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October 1, 2024

RE: Corrissa Hernandez v. Walmart, Inc.

Dear Ms. Lawrence:

The National Women's Law Center files the attached charge on behalf of our client Corrissa Hernandez, who experienced unlawful intentional discrimination and retaliation on the basis of her pregnancy status, sex, and disability by her former employer, Walmart, Inc. and Wal-Mart Stores East, LP ("Walmart"). The charge outlines the ways in which Walmart violated the Pregnant Workers Fairness Act (PWFA), 42 U.S.C. §§ 2000gg-1(1), (3), (5); Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12112(b)(5); Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e-2(a)(1), as amended by the Pregnancy Discrimination Act (PDA), 42 U.S.C. § 2000e(k); and the Ohio Fair Employment Practices Act, Ohio Re. Code §§ 4112.01, 4112.

Ms. Hernandez seeks to ensure that Walmart complies with all applicable federal and state anti-discrimination laws. In particular, she brings this charge to ensure that Walmart provides pregnant workers and disabled workers with reasonable accommodations as required by law. Ms. Hernandez also seeks to be made whole herself.

As outlined in the Charge, Walmart discriminated against Ms. Hernandez when she worked at the Walmart Supercenter in Oberlin, Ohio, by failing to provide reasonable accommodations for her pregnancy and her disability and unlawfully discharging her in response to her April 2024 request for accommodations. Walmart fired Ms. Hernandez after she worked just two shifts, and immediately after she requested accommodations.

Walmart hired Ms. Hernandez as a stocker in March 2024. Shortly after, Ms. Hernandez learned she was pregnant. She asked to switch to a cashier position, because she had previously experienced a miscarriage while working in a physically demanding job. She began working as a cashier in April.

Ms. Hernandez consulted with her doctor about any accommodations she would need. Based on her doctor's recommendations, Ms. Hernandez requested to sit while working and to move to a part-time schedule from a full-time schedule because of limitations related to her pregnancy and other medical conditions. Ms. Hernandez made these requests to a lead cashier.

The lead cashier told Ms. Hernandez she would need to provide a doctor's note related to her request to sit while working. She also asked Ms. Hernandez to write down her availability for a part-time schedule. The lead cashier then left the area and Ms. Hernandez returned to work. Another employee, likely a manager, later went up to Ms. Hernandez and brought her into an office. That employee told Ms. Hernandez that she was being fired because "they," presumably higher management, did not want her to miss work shifts or leave work early. Ms. Hernandez had not missed any work shifts or left work early while employed at Walmart. The same employee also told Ms. Hernandez to re-apply for the job when she was no longer pregnant. Walmart engaged in no interactive process with Ms. Hernandez and did not offer to provide any accommodations.

We have reason to believe Walmart has discriminated against other pregnant workers and therefore bring this charge on behalf of all similarly situated Walmart employees. Ms. Hernandez is aware of at least one other pregnant employee whom Walmart mistreated at the same Oberlin store where she worked. Walmart is one of the largest private employers in the United States, if not *the* largest.¹ We, and our client, are concerned that in addition to other pregnant employees at the Oberlin store, workers at the many other Walmart stores nationwide may also be experiencing or be vulnerable to discrimination.

Walmart provided no indication that allowing Ms. Hernandez to sit would have been an undue hardship, and Ms. Hernandez's request to sit while working at a cash register qualifies as a "predictable assessment" under the PWFA that in "virtually all cases" will be considered a reasonable accommodation that will not create an undue hardship. *See* 29 C.F.R. §1636.3(j)(4)(iii). Moreover, under the PWFA, it is not reasonable for an employer to seek documentation when an employee seeks to sit at work as an accommodation. 29 C.F.R. §1636.3(l)(1)(iii). Ms. Hernandez's request to sit also qualifies as a reasonable accommodation under the ADA.

In addition, both the PWFA and the ADA provide that a change to an employee's work schedule, including moving from a full-time to part-time schedule, is considered a reasonable accommodation absent undue hardship. *See* 29 C.F.R. § 1636.3(i)(2); 42 U.S.C. §§ 12102; *see also Hostettler v. Coll. of Wooster*, 895 F.3d 844, 857 (6th Cir. 2018) ("[T]he ADA requires that employers reasonably accommodate employees with disabilities, including allowing modified work schedules."); *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA* at question 22 (2002). Again, Walmart never cited an undue hardship or attempted to discuss other possible accommodations with Ms. Hernandez.

We look forward to working with EEOC to resolve this issue and achieve justice for Ms. Hernandez and other similarly situated workers. Thank you.

¹ *See e.g.* Einar H. Dyvik, *Largest Companies in the World Based on revenues, by Number of Employees 2023*, STATISTA, July 4, 2024, <https://www.statista.com/statistics/264671/top-50-companies-based-on-number-of-employees/#statisticContainer>.

Sincerely,

Rachel Smith

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