IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WARREN RIVERA-NIGAGLIONI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Case No.:**
	:	
JOHN F. MARTIN AND SONS, LLC,	:	
	:	
Defendant.	:	**COMPLAINT IN CIVIL ACTION**
	:	
	:	

Filed on Behalf of Plaintiff:
Warren Rivera-Nigaglioni

Counsel of Record for this Party:
J.P. WARD & ASSOCIATES, LLC

Joshua P. Ward
Pa. I.D. No. 320347

J.P. Ward & Associates, LLC
The Rubicon Building
201 South Highland Avenue
Suite 201
Pittsburgh, PA 15206

Telephone: (412) 545-3015
Fax No.: (412) 540-3399
E-mail: jward@jpward.com

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WARREN RIVERA-NIGAGLIONI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Case No.:**
	:	
JOHN F. MARTIN AND SONS, LLC,	:	
	:	
Defendant.	:	
	:	
	:	

COMPLAINT

AND NOW, comes Plaintiff, Warren Rivera-Nigaglioni, by and through the undersigned counsel, J.P. Ward & Associates, LLC and, specifically, Joshua P. Ward, Esquire, who files the within Complaint in Civil Action against Defendant, John F. Martin and Sons, LLC, of which the following is a statement:

PARTIES

1. Plaintiff, Warren Rivera-Nigaglioni (hereinafter "Mr. Rivera"), is an adult individual who currently resides at 2503 Garfield Avenue, West Lawn, Pennsylvania 19609.

2. Defendant, John F. Martin & Sons, LLC, (hereinafter "John F. Martin & Sons"), is a company with a place of business located at 55 Lower Hillside Road, Stevens, Pennsylvania 17578.

JURISDICTION AND VENUE

3. Jurisdiction is proper as Mr. Rivera brings this lawsuit under the Family and Medical Leave Act of 1993 (hereinafter, the "FMLA"), 29 U.S.C. § 2601 *et seq*. and the Families First Coronavirus Response Act (hereinafter, the "FFCRA").

4. This Court has supplemental jurisdiction over Mr. Rivera's state law claims pursuant to 28 U.S.C. § 1367(a).

5. At all relevant times, upon information and belief, John F. Martin & Sons is a company with less than 500 employees and therefore is subject to the recently enacted Families First Coronavirus Response Act (FFCRA), which in turn is compromised of the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Act (EFMLA). John F. Martin & Sons is also subject to the Family and Medical Leave Act (FMLA).

6. The EPSLA and EFMLEA were two new emergency paid leave requirements passed by Congress and signed by the President under the circumstances of the unprecedented public health emergency of the COVID-19 pandemic. At the time the law was passed, numerous state governments, including Pennsylvania's, had issued shut down orders requiring schools and workplaces to be closed and residents to remain at home except for essential life-sustaining activity.

7. Mr. Rivera is a resident and citizen of Pennsylvania, a substantial part of the events or omissions giving rise to the claims occurred in Eastern Pennsylvania, and, therefore, this action is within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and the venue is proper pursuant to 28 U.S.C. § 1391(b).

PROCEDURAL HISTORY AND FACTUAL ALLEGATIONS

8. On or about 2016, Mr. Rivera initiated employment with John F. Martin and Sons as an order picker and was ultimately promoted to a position working in shipping, receiving and inventory.

9. During Mr. Rivera's employment with John F. Martin & Sons, he received numerous positive performance reviews and was slated for a promotion prior to the onset of COVID-19 and his ultimate termination.

10. Mr. Rivera was known for his talent and versatility in the workplace, as he was able to transfer from position to position when needed.

11. Mr. Rivera was a full-time employee who regularly dedicated over 40 hours a week to John F. Martin & Sons.

12. Additionally, Mr. Rivera would visit the worksite on the weekends upon John F. Martin & Sons' request to complete workplace tasks outside Mr. Rivera's traditional workplace duties.

13. On or about March 2020, Mr. Rivera was unable to resume his regular work schedule due to Governor Wolf's statewide stay-at-home orders closing schools and childcare services. This left Mr. Rivera without any childcare options for his child.

