOIS KARPINSKE
d/b/a KARPINSKE ENTERPRISES,
and MC DONALD'S OF
DYERSVILLE, IOWA,
Defendants.

Law No. 01311LACV055644

PETITION AT LAW

filed a lawsuit

CLERK OF DISTRICT COURT
DUBUQUE COUNTY IOWA

2008 AUG 18 AM 9:21

FILED

COMES NOW the Plaintiff, Daniel L. Carver, and for his cause of action against the Defendants, states as follows:

INTRODUCTION

1. This is an action under the Iowa Civil Rights Acts, Iowa Code Chapter 216.

JURISDICTION

2. This Court has subject matter jurisdiction over this action pursuant to Section 216.16(1) of the Code of Iowa.
3. Venue is appropriate in this county since it is the county of residence of the Plaintiff and the location where the alleged discrimination occurred.

PARTIES

4. The Plaintiff, Daniel L. Carver, is a resident of Epworth, Dubuque County, Iowa.
5. Based on information and belief, the Defendants, Glenn and Lois Karpinske

of Galena, Illinois, own Karpinske Enterprises which is an unincorporated entity that owns and operates Defendant restaurant, McDonald's Restaurant of Dyersville located at 1510 9th Street SE in Dyersville, Dubuque County, Iowa.

6. The Plaintiff was an employee at the subject McDonald's Restaurant in Dyersville, Iowa at all times material herein.

7. The Defendants collectively at all relevant times herein have employed at least four (4) employees and are therefore defined as an "employer" pursuant to Iowa Code Chapter 216.

PROCEDURAL REQUIREMENTS

8. On or about March 5, 2008, within 180 days of the acts of which he complains, the Plaintiff filed charges of employment discrimination with the Iowa Civil Rights Commission against the Defendants on the basis of sexual orientation/harassment and physical disability discrimination. Said complaint was assigned CP #03-08-54863. A copy of said complaint is attached hereto and marked as Exhibit "A".

9. On May 22, 2008, less than 90 days prior to the filing of this complaint, the Iowa Civil Rights Commission issued to Plaintiff a Right-To-Sue Letter with respect to such charges of discrimination. A copy of such Right-To-Sue Letter is attached hereto and marked as Exhibit "B".

COUNT I – SEXUAL ORIENTATION DISCRIMINATION

10. Plaintiff repleads and realleges each and every material allegation set forth in paragraphs 1 through 9 above and incorporates the same by reference herein.

11. The Plaintiff, Daniel Carver, is a member of a protected class in that he is homosexual.

12. Iowa Code § 216.6(1)(a) provides that:

"It shall be an unfair or discriminatory practice for any person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the ...sexual orientation of such applicant or employee."
Iowa Code § 216.6(1)(a).

13. The Plaintiff, Daniel Carver, was at all times material to this action qualified to perform his job at the McDonald's Restaurant in Dyersville, Iowa, owned and operated by the Defendants as described above.

14. The Plaintiff suffered a series of adverse employment actions during his employ at McDonald's in Dyersville, Iowa, as a result of his status as a homosexual, including, but not limited to, denial of promotion opportunities, loss of working hours and termination of employment.

15. The Plaintiff, Daniel Carver, was also subjected to different terms and conditions of employment than the terms and conditions of employment enjoyed by non-homosexual employees.

16. All of the above-described conduct to which the Plaintiff was subjected was in violation of Iowa Code § 216.6, and therefore the Defendants should be held liable for such conduct.

17. As a proximate result of the adverse actions and discriminatory treatment to which Daniel Carver was subjected during his employment with Defendants, the Plaintiff has suffered substantial damages, including but not limited to lost wages, emotional

distress and mental anguish, attorney's fees and court costs.

WHEREFORE, Plaintiff requests judgment against the Defendants in an amount which will fully and fairly compensate him for his injuries and damages, for interest and costs as allowed by law, for attorney's fees and for such other and further relief, including any and all relief as may be just in the premises and consistent with the purposes of the Iowa Civil Rights Act, Iowa Code Chapter 216.

**COUNT II – HOSTILE WORK ENVIRONMENT AND SEXUAL ORIENTATION
HARASSMENT**

18. Plaintiff repleads and realleges each and every material allegation set forth in paragraphs 1 through 17 above and incorporates the same by reference herein.

