



venue is proper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to this action occurred in this judicial district.

### **PARTIES**

4. Plaintiff is a former employee of Defendant Healthcare Commons, Inc. (“HCI”) and resides in New Castle, Delaware.

5. Defendant HCI maintains a place of business in Carneys Point, New Jersey. HCI is a licensed, not-for-profit, community mental health agency.

6. Defendant is an employer within the meaning of USERRA, 38 U.S.C. § 4303(4)(A), and is subject to suit under USERRA under 38 U.S.C. § 4323(a).

### **FACTS**

7. Toliver joined the United States Army National Guard in September 2004. At all times relevant hereto, Toliver served as a Sergeant in the Army National Guard in the 59<sup>th</sup> Medical Detachment based in the District of Columbia Armory.

8. Toliver began work at HCI on July 1, 2010 as a mental health screener.

9. When Toliver began working at HCI, she did not have a mental health screener certification. Shortly after beginning employment at HCI, at HCI’s direction, Toliver took a course that was a prerequisite to becoming a certified mental health screener. At that time, Toliver was permitted to work at HCI without a certification. After Toliver completed the course, HCI submitted an application for Toliver’s mental health screener certification. Thereafter, upon passing the screener proficiency exam, Toliver became a certified mental health screener on or about November 29, 2010.

10. On or about September 10, 2012, Toliver verbally notified her supervisors at HCI that she had been called to active duty military service. On or about September 28, 2012, Toliver

provided written notification to her supervisors at HCI that she had been called to active duty military service.

11. As a result of being ordered to active duty, Toliver submitted a written request for a leave of absence from HCI effective October 1, 2012.

12. Toliver was on active duty with the United States Army National Guard from on or about October 1, 2012 through May 9, 2014 and was honorably released from active duty.

13. Although Toliver was not scheduled to be discharged from active duty for approximately a year, on May 23, 2013, Toliver emailed HCI about her anticipated return to work at HCI.

14. In response, by email dated July 23, 2013, HCI stated that Toliver could not return to work unless she renewed her mental health screener certification. HCI also stated that, to renew her mental health screener certification, Toliver must demonstrate to the appropriate state agency that she had earned 15 credits toward recertification. HCI did not offer – and did not provide – any assistance to Toliver in obtaining the appropriate credits necessary for recertification. HCI informed Toliver that it would only rehire her if she was re-certified.

15. Toliver's obligations while on active duty prevented her from getting recertified prior to applying for re-employment with HCI.

16. On or about May 21, 2014, after being discharged from active duty, Toliver contacted HCI to request reemployment.

17. By letter from HCI's attorney dated May 27, 2014, HCI informed Toliver that she was being denied reemployment. In the letter, HCI claimed Toliver was not rehired because her screening certification had lapsed.

18. HCI made no effort to provide Toliver with a position that did not require a certification, nor did it make any effort to train Toliver to reestablish her certification. As a direct result of HCI's failure to reemploy Toliver following her military leave, she has lost substantial wages and benefits.

19. HCI continued to employ other individuals while Toliver was on military leave, including an individual for the position previously held by Toliver.

20. Upon information and belief, HCI experienced no changed circumstances between 2012 and 2014 that would have prevented her employment.

21. Upon information and belief, HCI could have reemployed Toliver without her certification, either in her pre-service position or in a position of like seniority and status.

22. In accordance with Section 4322(a) of USERRA, upon learning that HCI refused to reemploy her, Toliver filed a complaint with the Veterans' Employment and Training Services ("VETS") of the United States Department of Labor. VETS conducted an investigation and concluded that Toliver's rights were violated under USERRA. The Department of Labor referred Toliver's claims to the Department of Justice with a finding of merit.

#### **USERRA CLAIM**

23. Plaintiff re-alleges and incorporates Paragraphs 1 through 22 as if fully set forth herein.

24. USERRA provides that "[a]ny person whose absence from a position of employment is necessitated by reason of service in the uniformed services is entitled to the reemployment rights and benefits of [USERRA] . . . ." 38 U.S.C. § 4312(a).

25. USERRA provides that for an individual who was on military leave for more than 90 days, the employer is required to reemploy the servicemember "(A) in the position of

employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, ... or (B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.” 38 U.S.C. § 4313(a)(2)(A) &(B).

26. Defendant violated USERRA §§ 4312 & 4313 by failing to reemploy Toliver following her military leave with the Army National Guard in either the position she would have been employed had she not left for service, or in her pre-service position, or in a position of like seniority of status.

27. Defendant violated USERRA §§ 4312 & 4313 by failing to make reasonable efforts to qualify Toliver for her proper reemployment position following her military leave with the Army National Guard in either the position she would have been employed had she not left for service or in her pre-service position.

28. Plaintiff satisfied all of the pre-requisites for reemployment under USERRA, 38 U.S.C. §§ 4312(a)(1)-(3), by giving advance notice of her leave, serving less than five years and timely requesting reemployment from her employer.

29. Defendant cannot avoid USERRA’s reemployment requirements under 38 U.S.C. § 4312(a) because HCI’s circumstances did not change as to make such reemployment impossible or unreasonable under 38 U.S.C. § 4312(d).

30. Defendant’s violation of USERRA was willful and in reckless disregard of Plaintiff’s rights under the statute.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff requests this Court enter judgment against Defendant, as follows:

- A. Declare that Defendant's actions were in violation of USERRA's reemployment provisions, 38 U.S.C. §§ 4312 & 4313;
- B. Order that Defendant comply with the provisions of USERRA;
- C. Order that Defendant pay Plaintiff all amounts due to Toliver for loss of wages and other benefits of employment cause by Defendant's violation of USERRA;
- D. Award Plaintiff liquidated damages in an amount equal to the amount of lost wages and other benefits of employment suffered by reason of Defendant's willful violations of USERRA, pursuant to 38 U.S.C. § 4323(d)(1)(C); and
- E. Grant any other such relief as may be due and just.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: May 7, 2015

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