14. Mr. Rivera exhausted all options to obtain childcare as so to not disrupt his work schedule but was ultimately unsuccessful due to COVID-19.

15. On or around March 2020, at the onset of the COVID-19 pandemic, John F. Martin & Sons placed a sign referencing the Families First Coronavirus Response Act (hereinafter, "FFCRA") on the bulletin board for employees.

16. Upon the notification of his FMLA and associated FFCRA rights, Mr. Rivera attempted to speak with Human Resources Representatives, Peter Santiago (hereinafter, Mr. Santiago") and Jenny Rivera (hereinafter, Ms. Rivera") regarding his options for leave to care for his child, but was informed they would get back to him with more information.

17. Mr. Rivera's request for leave was ultimately denied, as Mr. Rivera was notified that his need for the leave was not applicable, as the company could only grant FFCRA leave for 5 of the 6 qualifying reasons.

18. John F. Martin & Sons intentionally excluded qualifying reason #5 of the FFCRA, which provided leave for an individual who, "…is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19".

19. In response to receiving this information, Mr. Rivera asked Ms. Rivera why qualifying reason #5 was excluded from FMLA and its associated FFCRA leave. Ms. Rivera informed Mr. Rivera that she was unsure of the answer and would speak to Mr. Santiago regarding the justification for the exclusion.

20. Rather than attempting to reasonably accommodate Mr. Rivera, Mr. Santiago and Ms. Rivera informed Mr. Rivera that he must find a solution to his childcare dilemma and continue his normal work schedule.

21. Additionally, Mr. Rivera notified Supervisor, Keith Lehr (hereinafter, "Mr. Lehr"), of his lack of childcare options due to the closure of schools and childcare facilities relating to the COVID-19 pandemic. In response, Mr. Lehr informed Mr. Rivera that it was mandatory to continue working his regularly scheduled hours and dismissed Mr. Rivera's dilemma.

22. On or about April 2020, Mr. Rivera slipped a letter under the office door of Mr. Santiago and Ms. Rivera, once again requesting information as to why qualifying reason #5 was not applicable for FFCRA leave.

23. Shortly thereafter, Mr. Rivera was approached by Director of Sales and Operations, John Flannery (hereinafter, "Mr. Flannery"), regarding the aforementioned letter and his need for FMLA and its associated FFCRA leave.

24. Mr. Flannery informed Mr. Rivera that FMLA and the associated FFCRA was not applicable to the entire corporation, as John F. Martin & Sons did not meet the requirements due to exceeding 500 employees.

25. Upon information and belief, John F. Martin & Sons deceptively and falsely tabulated their employees to exceed 500 employees, therefore disqualifying the company and its employees from FMLA and associated FFCRA benefits.

26. Additionally, Mr. Flannery told Mr. Rivera, "If your kids don't have anyone, I would stay home because they come first".

27. Following Mr. Flannery's suggestion, Mr. Rivera began to call off from work daily on unpaid leave to provide childcare.

28. On or about May 12, 2020, after approximately one week of calling off on unpaid leave, Mr. Rivera received a termination letter from John F. Martin & Sons in the mail, citing his absence from the workplace.

COUNT I
FMLA RETALIATION

29. Mr. Rivera incorporates the allegations contained in the paragraphs, above, as if fully set forth at length herein.

30. In order to prevail on a claim of retaliation under the FMLA, one must prove that: "(1) he invoked his right to FMLA-qualifying leave, (2) he suffered an adverse employment decision, and (3) the adverse action was causally related to his invocation of rights." *Lichtenstein v. U. of Pittsburgh Med. Ctr.*, 691 F.3d 294, 302 (3d Cir. 2012)

31. Mr. Rivera was eligible for sick leave and paid leave under the FMLA, as he had worked for John F. Martin & Sons for approximately four years and dedicated at least 40 hours a week to his employer.

32. Mr. Rivera attempted to invoke his rights to FMLA-qualifying leave upon communicating with Ms. Rivera and Mr. Santiago following Governor Wolf's COVID-19 mandatory stay-at-home order and the posting of a FFCRA poster outlining leave options for employees in the workplace.

