

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

VIRGINIA JAMES,

Plaintiff,

v.

WAL-MART STORES EAST, LP and  
WALMART INC.,

Defendants.

2:23-cv-23-633-BHH-MGB

**COMPLAINT**

**Demand for Trial by Jury**

**NATURE OF THE ACTION**

1. The Plaintiff, Virginia James, brings this action against the Defendants, Wal-Mart Stores East, LP, and Walmart Inc. (collectively, “Walmart”), for violations of Title I of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12203 *et seq.*, and the South Carolina Human Affairs Law (“SCHAL”), S.C. CODE ANN. §§ 1-13-10 *et seq.*

2. Ms. James was a hardworking, dedicated employee of Defendants for almost seven (7) years. Throughout her employment with Defendants, she performed her job duties while living with multiple chronic health conditions, including asthma, diabetes, and acute back pain.

3. At times, Ms. James sought accommodations from Defendants to enable her to continue working, including occasional days off work to recuperate from acute symptoms of her disabilities. Although Ms. James diligently followed Defendants’ protocols for her absences and offered medical documentation upon her return to work, Defendants repeatedly punished Ms. James for her disability-related absences by assigning her “points” pursuant to their nationwide “no-fault” attendance policy, which automatically punishes workers by assigning them

attendance points for any unscheduled absence, including those related to disabilities, in violation of the ADA and SCHAL.

4. Moreover, Defendants’ supervisors, managers, and human resources personnel uniformly failed to engage with Ms. James in an individualized, interactive process regarding her needs, or offer her any accommodation that would have enabled her to recuperate and return to performing the essential functions of her job without penalty. Instead, Defendants refused to consider Ms. James’s doctors’ notes and directed her to their third-party leave administration company, which summarily denied her requests for time off, even though allowing Ms. James to be occasionally absent without penalty as a reasonable accommodation for her disabilities would not have imposed significant difficulty or expense on Walmart’s operations. Ultimately, Defendants fired Ms. James for her disability-related absences, telling her that she was “not benefitting Walmart right now” because she was “having a lot of health issues.”

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over Ms. James’s ADA claims pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over Ms. James’s SCHAL claims pursuant to 28 U.S.C. § 1367(a).

6. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(b) because the unlawful employment practices complained of herein occurred within the District of South Carolina.

7. Venue lies in this judicial division pursuant to Rule 3.01(A)(1) of the Local Civil Rules of the United States District Court for the District of South Carolina because a substantial part of the events and omissions giving rise to Ms. James’s claims occurred in Charleston, South Carolina.

**CONDITIONS PRECEDENT**

8. Ms. James timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) on July 24, 2017. This Charge was cross-filed with the South Carolina Human Affairs Commission.

9. On February 20, 2020, the EEOC issued a Determination of Probable Cause finding that Defendants denied Ms. James a reasonable accommodation and discharged her from employment because of her disability in violation of the ADA.

10. The EEOC further concluded that Defendants maintained a “nationwide no-fault attendance and leave policy and/or practice that subjects qualified individuals to attendance points for missing time from work for disability-related reasons,” thereby failing to provide reasonable accommodations and discharging individuals from employment on the basis of their disabilities in violation of the ADA.

11. On or about November 17, 2022, the EEOC issued Ms. James a Notice of Right to Sue. This Complaint has been filed within 90 days of receipt of that Notice.

**PARTIES**

12. Plaintiff Virginia James is a natural person who lives in Charleston, South Carolina.

13. Defendant Wal-Mart Stores East, LP is a limited partnership incorporated in Delaware. Upon information and belief, Defendant Wal-Mart Stores East, LP employs over fifteen (15) people.

14. Defendant Walmart Inc. is a foreign corporation incorporated in Delaware. Defendant Walmart Inc. employs approximately 1.7 million people in the United States.

15. Together, Defendants operate retail stores selling a variety of pharmacy, grocery, household, and other goods, including Walmart Supercenter #1748, located at 3951 West Ashley Circle, Charleston, SC 29414.

