

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KAYTIARA MCALISTER,

Plaintiff,

v.

E.J. BROOKS COMPANY, D/B/A
TYDENBROOKS SECURITY
PRODUCTS GROUP,

Defendants.

Case No.

COMPLAINT

Plaintiff Kaytiara McAlister (“Plaintiff” or “Ms. McAlister”) alleges and states the following in support of her Complaint against Defendant E.J. Brooks Company, d/b/a TydenBrooks Security Products (“Defendant” or “TydenBrooks”):

I. INTRODUCTION

1. On Friday, November 9, 2018, Ms. McAlister, a long-time employee of TydenBrooks, left work early and unexpectedly in the middle of a shift she had volunteered to take. Ms. McAlister left work because she suddenly began experiencing significant vaginal bleeding that was visibly leaking through her clothes. Ms. McAlister was early in her second pregnancy at the time and feared

that she may be having a miscarriage. Fortunately, Ms. McAlister did not suffer a miscarriage and was ready to return to work after a weekend of bedrest. However, when Ms. McAlister went to work for her scheduled shift the next Monday, November 12, 2018, she learned that she had been terminated under TydenBrooks' absence control policy—an unrelenting and inflexible system that punishes workers for virtually all unscheduled absences, even ones that are protected under the law. Ms. McAlister became a victim of this policy when TydenBrooks unlawfully terminated her for an absence protected by the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601, *et seq.*, which entitles women to take time off from work without penalty for pregnancy-related medical emergencies.

2. By terminating Ms. McAlister in this manner, TydenBrooks displayed a complete disregard for—and interfered with—Ms. McAlister's rights under the FMLA. Although Ms. McAlister notified her supervisor before leaving work that she was having a pregnancy-related medical emergency, Ms. McAlister was never given notice by TydenBrooks of her rights associated with her pregnancy-related absence under the FMLA. Instead, she was assessed a point for leaving early and summarily terminated as a result of this pregnancy-related leave, which caused her to lose crucial income and health insurance benefits for her family.

3. TydenBrooks willfully violated Ms. McAlister's rights under the FMLA when it terminated her for a pregnancy-related absence that it knew, or should have known, was legally protected. No employer—including TydenBrooks—is above the law and it should be held accountable for interfering with Ms. McAlister's rights under the FMLA.

II. PARTIES

4. **Plaintiff Kaytiara McAlister** is a former employee of TydenBrooks and a resident of Tallapoosa, Georgia. In March 2014, Ms. McAlister began working at TydenBrooks as a temporary worker. In September of 2014, she was hired by TydenBrooks as a permanent employee. At the time of her termination in November of 2018, Ms. McAlister was employed by TydenBrooks as a lead operator. At all relevant times she was an “employee” or “covered employee” under the FMLA.
5. **Defendant E.J. Brooks Company, d/b/a TydenBrooks Security Products**, is, upon information and belief, a New Jersey Corporation with its principal place of business and its corporate headquarters in Atlanta, Georgia. It is registered to conduct business in Georgia and has appointed an agent located at 289 S Culver Street, Lawrenceville, Georgia 30046-4805 to receive process. At all relevant

times, TydenBrooks met the relevant definition of “employer” and/or a “covered employer” under the FMLA.

III. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the claims in this action pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1331.
7. Records maintained by the Georgia Secretary of State identify Defendant’s principal office as being located in Atlanta, Georgia. Likewise, Defendant’s website (www.tydenbrooks.com) indicates that its corporate headquarters are based in Atlanta, Georgia. Accordingly, venue of this action is proper pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1391 because the Defendant resides in the Atlanta division.

IV. FACTUAL ALLEGATIONS

TydenBrooks’ Attendance Policy

8. TydenBrooks maintains a strict attendance policy (the Policy) under which its employees are assessed with points (or “occurrences”) for every occasion on which they miss a scheduled shift, arrive late, or leave early. Pursuant to the Policy, each workday missed will result in one occurrence, and each tardy arrival or early

departure will result in half an occurrence. If the number of points incurred reaches a certain threshold, employees are subject to discipline and/or termination.

9. The Policy provides a limited set of events that may justify an exception to the assessment of occurrences. These exceptions include absences due to jury duty, bereavement, and military leave.
10. Although the Policy states that occurrences will not be recorded on an employee's attendance record for "[a]bsences approved under the FMLA," it fails to fully and accurately inform employees of their rights under the FMLA in several respects. By referring to "approved" FMLA-absences, the Policy misleadingly suggests that absences that have *not* previously been approved are not protected, which mischaracterizes the law.
11. The Policy does not explain what the acronym "FMLA" stands for, nor does it contain any information about what types of conditions or events the FMLA protects. Indeed, in a separate paragraph, the Policy states that absences due to medical reasons *will* subject an employee to occurrences, even if the employee provides medical documentation upon their return to work.
12. Furthermore, the Policy does not explain whether the FMLA protects absences or time-off resulting from pregnancy-related medical conditions or emergencies. In fact, TydenBrooks' Policy makes no mention whatsoever of pregnancy or any

protections for pregnancy-related absences, thereby failing to provide workers, such as Ms. McAlister, with any indication whether they are protected from occurrences if they miss work for pregnancy-related emergencies.

