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July 31, 2014

VIA ELECTRONIC AND FIRST CLASS MAIL

Rebecca Tenbrook, Senior Associate General Counsel
Cynthia Scott, Associate General Counsel
Walmart Stores, Inc.
702 Southwest 8th Street
Bentonville, AR 72712

Dear Ms. Tenbrook and Ms. Scott,

Ms. Candis Riggins, a former maintenance associate at the Walmart store in Laurel, Maryland, has retained A Better Balance, Mehri & Skalet, PLLC, and the National Women’s Law Center to represent her in her claims of pregnancy and disability discrimination against Wal-Mart Stores, Inc. (“Walmart”). As you know, A Better Balance and the National Women’s Law Center are non-profit legal organizations that advocate for the rights of pregnant women in the workplace. Lawyers at Mehri & Skalet have handled some of the largest and most far-reaching class action discrimination matters in history. A Better Balance initially detailed its concerns regarding Walmart’s treatment of pregnant workers a year and a half ago in its letter dated January 23, 2013.

In January 2014, A Better Balance, the National Women’s Law Center, and Mehri & Skalet filed a pattern and practice pregnancy discrimination EEOC charge against Walmart on behalf of a class of female employees, based on many months of investigations of the experience of pregnant associates at Walmart and an analysis of Walmart’s written policies. As the charge set out, while Walmart provided workers with disabilities with reasonable accommodations unless it would pose an undue hardship, Wal-Mart held pregnant workers to a much higher standard, in violation of the Pregnancy Discrimination Act (PDA): they were only eligible for the more limited category of job aids or environmental adjustments when the aid or adjustment would be “easily achievable” and would have “no negative impact on the business.” On March 5, 2014, in a letter to the U.S. Securities and Exchange Commission, Walmart announced a change in its policies related to pregnancy accommodation. The Revised Policy states that disabilities entitled to reasonable accommodation include “a temporary disability caused by pregnancy,” but does not otherwise define “temporary disability.” Walmart Director of National Media Relations Randy Hargrove shortly thereafter stated that under the new policy Walmart “provide[s] pregnant associates with the same accommodations that are offered to associates with disabilities under the Americans with

Disabilities Act”¹ and indicated that “if a pregnant employee is having a normal pregnancy but has work restrictions limiting her ability to do her job—such as a lifting restriction or need for reduced work hours—Walmart will work with her to find another position that fits the job restrictions.”² We are concerned that this description of Walmart’s policy does not accord with the policy’s actual wording, which could be interpreted to exclude women who have a medical need for accommodation as a result of a normal pregnancy, in violation of the PDA.

Unfortunately, Walmart’s treatment of Candis Riggins confirms our concern that adoption of the new policy has failed to ensure that Walmart will treat pregnant associates in accordance with legal requirements. Even after Walmart’s new Accommodation in Employment Policy went into effect, and after Ms. Riggins notified her manager of her medical need for an accommodation, Walmart refused to engage our client in a good faith interactive process to assess the availability of a temporary transfer or other form of reasonable accommodation that would have permitted her to continue working. As a result, Ms. Riggins lost her job, robbing her of critical income that she desperately needs to support herself and, now, her new baby. Enforcement guidance released by the Equal Employment Opportunity Commission earlier this month makes clear that Walmart’s treatment of Ms. Riggins is in violation of federal law. See Equal Employment Opportunity Commission, *Enforcement Guidance: Pregnancy Discrimination and Related Issues* (July 2014), available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.

We request that Walmart reinstate Ms. Riggins upon her recovery from childbirth. Walmart must also ensure that Ms. Riggins is adequately compensated for the time prior to childbirth when she was unable to work as a result of Walmart’s failure to make reasonable accommodations. Finally, we call on Walmart to clarify and effectively implement its policies and procedures with respect to pregnant workers in order to ensure fair treatment and compliance with the law, consistent with Walmart’s expressed intent, because its policy revision has failed to remedy the problem.

I. Relevant Factual Information

Ms. Riggins started working as a full-time maintenance associate at the Laurel, Maryland, Walmart store about one year ago. In early March, at 23 weeks pregnant, Ms. Riggins started to feel sick and nauseated by the harsh chemicals she used when cleaning the bathrooms. Ms. Riggins approached a co-manager and told him she was pregnant and that the chemicals in the bathroom were making her sick. She asked if she could temporarily work as a cashier. The co-manager agreed to reassign her for that day and did so from time to time thereafter, since the store was sometimes short-staffed of cashiers. However, this was not a formal arrangement, and Ms. Riggins was not permitted to work as a cashier on those occasions when the store was not short-staffed. When she was not permitted to work as a cashier, she was required to continue to clean with harsh chemicals. Within days of speaking with the co-manager, she went to the Emergency Room because she was feeling very ill. She told the Emergency Room doctors about her job

¹ Comment from Randy Hargrove, Walmart Director National Media Relations, (Apr. 7, 2014, 5:55P.M.), on Lydia DePillis, *Under Pressure, Walmart Upgrades Its Policy for Helping Pregnant Workers*, Washington Post (Apr. 5, 2014, 9:03 A.M.), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/04/05/under-pressure-walmart-upgrades-its-policy-for-helping-pregnant-workers/>.

