

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LUIS ARANGO, on behalf of himself and all other similarly situated persons, known and unknown,

Plaintiff,

v.

WORK & WELL, INC., SYSCO CHICAGO, INC. d/b/a SYSCO FOOD SERVICE – CHICAGO, INC., and DOES 1-50

Defendants.

JURY TRIAL DEMANDED

COMPLAINT AT LAW

Plaintiff, Luis Arango (“Arango”), on behalf of himself and all other similarly situated persons, known and unknown, by and through his attorneys, Caffarelli & Siegel Ltd., complains against Defendants, Work & Well, Inc. (“Work & Well”), Sysco Chicago, Inc. d/b/a Sysco Food Service – Chicago, Inc. (“Sysco”), and certain Doe Defendants identified herein as Does 1-50 (collectively “Defendants”), as follows:

NATURE OF ACTION

1. This is a nationwide class action for damages and injunctive relief caused by Defendants’ unlawful interference with the rights of Plaintiff and other similarly situated individuals in violation of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601, *et seq.* (“FMLA”).

JURISDICTION AND VENUE

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 2617.

3. The unlawful employment practices described herein were committed within the State of Illinois, in the place of Plaintiff Luis Arango's employment in Defendant Sysco's facility in Des Plaines, Illinois, and throughout the United States. Accordingly, venue in the Northern District of Illinois is proper pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Luis Arango was employed by Defendant Sysco at its Des Plaines, Illinois facility as a full-time employee from on or around September 2001 until his termination on or about January 17, 2011.

5. Arango was an "eligible employee" under 29 U.S.C. § 2611(2)(A).

6. Plaintiff and the class he seeks to represent are current and former employees of Sysco and all other companies, identified herein as Does 1-50, who use Work & Well's third party administration services for processing employees' requests for FMLA leave. Plaintiff and the class he seeks to represent were improperly denied FMLA leave as a result of Defendants' practice of requiring employees and their healthcare providers to submit medical information beyond that which an employer may request under the FMLA.

7. Defendant Sysco is a Delaware corporation doing business in the State of Illinois, engaged in an industry affecting commerce, with a facility in Des Plaines, Illinois.

8. Defendant Work & Well is a New Jersey corporation doing business in the State of Illinois, and acted in the interest of Sysco with regard to Arango. Work & Well also acted in the interest of the Doe Defendants with regard to other members of the putative class of employees who were wrongfully denied FMLA leave. Work & Well at all relevant times had the authority to grant or deny Arango's request for leave pursuant to the FMLA, as well as the requests for leave pursuant to the FMLA of all putative class members.

9. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff at this time. When their true names and capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously-named Defendants are employers that use Work & Well to process FMLA leaves and are responsible in some manner for the occurrences herein alleged, and that the damages of the putative class members herein alleged were proximately caused by such Defendants.

FACTUAL ALLEGATIONS

10. Arango began working for Sysco as an Inventory Control Associate in or around September 2001. Throughout his employment, Arango performed his job satisfactorily.

11. In the year prior to November 2010, Arango worked for Sysco on a full-time basis, and had worked more than 1,700 hours.

12. Sysco employs more than 50 employees within a 75-mile radius of Arango's workplace.

13. Work & Well is the third-party administrator for Sysco and Does 1-50, and is responsible for overseeing and processing employees' FMLA leaves.

14. On or about November 15, 2010, Arango requested leave from his employment with Sysco pursuant to the FMLA.

15. On or about November 15, 2010, Work & Well provided Arango with its "FMLA LEAVE for SELF – DOL" form (the "Certification Form"), to be completed by Arango's healthcare provider and returned to Work & Well.

16. Work & Well uses the Certification Form to process the FMLA leaves of employees of its clients, including Sysco and Does 1-50.

17. The Certification Form requires employees' healthcare providers to disclose certain detailed medical information including but not limited to prescription medications, upcoming doctors' appointments, and detailed information about medical procedures. This is more information than an employer is permitted to request pursuant to the FMLA.

18. On or about November 16, 2010, Work & Well provided Arango's healthcare provider with its "CLARIFICATION OF FMLA CERTIFICATION" form (the "Clarification Form").

19. Work & Well uses the Clarification Form when it does not receive all of the requested information on the Certification Form to process the FMLA leaves of employees of its clients, including Sysco and Does 1-50.

20. The Clarification Form requires employees' healthcare providers to disclose certain detailed medical information. This requested detailed medical information is more information than an employer is permitted to request in order to process an employee's medical leave pursuant to the FMLA.

21. Arango's healthcare provider completed and returned the required Certification Form and Clarification Form, indicating that due to his serious health condition, Arango was unable to work during the period between November 22, 2010 to January 15, 2011.

22. On or about November 22, 2010, Work & Well approved Arango's FMLA leave for the period beginning November 15, 2010 and ending December 18, 2010, but denied Arango's FMLA leave for the period beginning December 19, 2010 to January 15, 2011 on the basis that it did not receive the detailed medical information that it had requested.