33. Mr. Rivera requested leave because he was unable to attend work due to the need to care for his young child whose school or childcare provider was closed for reasons related to COVID-19.

34. Ms. Rivera notified Mr. Rivera of his disqualification for FMLA and its associated FFCRA leave due to John F. Martin & Sons not recognizing the childcare option (#5) under the FFCRA and did not provide further justification for their decision.

35. Upon Mr. Rivera's attempt to gather more information regarding the lack of childcare option under the FFCRA and his FMLA rights through his employer, Mr. Flannery informed Mr. Rivera that John F. Martin & Sons was disqualified from providing FMLA and its associated FFCRA benefits to its employees due to employing over 500 individuals.

36. Therefore, Mr. Rivera was provided conflicting information regarding the company's eligibility under the FMLA.

37. Further, Mr. Flannery suggested Mr. Rivera call off work for unpaid leave until he was able to find means for childcare, as he expressed his understanding of the issue out of Mr. Rivera's control due to the onset of COVID-19.

38. Approximately one week after calling off work daily to provide childcare, Mr. Rivera received a termination letter from John F. Martin & Sons in the mail, citing his absence from the workplace.

39. Mr. Rivera suffered an adverse employment decision in the form of the termination of his employment following his attempt to invoke his FMLA rights.

40. Mr. Rivera's termination was causally related to the invocation of his FMLA-rights, as Mr. Rivera attempted to invoke his FMLA rights on multiple occasions but was informed by Mr. Santiago and Ms. Rivera that his need for childcare did not apply for FMLA leave, regardless of qualifying reason #5 under the FFCRA.

41. The two main factors relevant with respect to establishing a causal link to satisfy the prima facie case of retaliation under the FMLA are: (1) timing and/or (2) evidence of ongoing antagonism. *Sabbrese v. Lower's Home Center's Inc.*, 320 F. Supp. 2d 311 (W.D. Pa. 2004).

42. The timing of Mr. Rivera's termination establishes a causal link sufficient to satisfy the prima facie case of retaliation, as Mr. Rivera placed a request for FMLA-qualifying leave in March 2020 following Governor Wolf's COVID-19 mandatory stay-at-home order and was terminated May 12, 2020.

43. Despite Mr. Flannery's suggestion to continue calling off work to provide childcare, John F. Martin & Sons promptly terminated Mr. Rivera's employment due to his repeated absence from the workplace.

44. The circumstances and timing between these two events evidence a strong correlation between Mr. Rivera's attempt to invoke his FMLA rights and his discharge.

WHEREFORE Plaintiff, Mr. Rivera, respects that this Honorable Court consider the above and grant relief in her favor. Specifically, Mr. Rivera requests that this Court award back pay, front pay, any other compensatory damages and liquidated damages as calculated by the Court, reasonable attorney's fees and any other relief as this Court sees fit.

COUNT II
RETALIATION IN VIOLATION OF THE FFCRA

45. Mr. Rivera incorporates the allegations contained in the paragraphs, above, as if fully set forth at length herein.

46. The FFCRA requires employers to provide specified employees with paid leave because of a "qualifying need related to a public health emergency." 116 P.L. 127, 2020 Enacted H.R. 6201, 134 Stat. 178 §3102(a)(1)(F).

47. According to the FFCRA, a "public health emergency" means "the declaration of a public health emergency, based on an outbreak of SARS-CoV-2 or another coronavirus with pandemic potential," based on declaration by the Secretary of Health and Human Services. 116 P.L. 127, Enacted H.R. 6201, 134 Stat. 178 §1101(h)(2).

48. On January 30, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d) for the entire United States in response to the novel 2019 coronavirus.

49. Under the FFCRA, an "eligible employee" is an employee who has been employed by his or her employer for more than 30 calendar days prior to the requested leave. 116 P.L. 127, Enacted H.R. 6201, 134 Stat. 178 §3102(b)(a)(1)(A).