13. In practice, TydenBrooks' Policy has been inconsistently applied. For example, Ms. McAlister was terminated after accumulating six occurrences. By contrast, upon information and belief, employees with point balances significantly higher than six occurrences—some as high as 30 occurrences or more—have not been terminated.

Ms. McAlister's Employment with TydenBrooks

14. Ms. McAlister was first employed as a temporary worker at TydenBrooks' Tallapoosa plant located at 1 Stoffel Drive, Tallapoosa, Georgia 30176 in or about March 2014.

15. On or about September 7, 2014, TydenBrooks hired Ms. McAlister as a permanent employee. At that time, she worked as a machine operator.

16. Ms. McAlister was promoted to the position of lead operator in or around 2017. She was chosen for this position, among other reasons, because of her excellent performance history at the company.

17. As a lead operator, Ms. McAlister was responsible for overseeing the work of other machine operators, managing quality control, and relieving or filling in for other employees on an as-needed basis.
18. At the time of her termination, Ms. McAlister was an hourly employee working 40 hours per week, plus overtime. She was being paid \$14.00 per hour.
19. In the 12 months immediately preceding November 9, 2018—the day that she experienced bleeding and her need for FMLA protection arose—Ms. McAlister had worked well over 1,250 hours for TydenBrooks.

Ms. McAlister's Attendance

20. Ms. McAlister was a dedicated employee who rarely missed work.
21. Because TydenBrooks punishes employees for medical absences, Ms. McAlister regularly went to work when she was sick.
22. Furthermore, when one of her co-workers had surgery in 2018, Ms. McAlister helped to cover her co-worker's shifts in addition to her own. As a result, at one point in time, Ms. McAlister worked for three months straight with only three days off.
23. Upon information and belief, TydenBrooks' policy was that employees would be permitted a five-minute grace period at the start of their scheduled shift before they would be considered tardy.

24. Ms. McAlister occasionally arrived for her 7 am shift between one and five minutes late, after dropping her daughter off at daycare. Although she worked her full twelve-hour shift (and often an additional hour or more), and despite the grace period permitted by TydenBrooks' policy, unbeknownst to her, she was considered "tardy" on those occasions and assessed with half of an occurrence.
25. In or about the summer of 2018, Ms. McAlister received a verbal warning from her supervisor, Stanley Creasman, because she had allegedly accumulated a total of four occurrences. The warning was documented on a form that Ms. McAlister was required to sign. Ms. McAlister was doubtful that she had accumulated so many occurrences, and she asked to receive a copy of the form. Her request was refused by Human Resources.
26. Upon information and belief, as of October 2018, Ms. McAlister had been assessed with five and a half occurrences—all for tardy arrivals of five minutes or less. This meant that she was only a half-occurrence away from having six occurrences, which was the baseline number of occurrences that could lead to termination.

Ms. McAlister's FMLA Leave

27. On or about November 5, 2018, Ms. McAlister learned she was pregnant with her second child. She was ecstatic about the news and thrilled to welcome a new child to her family.

28. At approximately 7:30 in the morning on Friday, November 9, while she was working a voluntary overtime shift, Ms. McAlister began to feel sharp pain in her chest and significant cramping in her lower abdomen. Initially, she was afraid that she was having a heart attack because the pain was so severe.
29. Ms. McAlister went to the bathroom and discovered that she was bleeding vaginally and covered in blood. The blood had visibly soaked through her pants in a way that would have been obvious to anyone who looked at her legs.
30. Worried that she may be experiencing a miscarriage, Ms. McAlister called her Obstetrician-gynecologist while she was at work. She was especially concerned because she had suffered from preeclampsia during her first pregnancy, a serious complication which is characterized by high blood pressure and can lead to organ damage and other harm for the mother.
31. Ms. McAlister was told that she could be experiencing a miscarriage. She was advised to leave work immediately so she could elevate her feet and try to lower her heart rate, in the hope of preventing a miscarriage or further complications, and to monitor the bleeding at home. She was advised to go immediately to the hospital if the bleeding did not stop within twelve hours.