19. During his employment with Defendants, Daniel Carver was subjected to a hostile and abusive working environment both by supervisors and co-workers alike due to Mr. Carver's sexual orientation.

20. Mr. Carver was called discriminatory names and subjected to a hostile and abusive work environment because of his sexual orientation.

21. Mr. Carver was subjected to an ongoing pattern and practice of harassing and discriminatory conduct, including inappropriate statements, death threats, as well as physical abuse at the hands of one of the managers of the restaurant because of his homosexuality.

22. The harassment to which Mr. Carver was subjected because of his sexual orientation was severe and pervasive, and it affected the terms, conditions and privileges of Mr. Carver's employment.

23. Mr. Carver complained about the treatment he was receiving on the job, but no action was taken to remedy the situation.

24. The effect of the hostile and abusive work environment was that the Plaintiff was deprived of equal employment opportunities and was otherwise adversely affected and discriminated against because of his sexual orientation.

25. The Defendants knew or should have known of the harassment as described above, and they failed to take prompt remedial action to correct the harassment.

26. Mr. Carver also suffered tangible employment action when his employment was terminated because of his sexual orientation.

27. All of the above conduct is in violation of Iowa Code § 216.6, and hence the Defendants should be held liable for such conduct.

28. As a proximate result of the hostile work environment to which Mr. Carver was subjected, Mr. Carver has suffered damages, including emotional distress and mental anguish, and lost wages.

WHEREFORE, Plaintiff requests judgment against the Defendants in an amount which will fully and fairly compensate him for his injuries and damages, for interest and costs as allowed by law, for attorney's fees and for such other and further relief, including any and all relief as may be just in the premises and consistent with the purposes of the Iowa Civil Rights Act, Iowa Code Chapter 216.

COUNT III – DISABILITY DISCRIMINATION AND HARASSMENT

29. Plaintiff repleads and realleges each and every material allegation set forth

in paragraphs 1 through 28 above and incorporates the same by reference herein.

30. Plaintiff Daniel Carver is protected from disability based discrimination because he is HIV positive. Specifically, Iowa Code § 216.2 defines "disability" to include the condition of a person with a positive human immunodeficiency virus test result.

31. Despite his HIV positive status, Mr. Carver is otherwise qualified to perform the essential functions of his job at McDonald's Restaurant in Dyersville, Iowa.

32. During Mr. Carver's employment with the Defendants, he was subjected to a variety of discriminatory and harassing incidents due to his HIV positive status, including the termination of his employment.

33. The Defendants and their employees have intentionally discriminated against Mr. Carver by subjecting him to different terms and conditions of employment than those enjoyed by non-HIV positive employees.

34. In addition, Mr. Carver has been subjected to a hostile and abusive work environment during his employment with Defendants. Specifically, Mr. Carver was subjected to discriminatory statements and treatment relating to his HIV positive status.

35. Mr. Carver complained about the harassment and discrimination to which he was subjected based upon his HIV positive status, but it was not remedied. Instead, his employment was eventually terminated.

36. The harassment and discrimination to which Mr. Carver was subjected was severe and pervasive and altered the terms, conditions and privileges of his employment.

37. The Defendants failed to take prompt remedial action to stop the harassing and discriminatory treatment to which Mr. Carver was subjected.

38. The conduct of the Defendants and their employees is in violation of Iowa

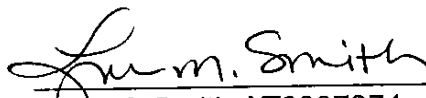
Code § 216.6, and therefore the Defendants should be held liable for said conduct.

39. As a proximate result of the discriminatory and harassing conduct as set forth above, Mr. Carver has suffered damages, including emotional distress, lost wages, attorney's fees and court costs.

WHEREFORE, Plaintiff requests judgment against the Defendants in an amount which will fully and fairly compensate him for his injuries and damages, for interest and costs as allowed by law, for attorney's fees and for such other and further relief, including any and all relief as may be just in the premises and consistent with the purposes of the Iowa Civil Rights Act, Iowa Code Chapter 216.

Respectfully submitted,

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