

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

BARRY YEDWABNICK, an individual,

Plaintiff,

CASE NO.:

v.

MCDONALD'S RESTAURANTS OF
FLORIDA, INC., a Florida corporation,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Barry Yedwabnick, through the undersigned, states:¹

INTRODUCTION

1. A local McDonalds hired Plaintiff to work the grill and fryer. He was 59. His direct manager repeatedly and profanely harassed him regarding his age. She sent him home from shifts. She threatened his job. She video recorded herself demeaning him and posted it on social media. Plaintiff reported all of this to management (including the assistant general manager, general manager, and regional manager), many of whom witnessed the harassment firsthand. And yet, McDonalds failed to do anything about Plaintiff's mistreatment.

2. This is an action for age discrimination, retaliation, constructive discharge, and hostile work environment, in violation of the Age Discrimination in Employment Act of 1967 ("ADEA") and the Florida Civil Rights Act ("FCRA").

Defendant McDonald's Restaurants of Florida, Inc. is "Defendant" or "McDonalds."

PARTIES

3. Plaintiff is a resident of Osceola County, Florida. At all times material, he was an employee of Defendant. 29 U.S.C. § 630(f). Plaintiff worked at a store located at 1305 East Osceola Parkway, Kissimmee, Florida 34744.

4. Defendant is a Florida corporation with a principal address in Cook County, Illinois. Defendant operates the store at 1305 East Osceola Parkway, Kissimmee, Florida 34744. At all times material, Defendant was Plaintiff's employer. 29 U.S.C. § 630(b); Fla. Stat. § 760.02(7).

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 for claims arising under 29 U.S.C. § 623.

6. This Court has supplemental jurisdiction over Plaintiff's state law claims because they are so closely related to his ADEA claims that they form part of the same case or controversy. 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendant because Defendant continuously conducts business within this District.

8. Venue is proper because Defendant is subject to personal jurisdiction in this District and because the acts complained of and giving rise to the claims occurred in this District. 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

9. On December 8, 2022, Defendant hired Plaintiff as a crew member for its store located at 1305 East Osceola Parkway, Kissimmee, Florida 34744.

10. Plaintiff was assigned the night shift.

11. Classie Greene, a McDonalds' employee of more than 15 years, was his direct manager. When Plaintiff met Ms. Greene for the first time she said, "Oh my God, they assigned me a retarded slow ass motherfucker."

12. Similar comments were incessant. Ms. Greene repeatedly:

- a. called Plaintiff a "lazy old man";
- b. told Plaintiff he was "too old to do this job"; and
- c. stated to other employees "I can't believe this old motherfucker was assigned to my shift."

13. Ms. Greene repeatedly sent Plaintiff home as a form of intimidation and bullying. For example, Plaintiff asked coworkers to help him lift heavy boxes during a shift. Ms. Greene refused to allow anyone to help him and told him to "punch out and get the fuck out of my store." And so, he did.

14. Other managers did nothing to deter Ms. Greene's behavior. Within five days of working with Ms. Greene, Plaintiff complained of her behavior to a manager named Archie. Ms. Greene approached the two while they spoke. Plaintiff, in front of Archie, asked Ms. Greene to stop treating him so disrespectfully. Ms. Greene responded the same as she had when he asked for assistance moving boxes: "Fuck

you, if you don't like it, just punch out and get the fuck out of my store." Archie just looked at the ground. Nothing changed.

15. Plaintiff also complained about Ms. Greene's behavior to store managers named Valerie and Christopher. Plaintiff explained that he needed his job, but could not stand his mistreatment. He asked to be put on the day shift. He was never put on the day shift.

16. In addition to such conduct occurring directly in front of Ms. Greene's fellow managers and supervisors, at least one of Plaintiff's co-workers reported Ms. Greene's treatment of Plaintiff to numerous managers around this time.

17. In early February 2023, Plaintiff met with the store's general manager (Maria, last name unknown) and assistant general manager (Lorena Padron). They listened, and Ms. Padron took notes, as Plaintiff explained how Ms. Greene had discriminated against him because of his age. As he had with shift managers, he explained that he needed his job and that he needed help to get off of Ms. Greene's shift.

18. Again, Defendant refused to do anything. This failure—at numerous levels of its chain of command—allowed Ms. Greene's behavior to worsen.

19. Ms. Greene was by now aware of Plaintiff's complaints to her co-managers and supervising managers.

20. Three days after Plaintiff spoke with the general and assistant general managers, Ms. Greene made clear that her mistreatment of Plaintiff was not going to

stop. Around 2:00 a.m., with both clocked in, Ms. Greene took a video of Plaintiff with her cell phone for the social media website Tik Tok.