32. After speaking with her doctor's office, Ms. McAlister found Mark Saunders, the shift supervisor on duty. Mr. Saunders was not her regular supervisor, but Ms. McAlister had previously worked on his shifts.
33. Ms. McAlister told Mr. Saunders that she was pregnant and bleeding, and feared she was having a miscarriage. Ms. McAlister was doubled over in pain, unable to stand up straight. She lifted her leg to show Mr. Saunders the blood that was visible on her pants.
34. Ms. McAlister further explained to Mr. Saunders that she had spoken with her doctor's office and had been advised to go home to rest and monitor the bleeding.
35. Mr. Saunders told Ms. McAlister to go home and said he would notify Human Resources of the situation. Mr. Saunders asked if she needed him to call anyone or needed help getting home. Ms. McAlister assured him that she could get home on her own, and then she left.
36. On previous occasions when Ms. McAlister had needed to leave her shift early, she had always notified her supervisor—as she was required to do, according to TydenBrooks' attendance policy—and Human Resources had subsequently been notified.

37. Consequently, after speaking with Mr. Saunders, Ms. McAlister had every reason to believe that Human Resources had been informed about her pregnancy and the reason she needed to leave work.

38. After leaving work, Ms. McAlister went home to rest, per the instructions she had been given by her doctor's office. Fortunately, the bleeding stopped several hours later, and she did not miscarry.

39. Ms. McAlister scheduled a follow-up appointment with her doctor for the following Monday, November 12, 2018.

40. Ms. McAlister later learned that the bleeding had likely been caused by a subchorionic hemorrhage, resulting in a partial separation of the chorionic membranes from the uterine wall.

Ms. McAlister's Termination

41. Ms. McAlister returned to work for her next scheduled shift on November 12, 2018.

42. She was about to start working when Mr. Creasman walked over and informed her that they had a meeting with Human Resources.

43. Ms. McAlister met with Mr. Creasman and Sy Johnson, a member of TydenBrooks' Human Resources Department.

44. Ms. McAlister was informed that she had received her sixth occurrence because she left her shift early the previous Friday, November 9, 2018, and she was being terminated pursuant to TydenBrooks' attendance policy.
45. Based on her previous conversation with Mr. Saunders, Ms. McAlister believed that Ms. Johnson was already aware of the reason that she had left her shift early the previous Friday. She felt powerless since it was clear the decision to terminate her had already been made, and she did not have any reason to believe at the time that her absence was protected under TydenBrooks' attendance policy or the law.
46. At no time did Mr. Saunders, Mr. Creasman, Ms. Johnson or any employee of TydenBrooks ever mention the Family and Medical Leave Act, or FMLA, to Ms. McAlister. Nor was she ever informed that her pregnancy-related leave may qualify for protection under the FMLA. She did not have independent knowledge of what "FMLA" stood for or that the law might apply to pregnancy-related needs or her situation.
47. Ms. McAlister was not notified of her eligibility to take FMLA leave for her pregnancy-related condition at this meeting or any other time. Nor was she asked to provide a medical certification to support such a request.

48. Ms. McAlister was also informed that her health insurance benefits had been terminated that day. As a result, she was left with no choice but to cancel her scheduled follow-up appointment with her doctor that afternoon.

49. Suddenly finding herself without income or health insurance and a baby on the way, Ms. McAlister was devastated. She lost crucial income and benefits upon which her family relied.

50. Several days after she was terminated, Ms. McAlister requested a copy of her personnel file from Human Resources, including her attendance history or other documentation used to support her termination. In response to this request, Ms. McAlister was told that she could only access the requested materials if she retained a lawyer.

V. CAUSES OF ACTION

COUNT I

Interference with Exercise of Rights in Violation of the FMLA 29 U.S.C. § 2615(a)(1)

51. Ms. McAlister realleges and incorporates by reference, as if fully set forth herein, each and every allegation of this Complaint.

52. Ms. McAlister was at all times relevant to this action an employee covered by the FMLA, having been employed by TydenBrooks for over four years prior to

requesting FMLA leave and having worked for over 1,250 hours in the twelve-month period preceding her request.

53. TydenBrooks is an employer covered by the FMLA pursuant to 29 U.S.C. § 2601 *et seq.* because it is a private business that employed 50 or more employees for each working day for at least 20 workweeks in the year prior to Ms. McAlister's leave.

54. Ms. McAlister was entitled to benefits under the FMLA for pregnancy-related incapacity when she experienced sharp pain in her chest, significant cramping in her lower abdomen, and heavy bleeding as a result of pregnancy, rendering her unable to work.

55. TydenBrooks engaged in prohibited conduct under the FMLA by interfering with, restraining, or denying Ms. McAlister's rights provided under the Act.

56. TydenBrooks interfered with Ms. McAlister's rights under the FMLA by failing to comply with the FMLA's employer notice requirements, including by failing to notify her of her eligibility to take FMLA leave within five business days of acquiring knowledge that Ms. McAlister's absence on November 9, 2018 was for an FMLA-qualifying reason.