16. At all relevant times, Defendants were Ms. James's employer, as that word is defined under the ADA and SCHAL.

## **FACTS**

### **Ms. James's Disabilities**

17. Throughout her employment with Defendants, Ms. James had a diagnosis of chronic asthma. When she experienced a flare up of her asthma symptoms, Ms. James would have severe difficulty breathing, along with wheezing, coughing, and chest pain. These symptoms, which sometimes lasted for a few days, impaired her ability to breathe and move.

18. Also throughout her employment with Defendants, Ms. James had a diagnosis of chronic diabetes mellitus. Although Ms. James worked diligently to manage her diabetes-related symptoms, her condition would sometimes cause spikes in her blood sugar levels. When this happened, Ms. James would experience severe dizziness and impaired vision for up to a few days at a time, impacting her ability to see, stand, walk, and remain awake.

19. Finally, during her employment with Defendants, Ms. James experienced acute lumbar back pain as a result of having two herniated discs and a pinched nerve in her back. This condition caused uncontrollable muscle cramps and pain in her back that, when acute, impaired her ability to stand and walk.

### **Ms. James's Employment with Walmart**

20. Ms. James worked for Defendants as a Cashier at Walmart Supercenter #3367 in North Charleston, South Carolina, from September 2010 until January 12, 2015.

21. On her last day of work at Supercenter #3367, Ms. James’s supervisor observed that Ms. James’s back pain was causing her difficulty walking and instructed her to go home.

22. Defendants later fired Ms. James for leaving work early that day, despite the fact that she was in pain and had been instructed to go home by her supervisor.

23. Four (4) months later, Defendants rehired Ms. James as a Cashier at Walmart Supercenter #1748, located at 3951 West Ashley Circle, Charleston, SC 29414 (the “Store”). She began work at the Store on May 20, 2015.

24. As a Cashier at the Store, Ms. James’s job responsibilities included arranging merchandise, assisting customers, and processing customer transactions.

**Walmart’s Absence Control Policy**

25. Throughout Ms. James’s employment at the Store, Defendants maintained a “no fault” absence control policy, under which its hourly employees accumulated points (termed “occurrences”) for each occasion on which they missed a scheduled shift, arrived late, or left early without advance approval from a supervisor or manager.

26. Employees who accumulated above a certain threshold of points were subjected to progressive discipline and, ultimately, termination from employment.

27. Upon information and belief, during Ms. James’s employment at the Store, Defendants assessed employees half of an occurrence, or point, for each incomplete shift, and one whole occurrence, or point, for each shift they missed.<sup>1</sup>

28. Employees who incurred six (6) or more points were subject to discipline, and those who incurred nine (9) or more points were subject to termination from employment.<sup>2</sup>

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<sup>1</sup> See A BETTER BALANCE, POINTING OUT: HOW WALMART UNLAWFULLY PUNISHES WORKERS FOR MEDICAL ABSENCES (2017), <https://www.abetterbalance.org/wpcontent/uploads/2017/05/Pointing-Out-Walmart-Report-FINAL.pdf>, at 7-8.

<sup>2</sup> See *id.*

29. Upon information and belief, during Ms. James's employment at the Store, Defendants' points-based absence control policy had no exception for absences caused by disabilities.

**Walmart's Relationship with Sedgwick Claims Management Services, Inc.**

30. Upon information and belief, at all times relevant to this Complaint, Defendants maintained a contract with Sedgwick Claims Management Services, Inc. ("Sedgwick"), a foreign corporation.

31. Pursuant to that contract, Sedgwick administered some of the employee benefit programs Defendants offered to their employees.

32. Among the programs for which Sedgwick acted as the administrator were Defendants' Family and Medical Leave Act ("FMLA") Policy, and its Personal Leave of Absence Policy.

33. At all relevant times, Sedgwick was an agent of Defendants and had actual and apparent authority granted to it by Defendants to manage the employee benefits programs referenced in the preceding paragraph.

34. Defendants are bound by the manifestations, actions and omissions of their agent Sedgwick with regard to the employee benefit programs offered by Defendants and administered by Sedgwick.

35. Notice to Sedgwick with regard to the employee benefit programs Defendants offer and Sedgwick administers is notice to Defendants.

