

COMMONWEALTH OF KENTUCKY
48th JUDICIAL CIRCUIT
FRANKLIN CIRCUIT COURT – DIVISION _____
CIVIL ACTION No. 18-CI-_____

NICOLE LIBERTO

PLAINTIFF

vs.

**COMPLAINT
JURY TRIAL DEMANDED**

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF AGRICULTURE

DEFENDANT

Serve: Hon. Andy Beshear
Office of the Attorney General
700 Capitol Avenue
Frankfort, KY 40601
(agent for service of process)

Plaintiff Nicole Liberto for her Complaint against defendant

Commonwealth of Kentucky, Department of Agriculture states as follows:

I

Nature of the Case

1. This is an action pursuant to the Kentucky Civil Rights Act (KCRA), KRS Chapter 344, seeking recovery of damages, including lost pay and benefits, compensatory damages for physical pain and suffering as well as emotional distress and mental anguish, declaratory and injunctive relief, attorney’s fees, litigation expenses and costs arising from defendant’s unlawful actions.

II

Jurisdiction and Venue

2. Franklin Circuit Court has jurisdiction over this case pursuant to KRS 23A.010, and venue is proper herein because the claims arose in Franklin County, Kentucky.

III

Parties

3. Plaintiff Nicole Liberto is a citizen of the United States of America and a resident of Jefferson County, Kentucky.

4. The Commonwealth of Kentucky, Department of Agriculture is a subdivision of the state government for Kentucky. Its agent for service of process is Commissioner, Hon. Ryan Quarles.

IV

Facts Giving Rise to the Lawsuit

5. Liberto is licensed to practice law in the Commonwealth of Kentucky and is a member in good standing of the Kentucky Bar Association.

6. Liberto has been employed by defendant as its deputy general counsel since about March 2007. At all times pertinent hereto, Liberto has been an employee of defendant within the meaning of KRS 344.030(5); defendant has been the employer of Liberto within the meaning of KRS 344.030(2); and, Liberto is and has been a “person” and/or “individual” within the meaning of KRS 344.010(1).

7. In 2007, Liberto was diagnosed with hypertrophic cardiomyopathy with left ventricle outflow tract obstruction (HCM), a heart condition involving enlarging of heart muscle cells and thickening of the left ventricle wall, which obstructs blood flow out of the left ventricle. Typical symptoms of HCM and those

suffered by Liberto include fainting, dizziness, unexpected shortness of breath, rapid arrhythmia and chest pain.

8. In 2010, a defibrillator was installed in Liberto's heart. The purpose of the defibrillator was to slow Liberto's heart rate and slow and/or mitigate the damage done her heart by the HCM.

9. Liberto's medication regime for HCM includes beta and calcium-channel blockers (twice daily), which work to reduce her heart's workload and assist the ventricles to fill with blood. Liberto's medication regime also includes an antiarrhythmic drug taken four times daily that also helps her heart beat less forcefully and to reduce the obstruction of blood flow from her heart. The medication can and often does exacerbate the dizziness and other symptoms caused by the HCM.

10. As a result of her HCM, Liberto, as compared with the ordinary person, suffers from substantial limits on the major life function of her circulatory system and has substantially more difficulty performing such tasks and activities as walking, lifting, bending and breathing.

11. Liberto's condition and her medication regime have varying day-to-day effects on her.

12. As a result of the HCM, Liberto has suffered at all times pertinent hereto a "disability" within the meaning of KRS 344.010(4).

13. At all times pertinent hereto, Liberto performed her job duties in a satisfactory manner, notwithstanding that she suffered from a disability within the meaning of KRS 344.010(a).

14. At all times pertinent hereto, Liberto was a qualified individual with a disability within the meaning of KRS 344.010(a).

15. Beginning in about 2007 defendant recognized that Liberto's condition constituted a disability within the meaning of the KCRA and, as a reasonable accommodation therefor, placed Liberto on a flex schedule, which set her hours at 10 a.m. to 6:30 p.m.

16. Beginning in about December 2010, defendant, in recognition of Liberto's continuing disability and upon her request, modified the terms of Liberto's reasonable accommodation to include a telecommuting component to be used when necessary and reasonable. This state of affairs continued substantially intact up to July 2018.

17. In July 2018, defendant terminated the reasonable accommodation of telecommuting that had been afforded Liberto since December 2010.

18. Defendant has failed and refused to engage in a meaningful and actual interactive process with respect to Liberto's disability and any reasonable accommodation therefor.

19. Instead of engaging in a meaningful interactive process with Liberto and affording her a reasonable accommodation for her disability as required by the KCRA, defendant proffered a pretextual and unfounded rationale for terminating Liberto's reasonable accommodation.

20. Defendant has discriminated against Liberto on account of her disability in violation of the KCRA.

21. As a direct and proximate result of defendant's actions and inactions, Liberto has suffered, is suffering and is reasonably certain to suffer in the future,

lost wages and benefits, physical pain and suffering, emotional distress and hardship along with mental anguish.

V

CAUSES OF ACTION

Count 1

Disability Discrimination

22. Liberto incorporates paragraphs 1 through 21 hereof as if fully set forth herein.

23. The KCRA prohibits discrimination by an employer against an employee that is a qualified individual with a disability.

24. Included within the KCRA's definition of prohibited discrimination is the failure to make reasonable accommodations to the known physical limitations of an otherwise qualified individual with a disability who is an employee unless doing so would impose an undue hardship on the employer.

25. The KCRA imposes on an employer a duty to engage in good-faith in an interactive process regarding whether a particular individual's disabilities impact her ability to perform what are the actual essential functions of her job, and to determine on an individualized basis whether an employee can perform her actual essential job functions with or without reasonable accommodation.

