



Richmond, Virginia Industrial Workers of the World

PO BOX 7055 Richmond, Virginia 23221

804.496.1568

richmond@iww.org

www.richmondiww.org

Rain Burroughs

Richmond, Virginia 23220

Mr. Rick Hood

Owner

Ellwood Thompson's Local Market

4 N. Thompson St.

Richmond, Virginia 23221

Friday December 21, 2012

Mr. Hood,

On behalf of Rain Burroughs, the Richmond, Virginia General Membership Branch of the Industrial Workers of the World and Food & Retail Workers United are requesting that Ellwood Thompson's reinstate Rain Burroughs immediately to an equivalent job with comparable pay, benefits, responsibilities, and hours of work. Burroughs, an employee since October 2010 of Ellwood Thompson's Local Market, located at 4 N. Thompson St. in Richmond, Virginia, was terminated on December 11, 2012. **If said reinstatement is not granted by 5:00pm Monday December 31, 2012, we will pursue further action.**

On September 7, 2012, Burroughs informed Lauri Colbert (Ellwood Thompson's Human Resources Department) via a documented 'Certification of Health Care Provider' signed by her doctor, explaining her need to take intermittent and reduced schedule leave for treatment thus triggering the rights granted under the Family Medical Leave Act of 1993 (FMLA).

To trigger rights under the FMLA, employees must "Provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave". See, 29 C.F.R. §825.302(c).

Although this notice was furnished and reasonable accommodations were suggested, Ms. Colbert told Burroughs that the request for leave 1) had no merit, 2) did not meet the criteria for FMLA and finally dismissed Burroughs from her office. Ms. Colbert failed to provide Burroughs an 'Eligibility Notice', see 29 C.F.R. §825.300(b), stating at least one reason why the employee is ineligible. Furthermore, Ms. Colbert failed to issue Burroughs with a 'Designation Notice', See, 29 C.F.R. § 825.302(d), notifying the employee in writing whether the requested leave is FMLA-qualifying."

"If the employer feels that the certification provided by the employee fails to provide necessary information regarding the employee's FMLA leave request, it must notify the employee of this, in writing, and the employee then has seven days to cure the deficiency. If the employee fails to provide the missing info, the employer may deny the request for leave." See, 29 CFR § 825.305(c)(d)

Ellwood Thompons's failure to request this information, "...interfering with a employee's right to take FMLA-qualifying leave..." and, "...denying valid request for leave...", See, 29 U.S.C. §§ 2614(a)(1); 2615(a)(1), are all violations of the FMLA and subject to investigation by the Department of Labor.



Richmond, Virginia Industrial Workers of the World

PO BOX 7055 Richmond, Virginia 23221

804.496.1568

richmond@iww.org

www.richmondiww.org

Leading up to Burroughs termination, FMLA leave was requested and granted to assist her mother, a patient with severe Chronic Obstructive Pulmonary Disease, beginning September 26, 2012 through October 29, 2012, and was extended through November 20, 2012.

Upon returning to work at Ellwood Thompson's, Burroughs received a written warning for late arrival from her immediate manager, Mattie Hinkley. Burroughs was told that she was being treated as a new hire since returning from FMLA leave, and was therefore on probation.

“Job guaranteed leave means that the employer, in most circumstances, must return the employee to the same or equivalent job after leave, even if the employee has been replaced in the interim. See, 29 U.S.C. §2614(a). An equivalent job is one that has comparable pay, benefits, responsibilities, and hours of work. *Id.* at § 2614(a).

In addition to being placed on an unwarranted probation, Burroughs was never issued a 'Rights and Responsibilities' notice providing her “...a written description of the FMLA process, the employee's obligations during that FMLA process, and the consequences of the employee's failure to meet these obligations.” See, 29 C.F.R. § 825.300(c).

By not providing this information, any **disciplinary action and/or termination thereof is a violation of the FMLA** and may entitle the employee to “...receive wages, employment benefits, and other compensation denied or lost to the employee as a result of the violation that are 'justified by the facts of a particular case'” 29 C.F.R. 825.400(c)... “A successful litigant may also be able to receive: 1) liquidated damages, especially if the violation was willful; 2) equitable relief, including **reinstatement** and/or promotion; and 3) reasonable attorneys' fees and “other costs of the action from the employer in addition to the judgment awarded by the court.” 29 C.F.R. § 825.400(c).

Furthermore,

“It is mandatory for employers to provide employee's with notice of their eligibility protection and their rights and responsibilities.” See, 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b). **“It is mandatory for employers to retain a copy of this disclosure in their records for three years.”** See, 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Respectfully,

Niels Asmussen,
Secretary, Richmond GMB of the Industrial Workers of the World

cc: Ellwood Thompson's Store Manager