50. Under the FFCRA, a qualifying employer is an employer with "fewer than 500 employees." 116 P.L. 127, Enacted H.R. 134 Stat. 178 §3201(b)(a)(1)(B).

51. The FFCRA defines a "qualifying need related to a public health emergency" as a situation where the employee is "unable to work (or telework) due to a need for leave due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of child care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency." 116 P.L. 127, Enacted H.R. 134 Stat. 189-190 §5102(a)(2). 102(a)(1)(F).

52. Under the FFCRA "an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19." FFCRA section 3102(b) (incorporating FMLA section 110(a)(1)(A).

53. Because Mr. Rivera worked for John F. Martin & Sons for longer than 30 days, Mr. Rivera is an "eligible employee" as defined by the FFCRA.

54. Additionally, upon information and belief, John F. Martin & Sons employed fewer than 500 employees, therefore, John F. Martin & Sons is a "qualifying employer" as defined by the FFCRA.

55. Due to Mr. Rivera's lack of options for childcare due to Governor Wolf's stay-at-home order closing schools and childcare services, Mr. Rivera qualified for leave under option #5 the FFCRA.

56. Additionally, under the FFCRA, individuals taking leave under the Act are to be compensated during this time by paid sick leave that "shall be available for immediate use by the employee." 116 P.L. 127, Enacted H.R. 134 Stat. 178 §5102(e)(1).

57. Mr. Rivera was not compensated, as he was forced to utilize unpaid time off pursuant to his denial of FFCRA leave.

58. Under the FFCRA, it is illegal for an employer to "discharge, discipline, or in any other manner discriminate against any employee who takes leave in accordance with [the] Act." 116 P.L. 127, Enacted H.R. 134 Stat. 178 §5104(1).

59. Any employer who terminates an employee in such circumstances shall "be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3))." 116 P.L. 127, Enacted H.R. 134 Stat. 178 §5105(a).

60. Further, an employer who terminates an employer shall "be subject to the penalties described in section 16 and 17 of [the Fair Labor Standards Act]. . . with respect to such violation." 116 P.L. 127, Enacted H.R. 134 Stat. 178 §5101(b).

61. Mr. Rivera placed a request for FMLA-qualifying leave in March 2020 following Governor Wolf's COVID-19 mandatory stay-at-home order and was terminated May 12, 2020.

62. Despite Mr. Flannery's suggestion to continue calling off work to provide childcare, John F. Martin & Sons promptly terminated Mr. Rivera's employment due to his repeated absence from the workplace to provide childcare.

63. As a direct and proximate cause of the aforementioned conduct, Mr. Rivera suffered actual damages, including, but not limited to, wage loss, loss of income, and emotional distress damages, all in the past, present and future.

64. As set forth hereinabove, the John F. Martin & Sons' actions were intentional, knowing, wanton, willful, and so outrageous as to shock the conscience.

WHEREFORE, Plaintiff, Mr. Rivera hereby requests this Honorable Court consider the above and grant relief in her favor. Specifically, Mr. Rivera requests this Court award her back

pay, front pay, any other compensatory and punitive damages as calculated by the Court, pre-judgment and continuing interest as calculated by the Court, and reasonable attorney's fees.

COUNT III
FMLA/FFCRA INTERFERENCE

65. Mr. Rivera incorporates the allegations contained in the paragraphs, above, as if fully set forth at length herein.

66. The FMLA provides in pertinent part, "[i]t shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise" these rights, violation of which is known as FMLA retaliation. *Lichtenstein v. U. of Pittsburgh Med. Ctr*., 691 F.3d 294, at 307 (3d Cir. 2012) (citing to 29 U.S.C. § 2615(a)(1)).

67. In order to demonstrate a claim for FMLA interference, a Plaintiff must establish: "(1) he or she was an eligible employee under the FMLA; (2) the defendant was an employer subject to the FMLA's requirements; (3) the plaintiff was entitled to FMLA leave; (4) the plaintiff gave notice to the defendant of his or her intention to take FMLA leave; and (5) the plaintiff was denied benefits to which he or she was entitled under the FMLA." Ross v. Gilhuly, 755 F.3d 185, 191–92 (3d Cir. 2014) (citing to *Johnson v. Cmty. Coll. of Allegheny Cnty*., 566 F.Supp.2d 405, 446 (W.D. Pa. 2008); see also, *Sommer v. The Vanguard Grp*., 461 F.3d 397, 399 (3d Cir. 2006)).