26. As part of its duty to engage in this individualized inquiry regarding the individual's disability and the actual essential job functions of her position, the employer may not rely rotely on a written job description of the position's essential functions but must engage in a good-faith examination of what the position's actual duties and tasks actually are.

27. The employer's failure to offer a reasonable accommodation is direct evidence of discrimination. *Kleiber v. Honda of America Mfg., Inc.*, 485 F.3d 862, 868 (6th Cir. 2007).

28. Defendant has terminated and refused to continue or allow a reasonable accommodation – telecommuting -- to Liberto, who is a qualified individual with a disability.

29. Defendant could and can allow a reasonable accommodation for Liberto without undue hardship.

30. Defendant has discriminated against Liberto in violation of the KCRA by failing to allow or provide a reasonable accommodation for her disability.

31. As a direct and proximate result of defendant's unlawful discrimination against Liberto arising from its failure to allow or provide a reasonable accommodation for her disability, she has suffered, is suffering and is reasonably certain to suffer in the future damages including lost pay and benefits, physical pain and suffering, emotional distress and mental anguish.

VI

DEMAND FOR RELIEF

WHEREFORE, plaintiff Nicole Liberto demands the Court enter judgment as follows:

(1) awarding her compensatory damages in an amount in excess of this Court's jurisdictional minimum and such additional amount as determined by a jury to be fair based on the evidence at trial to compensate her for the lost wages and benefits, emotional distress and mental anguish, embarrassment and

humiliation, physical pain and suffering, past, present and future, caused by defendant's unlawful actions;

(2) declaring that defendant has violated the KCRA by its failure to reasonably accommodate Liberto's disability;

(3) enjoining defendant from continuing its violation of the KCRA and ordering it to accommodate reasonably Liberto's disability consistent with the KCRA;

(4) award and/or grant her any other remedies allowable under the KCRA;

(5) award her costs, reasonable attorney's fees, and litigation expenses pursuant to KRS 344.450; and,

(6) all such other relief to which she proves entitled.

DEMAND FOR TRIAL BY JURY

Plaintiff demands pursuant to CR 38 trial by jury of all issues herein so triable.

Respectfully submitted,

/s/ Robert L. Abell
ROBERT L. ABELL
120 North Upper Street
Lexington, KY 40507
(859) 254-7076 (office)
e-mail: Robert@RobertAbellLaw.com
COUNSEL FOR PLAINTIFF

AOC-105 Doc. Code: CI
Rev. 1-07
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 4.02; CR Official Form 1



CIVIL SUMMONS

Case No. 18-CI
Court Circuit District
County Franklin

PLAINTIFF

Nicole Liberto
11309 Roden Court
Louisville, KY 40241

VS.

DEFENDANT

Commonwealth of Kentucky,
Department of Agriculture

Service of Process Agent for Defendant:

Hon. Andy Beshear, Office of the Attorney General
700 Capitol Avenue
Frankfort, KY 40601

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf** within **20 days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: _____, 2____ Clerk
By: _____ D.C.

Proof of Service

This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:

_____ this ____ day of _____, 2____.

Served by: _____
_____ Title

AOC-105 Doc. Code: CI
Rev. 1-07
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 4.02; CR Official Form 1



CIVIL SUMMONS

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700 Capitol Avenue
Frankfort, KY 40601

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Date: _____, 2____ Clerk
By: _____ D.C.

Proof of Service

This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:

this ____ day of _____, 2____.

Served by: _____
_____ Title



CIVIL SUMMONS

Plaintiff, **LIBERTO, NICOLE VS. COMMONWEALTH OF KENTUCKY, DEPT. OF AGRI.**, Defendant

**TO: COMMONWEALTH OF KENTUCKY, DEPT. OF AGRI.
105 CORPORATE DRIVE
FRANKFORT, KY 40601**

Memo: Registered Agent of Service exists.

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Amy Feldman

Franklin Circuit Clerk
Date: 1/11/2019

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title





CIVIL SUMMONS

Plaintiff, **LIBERTO, NICOLE VS. COMMONWEALTH OF KENTUCKY, DEPT. OF AGRI.**, *Defendant*

**TO: HON. ANDY BESHEAR
OFFICE OF THE ATTORNEY GENERAL
700 CAPITOL AVENUE
FRANKFORT, KY 40601**

Memo: Related party is COMMONWEALTH OF KENTUCKY, DEPT. OF AGRI.

The Commonwealth of Kentucky to Defendant:
COMMONWEALTH OF KENTUCKY, DEPT. OF AGRI.

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Amy Feldman

Franklin Circuit Clerk
Date: **1/11/2019**

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title





Commonwealth of Kentucky
Amy Feldman, Franklin Circuit Clerk

Case #: 19-CI-00036

Envelope #: 1407526

Received From: ROBERT ABELL

Account Of: ROBERT ABELL

Case Title: LIBERTO, NICOLE VS. COMMONWEALTH OF

Confirmation Number: 86569825

KENTUCKY, DEPT. OF AGRI.
Filed On: 1/11/2019 12:41:02PM

#	<u>Item Description</u>	<u>Amount</u>
1	Access To Justice Fee	\$20.00
2	Civil Filing Fee	\$150.00
3	Money Collected For Others(Court Tech. Fee)	\$20.00
4	Library Fee	\$3.00
5	Court Facilities Fee	\$25.00
6	Money Collected For Others(Attorney Tax Fee)	\$5.00
7	Charges For Services(Jury Demand / 12)	\$70.00
TOTAL:		<u>\$293.00</u>