21. Ms. Greene begins the video by directly addressing the camera, dressed in the blue button down and yellow tie of McDonalds' managers, saying "They just be putting anybody on my motherfucking overnights . . . Let me show you what this slow ass motherfucker done did." The video pans down to a drink Plaintiff prepared for a to-go order. Ms. Greene continues: "I said put me a large fruit punch in a large uber bag. This is what he did y'all. He put it in a bag. We going viral, we going viral." The camera pans back up to Plaintiff, who is sweeping the kitchen, head down. Ms. Greene states "He don't wanna be on camera but he is." Among other things the video was 'tagged' "#McDonaldsDummies" and "#McRetarded."

22. Approximately one week later, during what would be Plaintiff's last shift, Ms. Greene refused to allow Plaintiff to take a meal break during his shift. When plaintiff objected, Ms. Greene told Plaintiff (again) to "get the fuck out of my store," and sent him home.

23. On approximately February 14, 2023, a co-worker apprised Plaintiff of the video.

24. Thereafter, Plaintiff met with a regional manager of Defendant named Joe. Plaintiff showed Joe the video that Ms. Greene had posted on Tik-Tok of Plaintiff. The regional manager met with numerous employees who corroborated Plaintiff's account of his harassment at the hands of Ms. Greene.

25. Despite video evidence, Plaintiff's statements, management's statements, management's documentation, the corroborating statements of co-workers, and Plaintiff being an exemplary employee widely-liked amongst co-workers, Defendant did nothing to remedy the situation. Plaintiff was not offered a transfer. He was not offered the opportunity to work the day shift. Despondent with the realization that nothing would change, Plaintiff resigned.

26. Ms. Greene remained at the store after Plaintiff departed.

COUNT I
VIOLATION OF ADEA (DISCRIMINATION)

27. Plaintiff repeats and realleges Paragraphs 1-5, 7-26 as if fully set forth herein.

28. The discriminatory, ageist conduct detailed above constitutes discrimination on the basis of age in violation of the ADEA.

29. Plaintiff, a person above the age of 40, is a protected employee under the ADEA.

30. Plaintiff suffered adverse employment actions when his direct manager repeatedly threatened him with termination and sent him home without pay, as well as when Defendant refused to separate him from the harassing manager.

31. But for Plaintiff's age, Defendant would not have engaged in such conduct.

32. Defendant's conduct was willful. It was alerted at every level of management as to what was happening to Plaintiff. And yet, Defendant continued to countenance or approve of the discrimination Plaintiff was subjected to.

33. As a proximate and direct result of Defendant's conduct, Plaintiff has suffered, and will continue to suffer, damages.

34. Accordingly, Plaintiff is entitled to damages to the fullest extent permitted by the ADEA.

COUNT II
VIOLATION OF ADEA (CONSTRUCTIVE DISCHARGE)

35. Plaintiff realleges and incorporates by reference paragraphs 1-5, 7-26 as if fully set forth herein.

36. Plaintiff, a person above the age of 40, is a protected employee under the ADEA. But for his age, Plaintiff would have been treated differently by Defendant during his employment with Defendant.

37. Plaintiff resigned in February 2023. Among other factors contributing to Plaintiff's resignation:

- a. Management's repeated verbal attacks on him with profanity-laced tirades directed at his age;
- b. Management's repeated threats to his job security;
- c. Management repeatedly sending him home from work without pay for no justifiable reason;
- d. Management's refusal to allow Plaintiff to take a meal break;
- e. The failure of any managers—ranging from those with positions similar to his direct manager to those above her in the chain of

command (assistant general manager, general manager, regional manager)—to do anything to stem Ms. Greene’s mistreatment of and discrimination against Plaintiff, despite being fully apprised of it; and

- f. Management’s filming and mocking of him in a video taken by his manager while he worked, subsequently posted to a social media website without his consent.

38. These working conditions were so intolerable that a reasonable person would have been compelled to resign.

39. Plaintiff resigned as a result of these working conditions.

40. Defendant’s conduct was willful. It was alerted at every level of management as to what was happening to Plaintiff. And yet, Defendant continued to countenance or approve of the discrimination Plaintiff was subjected to.

41. As a proximate and direct result of Defendant’s conduct, Plaintiff has suffered, and will continue to suffer, damages.

42. Accordingly, Plaintiff is entitled to damages to the fullest extent permitted by the ADEA.

COUNT III
VIOLATION OF ADEA (HOSTILE WORK ENVIRONMENT)

43. Plaintiff realleges and incorporates by reference paragraphs 1-5, 7-26 as if fully set forth herein.

44. Plaintiff, a person above the age of 40, is a protected employee under the ADEA. But for his age, Plaintiff would have been treated differently by Defendant during his employment.

45. Defendant's mistreatment of Plaintiff was severe and pervasive to a degree that it materially altered Plaintiff's employment.