23. On or about November 22, 2010, Work & Well requested that Arango's healthcare provider submit additional detailed medical information to support his FMLA leave beyond December 18, 2010.

24. The November 22, 2010 request for additional information required Arango's healthcare provider to disclose detailed medical information. This detailed medical information is more information than an employer is permitted to request pursuant to the FMLA.

25. Work & Well denied Arango's FMLA leave on the basis that it did not receive the detailed medical information that it had requested.

26. On or about January 17, 2011 Sysco terminated Arango for allegedly failing to extend his FMLA leave because he allegedly failed to provide the detailed medical information requested by Work & Well in the Certification Form, the Clarification Form, and the November 22, 2010 request for additional information.

CLASS ACTION ALLEGATIONS

27. Plaintiff seeks certification of this lawsuit as a class action in order that the rights of Plaintiff and all other similarly situated persons, known and unknown (hereinafter the "putative class"), who are or within the relevant statutory period were employed by Work & Well clients Sysco and Does 1-50, may be adjudicated. Doe Defendants 1-50 are corporations that contract FMLA leave processing to Work & Well, whose employees were required to provide detailed medical information to Work & Well upon requesting FMLA leave, in violation of the FMLA. Plaintiff and these similarly situated persons seek damages including back pay, prejudgment interest and any other damages due under the FMLA.

28. This action is brought as a class action under Fed. R. Civ. P. 23 because the putative class is so numerous that joinder of all class members is impracticable.

29. Plaintiff and members of the putative class have been equally affected by Defendants' practice of requiring employees seeking FMLA leave and their health care providers to provide detailed medical information, which the FMLA prohibits employers from requesting. While the precise number of putative class members has not been determined at this time, Sysco employs over 400 individuals at its Des Plaines facility, and Work & Well serves as a third party FMLA administrator to many companies nationwide. It is believed that the putative class of employees subjected to the FMLA violations herein numbers in the hundreds of employees.

30. The putative class members still employed by Sysco and Does 1-50 may be reluctant to raise individual claims for fear of retaliation, or for fear that bringing an individual claim against a former employer may hinder their ability to find new employment.

31. The issues involved in this lawsuit present common questions of law and fact, which predominate over any variations that may exist between members of the class.

32. Plaintiff, the putative class and Defendants have a commonality of interest in the subject matter and remedy sought.

33. Plaintiff is able to fairly and adequately represent and protect the interests of the putative class.

34. Plaintiff's Counsel is competent and experienced in litigating class action lawsuits, such as the instant one.

35. If individual actions were required to be brought by each member of the class injured or affected, the result would be a multiplicity of actions, creating a hardship to the putative class, to the Court and to Defendants. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the class is entitled.

36. The books and records of Defendants are material to Plaintiff's case as they disclose the information sought, received, and relied upon in determining Plaintiff's eligibility for FMLA leave.

COUNT I
FAMILY AND MEDICAL LEAVE ACT – FMLA INTERFERENCE
(Class Action)

37. Plaintiff incorporates paragraphs 1 through 36, as if fully incorporated herein.

38. The matters set forth in this Count arise from Defendants' violations of the FMLA, 29 U.S.C. § 2601, *et seq.* Plaintiff brings this class action pursuant to 29 U.S.C. § 2617.

39. Plaintiff and the putative class are/were "eligible employees" within the meaning of the FMLA, 29 U.S.C. 2611(2)(A)

40. Pursuant to the FMLA, Plaintiff and the putative class were entitled to take leave pursuant to the FMLA upon providing proper medical certification to Defendants.

41. Defendants required Plaintiff and the putative class to provide detailed medical information beyond that which an employer is permitted to request in order to certify an employee's application for FMLA leave.

42. As a result of Defendants' practice of requiring Plaintiff and the putative class to provide such additional information, Plaintiff and the putative class were denied FMLA leave to which they were entitled.

WHEREFORE, Plaintiff and the putative class respectfully request that this Court enter an order as follows:

- A. An Order designating this action as a class action;
- B. An Order appointing Plaintiff and his counsel to represent a class of employees and former employees harmed by the conduct described herein;

- C. Declaring that the acts and practices by Defendants as described herein constitute a violation of the FMLA;
- D. Enjoining and permanently restraining these violations of the FMLA;
- E. Awarding Plaintiff and each putative class member back wages and lost benefits due to Defendants' violations of the FMLA;
- F. Awarding Plaintiff and the putative class front pay;
- G. Awarding Plaintiff and the putative class liquidated damages in an additional amount equal to the sum of the actual damages and interest pursuant to 29 U.S.C. § 2617(a)(1)(A);
- H. Awarding reasonable attorneys' fees and costs incurred by Plaintiff and the putative class in connection with the instant action; and
- I. Awarding Plaintiff and the putative class such further and additional relief, including equitable damages, as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby requests a jury on all issues so triable.

Dated: March 3, 2011

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Respectfully submitted,

LUIS ARANGO, on behalf of himself and all other similarly situated persons, known and unknown,

By: /s/ Alejandro Caffarelli
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