² Rhonda Smith, *Wal-Mart’s New Scheduling Plan Applauded, Revised Pregnancy Policy Remains Under Fire*, Bloomberg BNA Daily Labor Report (Apr. 11, 2014) (paraphrasing Hargrove’s statement).

duties, and they told her that she should not be working with the chemicals at the store, since it could harm her baby and herself.

In mid- to late-March, at 25 weeks pregnant, Ms. Riggins again spoke with a manager about changing jobs based on her health concerns. The manager told her to submit a Career Preference form to indicate that she would like to change jobs to be a cashier or a sales associate. Ms. Riggins submitted her Career Preference by means of the Walmart store computer and never received a response. This was the first of many Career Preference forms she submitted. Ms. Riggins was qualified to be a cashier, as exemplified by the fact that she performed these duties on four or five occasions after her initial request in early March when her assistance was needed by Walmart. Two to three new cashiers were hired every two weeks after Ms. Riggins submitted the first Career Preference form in which she asked to be a cashier. These new cashiers were hired instead of Ms. Riggins despite the fact that she was available, ready, and willing to take a position as cashier. Ms. Riggins was not accommodated despite the fact that another employee in the store, named “Bob,” with an on-the-job back injury was provided with an accommodation in or around February, 2014—he was transferred to be a door greeter away from his previous strenuous position.

In early April, at 30 weeks pregnant, Ms. Riggins was sitting at a bus stop on her way to work and passed out, dropping to the ground. She went to the hospital, and was again told she should not be working around harsh chemicals. She went back to work the next day, but left work early to go back to the hospital since she continued to feel very ill.

In mid-April, at 32 weeks pregnant, Ms. Riggins returned to work and told her assistant manager that she had been in the hospital because of pregnancy-related complications. She said she needed lighter duty because the chemicals in her maintenance work were making her sick and because she was experiencing significant back pain, which her doctor had advised her was being caused and exacerbated by the repeated bending and lifting required by the maintenance work. Her supervisor told her that rather than cleaning the bathrooms, she could sweep and mop the store, and clean the doors in the store. Although Ms. Riggins attempted this arrangement, her back still hurt and the chemicals used in cleaning the doors still made her sick. On about April 20th, she was asked to work as a greeter at the store entrance. She sat on a stool while performing this job, but a co-manager told her she could not sit on the stool dedicated to use by store greeters, despite the fact that injured workers are allowed to use stools while working as greeters. She stood for 8 hours as a result. Because of her continuing symptoms of pain and nausea and because of Walmart’s refusal to provide her with reasonable accommodations, Ms. Riggins decided that she could no longer risk her health and her baby’s health and thereafter began to call out sick. She lost critical income during this time.

In mid-May, Ms. Riggins received a letter stating that she was terminated effective May 19th.

No one at Walmart ever engaged with Ms. Riggins in a discussion of her job duties and what she could or could not do at work, although she repeatedly raised concerns about the impact her job duties were having on her health and the health of her pregnancy, with multiple managers, and submitted multiple Career Preference forms seeking to transfer to a cashier position. Ms. Riggins was never provided with a Request for Accommodation form or told about Walmart’s new policy of accommodating pregnancy-related temporary disabilities.

II. Walmart’s Treatment of Ms. Riggins Demonstrates the Ongoing Pattern of Pregnancy Discrimination, the Failure of Walmart’s Updated Policy to Provide Needed Accommodations to Pregnant Workers, the Necessity for Further Revision of the Policy, and the Need for Managers to Be Trained in Implementing the Policy.

Ms. Riggins’ experience demonstrates that Walmart’s policy change has not resolved the problem of Walmart associates being pushed off the job when they experience a medical need for reasonable accommodations as the result of pregnancy. Not only was Ms. Riggins not afforded a necessary reasonable accommodation, Walmart never engaged in the formal accommodation process set out in Walmart’s Accommodation in Employment Policy when responding to her repeated requests for a change at work based on medical needs arising out of pregnancy. Despite repeatedly requesting a reasonable accommodation and informing Walmart management of her need to transfer to another position, Ms. Riggins was never given a Request for Accommodation Form or told of her eligibility for reasonable accommodations. Walmart never engaged in an interactive process to determine what accommodation would address her needs. Although she submitted several Career Preference forms asking for a transfer as instructed by her managers, she never received a Determination Letter or a response of any kind. She was also never afforded the opportunity to request reconsideration of Walmart’s refusal to transfer her or otherwise accommodate her. Ms. Riggins’ experience makes clear that Walmart must take swift action to clarify the reach of its policy and train managers in implementation of its policy so pregnant Walmart associates do not continue to experience discrimination in violation of law. Walmart should also compensate those who have been harmed by its ongoing pattern of discriminating against pregnant workers.

III. Conclusion

Based on these serious legal concerns about Walmart’s treatment of Ms. Riggins and Walmart’s interpretation and implementation of its revised pregnancy accommodation policy, we request that no later than August 31st, 2014 you reinstate Ms. Riggins, provide compensation for her lost wages and attorneys’ fees, and commit to strengthen and fully implement Walmart’s pregnancy accommodation policy. This resolution will allow Ms. Riggins to avoid pursuing further legal action.

We propose that the parties initiate pre-litigation settlement negotiations, the purpose of which would be to attempt to resolve Ms. Riggins’s individual claims, the class-wide monetary claims, and injunctive relief, including meaningful modifications of personnel policies and practices.

We look forward to your prompt response.

Sincerely,



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