46. Among other factors demonstrating that Defendant's work environment had become hostile to Plaintiff:

- a. Management's repeated verbal attacks on him with profanity-laced tirades directed at his age;
- b. Management's repeated threats to his job security;
- c. Management repeatedly sending him home from work without pay for no justifiable reason;
- d. Management's refusal to allow Plaintiff to take a meal break;
- e. The failure of any managers—ranging from those with positions similar to his direct manager to those above her in the chain of command (assistant general manager, general manager, regional manager)—to do anything to stem Ms. Greene's mistreatment of and discrimination against Plaintiff, despite being fully apprised of it; and
- f. Management's filming and mocking of him in a video taken by his manager while he worked, subsequently posted to a social media website without his consent.

47. This goes beyond teasing or a few off-color comments. It demonstrates that Plaintiff was subjected to a hostile work environment.

48. The repeated failure to address Plaintiff's complaints in any way demonstrates a failure of Defendant to adequately respond to the rampant discrimination occurring in its workplace.

49. Simply put: Defendant fostered a workplace hostile to Plaintiff.

50. Defendant's conduct was willful. It was alerted at every level of management as to what was happening to Plaintiff. And yet, Defendant continued to countenance or approve of the discrimination Plaintiff was subjected to.

51. As a proximate and direct result of Defendant's conduct, Plaintiff has suffered, and will continue to suffer, damages.

52. Accordingly, Plaintiff is entitled to damages to the fullest extent permitted by the ADEA.

53. Plaintiff suffered damages as a result of Defendant's hostile work environment in an amount to be determined at trial.

COUNT IV
VIOLATION OF ADEA (RETALIATION)

54. Plaintiff realleges and incorporates by reference paragraphs 1-5, 7-26 as if fully set forth herein.

55. Plaintiff, a person above the age of 40, is a protected employee under the ADEA. But for his age, Plaintiff would have been treated differently by Defendant during his employment.

56. Plaintiff made formal complaints to numerous managers regarding his treatment by his direct manager, Ms. Greene.

57. Such complaints—including those to the assistant general manager and general manager of the store—constitutes protected activity.

58. Defendant took an adverse employment action against Plaintiff when, after he complained, denied him a meal break, and sent him home from work.

59. Defendant's conduct was willful. It was alerted at every level of management as to what was happening to Plaintiff. And yet, Defendant continued to countenance or approve of the discrimination Plaintiff was subjected to.

60. As a proximate and direct result of Defendant's conduct, Plaintiff has suffered, and will continue to suffer, damages.

61. Accordingly, Plaintiff is entitled to damages to the fullest extent permitted by the ADEA.

COUNT V
VIOLATION OF FCRA (DISCRIMINATION)

62. Plaintiff repeats and realleges Paragraphs 1 through 1-26 as if fully set forth herein.

63. Plaintiff, a person above the age of 40, is a protected employee under the FCRA.

64. Plaintiff suffered adverse employment actions when his direct manager repeatedly threatened him with termination and sent him home without pay, as well as when Defendant refused to separate him from the harassing manager.

65. But for Plaintiff's age, Defendant would not have engaged in such conduct.

66. Defendant acted with malice or with reckless indifference to Plaintiff's rights. Further, Defendant's management knowingly countenanced or approved of age discrimination, as exhibited by Defendant's failure to discipline Ms. Greene for her ageist conduct or otherwise adequately address Plaintiff's working environment.

67. As a proximate and direct result of Defendant's conduct, Plaintiff has suffered, and will continue to suffer, damages including emotional distress, inconveniences, loss of income and benefits, humiliation, and other indignities.

68. Accordingly, Plaintiff is entitled to compensatory and punitive damages, to the fullest extent permitted by the FCRA.

COUNT VI
VIOLATION OF FCRA (CONSTRUCTIVE DISCHARGE)

69. Plaintiff realleges and incorporates by reference paragraphs 1-26 as if fully set forth herein.

70. Plaintiff, a person above the age of 40, is a protected employee under the FCRA. But for his age, Plaintiff would have been treated differently by Defendant during his employment with Defendant.

71. Plaintiff resigned in February 2023. Among other factors contributing to Plaintiff's resignation:

- a. Management's repeated verbal attacks on him with profanity-laced tirades directed at his age;
- b. Management's repeated threats to his job security;
- c. Management repeatedly sending him home from work without pay for no justifiable reason;
- d. Management's refusal to allow Plaintiff to take a meal break;
- e. The failure of any managers—ranging from those with positions similar to his direct manager to those above her in the chain of command (assistant general manager, general manager, regional manager)—to do anything to stem Ms. Greene's mistreatment of and discrimination against Plaintiff, despite being fully apprised of it; and

f. Management's filming and mocking of him in a video taken by his manager while he worked, subsequently posted to a social media website without his consent.