36. At all relevant times, Defendants acted by and through their agents, servants, and employees, who were at all times acting within the course and scope of their agency and employment, and for whose acts and omissions Defendants are liable.

**Walmart Fails to Provide Ms. James with a Reasonable Accommodation for her Disabilities and Threatens to Fire Her Because of her Disabilities**

37. During her time working for Defendants at the Store, Ms. James experienced periodic flare ups of asthma, diabetes, and back pain. When flare ups occurred, Ms. James's doctors advised her to rest and recuperate at home before returning to her normal daily activities.

38. These brief periods of recuperation sometimes overlapped with Ms. James's scheduled days of work at the Store.

39. When Ms. James was unable to report for a scheduled shift at the Store, she always followed Defendants' written policies and notified the Store of her absence in advance of her shift.

40. Ms. James would do this by calling the Store and speaking to the on-duty Customer Service Manager.

41. In addition, Ms. James would frequently bring a doctor's note when she returned to work following a disability-related absence.

42. Although Ms. James would attempt to give these notes to Assistant Store Manager Ryan, he routinely declined to accept them, telling Ms. James that Walmart "does not take doctor's excuses," or words to that effect.

43. At other times, Ms. James attempted to submit doctor's notes explaining her absences to Tami Rigby, who worked in the Store's Personnel Office, but Ms. Rigby also refused to review or accept the notes.

44. Upon information and belief, Respondents' refusal to accept Ms. James's doctors' notes was part of a pattern or practice of willfully refusing to engage employees with known disabilities in an individualized interactive process or provide them with accommodations as required by the ADA.

45. During these conversations with her supervisors and managers, Ms. James repeatedly disclosed that her absences were caused by her diabetes, asthma, and lumbar back pain.

46. Defendants knew or should have known that Ms. James was making a request for a reasonable accommodation for her disabilities.

47. Despite knowing that Ms. James was absent for disability-related reasons, Walmart assessed Ms. James points under its absence control policy for every one of her disability-related absences.

48. Respondents' practice of automatically assigning punitive points to employees who were absent due to known disabilities constitutes a willful failure to provide reasonable accommodations in violation of the ADA.

49. Aware that she was incurring points for her disability-related absences, Ms. James repeatedly spoke with Assistant Store Manager Ryan to request that these points be waived or otherwise excused because her absences were caused by her medical conditions.

50. In response, Ryan told Ms. James he would "take care" of her absences, and waived some, but not all, of the points she had accrued due to disability-related absences.

51. Concerned about her accumulating points and fearful of losing her job, Ms. James spoke with colleagues at Walmart about her situation. Eventually, one of Ms. James's colleagues – *not* her supervisor or any manager – informed Ms. James of her right to intermittent leave under the FMLA.

52. Ms. James immediately contacted Walmart's Human Resources office, which told her to contact Sedgwick.

53. Ms. James promptly submitted a request for intermittent FMLA leave to Sedgwick, which was approved in January 2016.

**Ms. James Returns from FMLA Leave and Walmart Again Fails to Provide Her with a Reasonable Accommodation for her Disabilities**

54. In the summer and fall of 2016, Ms. James took a continuous leave of absence from her job at Walmart to undergo two surgeries related to her disabilities.

55. When Ms. James's doctors approved her to return to work in October 2016, she had exhausted her available FMLA leave.

56. Immediately following her return to work, Walmart again began assigning Ms. James points for absences caused by her disabilities.

57. Ms. James always followed Walmart's procedures for reporting her absences and personally notified her new supervisor, Assistant Store Manager Jake Akins, that her absences were caused by her disabilities.

58. Nevertheless, Jake refused to accept Ms. James's doctor's notes.

59. Although Jake told Ms. James that he would waive the points caused by her disability-related absences, Ms. James was unsure if he was actually doing so.

60. Throughout the period October 2016 through April 2017, Ms. James repeatedly spoke with the Store's Personnel Office about the points incurred by her disability-related absences and her resulting fear that she would be fired.