68. Moreover, an employee does not need to prove that invoking FMLA rights was the sole or most important factor upon which the employer acted." *Lichtenstein v. U. of Pittsburgh Med. Ctr*., 691 F.3d 294, 301 (3rd Cir. 2012).

69. Under this regulatory interpretation, employers are barred from considering an employee's FMLA leave "as a negative factor in employment actions such as hiring, promotions, or disciplinary actions." *Callison v. City of Philadelphia*, 430 F.3d 117, 119 (3d Cir. 2005).

70. Under the FFCRA, an "eligible employee" is an employee who has been employed by his or her employer for more than 30 calendar days prior to the requested leave. 116 P.L. 127, Enacted H.R. 6201, 134 Stat. 178 §3102(b)(a)(1)(A).

71. Under the FFCRA, a qualifying employer is an employer with "fewer than 500 employees." 116 P.L. 127, Enacted H.R. 134 Stat. 178 §3201(b)(a)(1)(B).

72. The FFCRA defines a "qualifying need related to a public health emergency" as a situation where the employee is "unable to work (or telework) due to a need for leave due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of child care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency." 116 P.L. 127, Enacted H.R. 134 Stat. 189-190 §5102(a)(2). 102(a)(1)(F).

73. Mr. Rivera was employed for a qualified employer under the FMLA and is therefore entitled to leave pursuant to the FMLA.

74. Additionally, Mr. Rivera was an eligible employee, as he had been employed at John F. Martin & Sons for approximately four years.

75. Although not a formalistic standard to invoke rights under the FMLA, employees must give their employer "adequate notice", and in doing so the employee "need not expressly assert rights under the FMLA, or even mention the FMLA." *Lichtenstein v. U. of Pittsburgh Med. Ctr.*, 691 F.3d 294, at 303 (3d Cir. 2012) (interpreting the language of 29 U.S.C. § 2612(e)(2) and 29 C.F.R. § 825.303(b)).

76. Mr. Rivera attempted to invoke his rights to FMLA leave as described hereinabove in Mr. Rivera's multiple requests for temporary leave under the FFCRA pursuant to a lack of childcare options due COVID-19 concerns.

77. Upon Mr. Rivera's denial of FMLA leave, Mr. Flannery suggested Mr. Rivera continue to call off of work in order to provide the necessary childcare.

78. Between the invocation of FMLA rights and the adverse employment decision, Mr. Rivera's employer actively interfered with his right to take FMLA and its associated FFCRA leave in direct violation of 29 U.S.C. § 2615(a)(1).

79. Shortly after Mr. Rivera began to call off, Mr. Rivera was terminated due to his repeated absence in the workplace.

80. Mr. Rivera was entitled to benefits to which he was denied and was instead promptly terminated.

81. Therefore, John F. Martin & Sons violated Mr. Rivera's rights by interfering with and/or restraining the exercise of Mr. Rivera's FMLA and associated FFCRA leave in direct violation of 29 U.S.C. § 2615(a)(1).

WHEREFORE, Plaintiff, Mr. Rivera, hereby requests this Honorable Court consider the above and grant relief in his favor. Specifically, Mr. Rivera requests this Court award him back pay, front pay, any other compensatory and punitive damages as calculated by the Court, pre-judgment and continuing interest as calculated by the Court, and reasonable attorney's fees.

JURY TRIAL DEMANDED.

J.P. WARD & ASSOCIATES, LLC.

Date: April 26, 2021

By: _____

Joshua P. Ward (Pa. I.D. No. 320347)
Kyle H. Steenland (Pa. I.D. No. 327786)

J.P. Ward & Associates, LLC.

The Rubicon Building
201 South Highland Avenue
Suite 201
Pittsburgh, PA 15206
Counsel for Plaintiff