72. These working conditions were so intolerable that a reasonable person would have been compelled to resign person.

73. Plaintiff resigned as a result of these working conditions.

74. Defendant acted with malice or with reckless indifference to Plaintiff's rights. Further, Defendant's management knowingly countenanced or approved of age discrimination, as exhibited by Defendant's failure to discipline Ms. Greene for her ageist conduct or otherwise adequately address Plaintiff's working environment.

75. As a proximate and direct result of Defendant's conduct, Plaintiff has suffered, and will continue to suffer, damages including emotional distress, inconveniences, loss of income and benefits, humiliation, and other indignities.

76. As a result of Defendant's conduct, Plaintiff has been damaged in an amount to be determined at trial.

COUNT VII
VIOLATION OF ADEA (HOSTILE WORK ENVIRONMENT)

77. Plaintiff realleges and incorporates by reference paragraphs 1-26 as if fully set forth herein.

78. Plaintiff, a person above the age of 40, is a protected employee under the FCRA. But for his age, Plaintiff would have been treated differently by Defendant during his employment.

79. Defendant's mistreatment of Plaintiff was severe and pervasive to a degree that it materially altered Plaintiff's employment.

80. Among other factors demonstrating that Defendant's work environment had become hostile to Plaintiff:

- a. Management's repeated verbal attacks on him with profanity-laced tirades directed at his age;
- b. Management's repeated threats to his job security;
- c. Management repeatedly sending him home from work without pay for no justifiable reason;
- d. Management's refusal to allow Plaintiff to take a meal break;
- e. The failure of any managers—ranging from those with positions similar to his direct manager to those above her in the chain of command (assistant general manager, general manager, regional manager)—to do anything to stem Ms. Greene's mistreatment of and discrimination against Plaintiff, despite being fully apprised of it; and
- f. Management's filming and mocking of him in a video taken by his manager while he worked, subsequently posted to a social media website without his consent.

81. This goes beyond teasing or a few off-color comments. It demonstrates that Plaintiff was subjected to a hostile work environment.

82. The repeated failure to address Plaintiff's complaints in any way demonstrates a failure of Defendant to adequately respond to the rampant discrimination occurring in its workplace.

83. Simply put: Defendant fostered the development of a workplace hostile to Plaintiff.

84. Defendant acted with malice or with reckless indifference to Plaintiff's rights. Further, Defendant's management knowingly countenanced or approved of age discrimination, as exhibited by Defendant's failure to discipline Ms. Greene for her ageist conduct or otherwise adequately address Plaintiff's working environment.

85. As a proximate and direct result of Defendant's conduct, Plaintiff has suffered, and will continue to suffer, damages including emotional distress, inconveniences, loss of income and benefits, humiliation, and other indignities.

86. Plaintiff suffered damages as a result of Defendant's hostile work environment in an amount to be determined at trial.

COUNT VIII
VIOLATION OF FCRA (RETALIATION)

87. Plaintiff realleges and incorporates by reference paragraphs 1-26 as if fully set forth herein.

88. Plaintiff, a person above the age of 40, is a protected employee under the FCRA. But for his age, Plaintiff would have been treated differently by Defendant during his employment.

89. Plaintiff made formal complaints to numerous managers regarding his treatment by his direct manager, Ms. Greene.

90. Such complaints—including those to the assistant general manager and general manager of the store—constitutes protected activity.

91. Defendant took adverse employment actions against Plaintiff when, after he complained, he was denied meal breaks, sent home from work, and mocked, via a video knowingly taken without his consent, on social media.

92. Defendant acted with malice or with reckless indifference to Plaintiff's rights. Further, Defendant's management knowingly countenanced or approved of age discrimination, as exhibited by Defendant's failure to discipline Ms. Greene for her ageist conduct or otherwise adequately address Plaintiff's working environment.

93. As a proximate and direct result of Defendant's conduct, Plaintiff has suffered, and will continue to suffer, damages including emotional distress, inconveniences, loss of income and benefits, humiliation, and other indignities.

REQUEST FOR RELIEF

Plaintiff respectfully requests the Court enter judgment in his favor as follows:

- a. Back and front pay resulting from Defendant's violations of the ADEA to the fullest extent permitted by law;
- b. Liquidated damages resulting from Defendant's violations of the ADEA to the fullest extent permitted by law;
- c. Back and front pay resulting from Defendant's violation of the FCRA to the fullest extent permitted by law;
- d. Compensatory and punitive damages resulting from Defendant's violations of the FCRA to the fullest extent permitted by law;
- e. Pre-judgment and post-judgment interest;
- f. An award of costs and reasonable attorneys' fees; and
- g. Such other relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims.

Dated: June 29, 2023

Respectfully submitted,

By: /s/ Christopher S. Prater

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