61. In response, Walmart's Personnel Office staff told Ms. James that "a doctor's note does not excuse an absence," or words to that effect, and directed her to apply through Sedgwick for a leave of absence as the only available avenue to waive her disability-related absence points.

62. Following the instructions of the Personnel Office staff, Ms. James applied twice through Sedgwick for leaves of absence to excuse her disability-related absence points, first in January 2017 and again in March 2017.

63. Sedgwick denied both of these applications, stating that Ms. James had exhausted her FMLA leave and was “not eligible for any leave of absence policy.”

64. As a result, Sedgwick’s denial letters stated, Ms. James’s “claim will be closed” and her only available next step was to report for work as scheduled.

65. In its Enforcement Guidance on Reasonable Accommodations and Undue Hardship under the ADA, the U.S. Equal Employment Opportunity Commission states that once an employee requests a reasonable accommodation:

The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.<sup>3</sup>

66. At no point during Ms. James’s discussions with her managers, Personnel Office staff, or Sedgwick, did any employee or agent of Defendants discuss with Ms. James her need for additional time off work without penalty as a reasonable accommodation for her disabilities, ask Ms. James to complete a reasonable accommodation request form, or otherwise engage with Ms. James in an individualized interactive process so as to ascertain what accommodations might enable her to perform the essential functions of her position without penalty, including, but not limited to, a modification of Defendants’ absence control policy before or after assessing discipline.

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<sup>3</sup> U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ENFORCEMENT GUIDANCE ON REASONABLE ACCOMMODATIONS AND UNDUE HARDSHIP UNDER THE ADA, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>.

67. Upon information and belief, Defendants were aware at all relevant times that the ADA required them to consider unpaid time off work as a reasonable accommodation for a qualified employee with a disability who is ineligible for protected leave under the FMLA.

68. Despite this knowledge, Walmart failed to engage in the interactive process or otherwise consider giving Ms. James leave a reasonable accommodation.

69. Upon information and belief, Defendants employ thousands of people trained to perform the same job responsibilities as Ms. James.

70. As a result, allowing Ms. James to be occasionally absent without penalty as a reasonable accommodate for her disabilities would not have imposed significant difficulty or expense on Walmart's operations.

71. Moreover, allowing an employee occasional absences without penalty when required to recuperate from a flare up of a disability is a common reasonable accommodation and would have enabled Ms. James to recuperate, return to work, and continue performing the essential functions of her position.

72. Defendants' utter failure to provide Ms. James with a reasonable accommodation for her disabilities, or even engage with her in an interactive process regarding her needs, despite ongoing, clear notice that Ms. James was being penalized for her disability-related absences constitutes a wonton, reckless failure to comply with the requirements of the ADA.

### **Walmart Fires Ms. James Because of Her Disabilities**

73. In early March 2017, Ms. James's blood sugar levels spiked, causing her to be absent from work until they stabilized. Ms. James reported each of her resulting absences in accordance with Walmart's policies.

74. On March 15, 2017, Ms. James spoke by phone with Assistant Store Manager Jake Akins. At her request, he checked her point balance and informed her that he was terminating her employment because she had exceeded the number of allowable occurrences. Ms. James reminded Jake of his promise to waive the points incurred by her disability-related absences; in response, Jake said there was “nothing he could do” to help Ms. James because she was “not benefitting Walmart right now” because she was “having a lot of health issues,” or words to that effect.

75. Upon information and belief, Jake and other managers employed by Defendants routinely waive points incurred pursuant to Walmart’s absence control policy for employees whose absences are caused by reasons other than their own disabilities, such as transportation problems or lack of childcare.

76. Devastated that she had been fired for circumstances outside her control, Ms. James visited the Store in person on April 7, 2017. When she arrived, a manager handed her a notice stating that she had been involuntarily terminated for “excessive absences and/or tardies.”

**FIRST CAUSE OF ACTION**  
**Disability Discrimination in Violation of the**  
**Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12203 *et seq.***

77. Ms. James incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

78. Ms. James was qualified for her job at Walmart, as evidenced by her tenure and performance.

79. Ms. James’s medical conditions as described in this Complaint constituted disabilities within the meaning of the ADA, 42 U.S.C. § 12102(1).