57. TydenBrooks further denied Ms. McAlister a benefit to which she was entitled under the FMLA by terminating her for an FMLA-qualifying absence.

58. Ms. McAlister was prejudiced by TydenBrooks' failure to notify her of her FMLA eligibility, because she was subsequently terminated for an FMLA-qualifying absence.

59. As a result of TydenBrooks' unlawful practices, Ms. McAlister has suffered significant monetary loss, including loss of earnings and other benefits and nonpecuniary losses.

COUNT II
Retaliation in Violation of the FMLA
29 U.S.C. § 2615(a)(2)

60. Ms. McAlister realleges and incorporates by reference, as if fully set forth herein, each and every allegation of this Complaint.

61. Ms. McAlister was at all times relevant to this action an employee covered by the FMLA, having been employed by TydenBrooks for over four years prior to requesting FMLA leave and having worked for over 1,250 hours in the twelve-month period preceding her request.

62. TydenBrooks is an employer covered by the FMLA pursuant to 29 U.S.C. § 2601 *et seq.* because it is a private business that employed 50 or more employees for each working day for at least 20 workweeks in the year prior to Ms. McAlister's leave.

63. Ms. McAlister was entitled to FMLA leave for pregnancy-related incapacity, when she experienced sharp pain in her chest, significant cramping in her lower abdomen, and heavy bleeding as a result of pregnancy, rendering her unable to work.
64. TydenBrooks' conduct constitutes unlawful retaliation against Ms. McAlister in willful violation of her rights under the FMLA. 29 U.S.C. § 2615(a).
65. Ms. McAlister engaged in an activity protected by the FMLA by taking leave for her pregnancy-related incapacity on or about November 9, 2018.
66. Ms. McAlister suffered an adverse employment action when she was terminated on or about November 12, 2018.
67. TydenBrooks justified Ms. McAlister's termination under its attendance policy, based on an occurrence assigned to her for an absence that was lawfully protected by the FMLA. TydenBrooks' alleged reason for terminating Ms. McAlister's employment is pretextual. This is evidenced by, among other reasons, the fact that, upon information and belief, TydenBrooks has declined to terminate other employees whose occurrences have exceeded the threshold for termination set forth in its Policy and the threshold that led to Ms. McAlister's termination.

68. TydenBrooks knew, or should have known, that the absence for which it assigned Ms. McAlister an occurrence on November 9, 2018 was covered by the FMLA. Her termination was based exclusively on this legally-protected absence.
69. TydenBrooks did not act in good faith as to any FMLA violations alleged herein.

VI. PRAYER FOR RELIEF

WHEREFORE, Ms. McAlister respectfully requests that this court:

- A. Declare that the practices complained of herein are unlawful and violate the FMLA;
- B. Enter judgment in favor of Ms. McAlister and against TydenBrooks on Counts I and II of this Complaint;
- C. Award Ms. McAlister damages for lost wages and benefits resulting from TydenBrooks' violations of the FMLA, plus interest;
- D. Award Ms. McAlister liquidated damages in an amount to be determined at trial;
- E. Award Ms. McAlister equitable relief, including reinstatement and an injunction requiring TydenBrooks' attendance policy to comply with the FMLA;
- F. Award Ms. McAlister all costs and reasonable attorneys' fees incurred in this action; and
- G. Grant such further legal and equitable relief as the Court deems just and proper.

VII. JURY DEMAND

Ms. McAlister demands a trial by jury on all issues of fact and damages stated herein.

Dated: November 11, 2020

Respectfully Submitted,

/s/Julie H. Burke

Julie H. Burke

GA Bar No. 448095

HILL, KERTSCHER & WHARTON LLP

3350 Riverwood Pkwy SE, Suite 800

Atlanta, GA 30339

T: 770-953-0995

jb@hkw-law.com

Dina Bakst

Pro hac vice application to be submitted

Christine T. Dinan

Pro hac vice application to be submitted

A BETTER BALANCE

40 Worth Street, 10th Floor

New York, NY 10013

T: 212-430-5982

dbakst@abetterbalance.org

cdinan@abetterbalance.org

Elizabeth Gedmark

Pro hac vice application to be submitted

A BETTER BALANCE

2301 21st Avenue South, Suite 355

Nashville, TN 37212

T: 615-915-2417

egedmark@abetterbalance.org

Keri L. Arnold

Pro hac vice application to be submitted

Lauren E. Rivard

Pro hac vice application to be submitted

ARNOLD & PORTER KAYE SCHOLER

250 West 55th Street

New York, NY 10019-9710

T: 212-836-7453

Keri.Arnold@arnoldporter.com

Lauren.Rivard@arnoldporter.com

Attorneys for Plaintiff