- a. Ms. James’s medical conditions, including asthma, diabetes, and acute lumbar back pain caused by herniated discs and a pinched nerve, are each physical impairments that substantially limit Ms. James in the performance of major life activities, including but not limited to breathing, moving, seeing, standing, and walking.
- b. In addition, at all times relevant to this Complaint, Ms. James had a record of impairments, including diabetes, asthma, and acute lumbar back pain, that Defendants were on notice of.
- c. Finally, Defendants regarded Ms. James as having qualifying impairments.

80. Defendants violated the ADA by failing to grant Ms. James the reasonable accommodation of time off work to recuperate from her known physical disabilities even though that accommodation would not have imposed a significant difficulty or expense on their operations, in violation of 42 U.S.C. §§ 12112(a) & 12112(b)(5)(A).

81. Defendants further violated the ADA by refusing to waive the points resulting from Ms. James’s disability-related absences, and by firing Ms. James because of her disabilities, in violation of 42 U.S.C. § 12112(a).

82. Ms. James has been, and continues to be, damaged as a result of Defendants’ unlawful acts, including by the loss of past wages and benefits, past and future physical and emotional distress, and the attorneys’ fees and costs of bringing this action.

83. Defendants maliciously and/or recklessly discriminated against Ms. James, thereby entitling Ms. James to an award of punitive damages pursuant to 42 U.S.C. § 1981a(a)(2) and 42 U.S.C. § 1981a(b)(1).

**SECOND CAUSE OF ACTION**  
**Disability Discrimination in Violation of the**

**South Carolina Human Affairs Law (“SCHAL”), S.C. CODE ANN. §§ 1-13-10 *et seq.***

84. Ms. James incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

85. Ms. James was qualified for her job at Walmart, as evidenced by her tenure and performance.

86. Ms. James’s medical conditions as described in this Complaint constituted disabilities within the meaning of the SCHAL, S.C. CODE ANN. § 1-13-30(N).

- a. Ms. James’s medical conditions, including asthma, diabetes, and acute lumbar back pain caused by herniated discs and a pinched nerve, are each physical impairments that substantially limit Ms. James in the performance of major life activities, including but not limited to breathing, moving, seeing, standing, and walking.
- b. In addition, at all times relevant to this Complaint, Ms. James had a record of impairments, including diabetes, asthma, and acute lumbar back pain, that Defendants were on notice of.
- c. Finally, Defendants regarded Ms. James as having qualifying impairments.

87. Defendants violated the SCHAL by failing to grant Ms. James the reasonable accommodation of time off work to recuperate from her known physical disabilities even though that accommodation would not have imposed a significant difficulty or expense on their operations, in violation of S.C. CODE ANN. § 1-13-80(D)(2).

88. Defendants further violated the ADA by refusing to waive the points resulting from Ms. James’s disability-related absences, and by firing Ms. James because of her disabilities, in violation of S.C. CODE ANN. § 1-13-80(A)(1).

89. Ms. James has been, and continues to be, damaged as a result of Defendants' unlawful acts, including by the loss of past wages and benefits, past and future physical and emotional distress, and the attorneys' fees and costs of bringing this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

- a) Declaring that the acts, practices, and omissions complained of herein violate the ADA and the SCHAL;
- b) Directing the Defendants to pay the Plaintiff actual damages, including back pay, front pay, and compensation for past and future lost benefits; actual, compensatory and punitive damages; and pre-judgment interest;
- c) Enjoining the Defendants from further discriminatory actions in violation of the ADA and SCHAL, including by affirmatively ordering Defendants to modify their employment policies and practices to comply with the ADA and SCHAL;
- d) Reinstate of Ms. James to her prior position;
- e) Awarding the Plaintiff reasonable attorneys' fees, costs, and expenses; and
- f) Awarding such other relief as the Court deems just and proper.

**JURY DEMAND**

The plaintiff demands a trial by jury.

Dated: Charleston, SC  
February 14, 2023

Respectfully submitted,

s/ David A. Nauheim  
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