Prepared by Docket Entry. Not filed in the case.

M.D. Fla. (Tampa Division)
Devore v. Bern's Steak House, Inc.
No. 8:26-cv-01552

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Kelly Devore ("Plaintiff"), sues Defendant, Bern's Steak House, Inc. ("Defendant"), and alleges:

PRELIMINARY STATEMENT

1. On or about April 24, 2025, Defendant terminated Plaintiff's employment, one day after Plaintiff had a panic attack at work. Plaintiff had worked for Defendant for about seventeen years, principally as a Server.

2. Plaintiff has anxiety. Before September 2024, Plaintiff told one of Defendant's managers that she has anxiety and post-traumatic stress disorder and gave Defendant medical documentation concerning those conditions. In or about September 2024, Plaintiff told Lauren Williams, in Defendant's Human Resources department, about the anxiety and the medication prescribed for it.

3. On or about April 23, 2025, Plaintiff told Defendant's call-out line that she was having a panic attack and would report to work as soon as she was able. Plaintiff arrived by the start of service and began working. Defendant's Head Chef, Chad, accused Plaintiff of being drunk and directed her outside. Plaintiff attempted to explain to Chad that she was having a panic attack. Williams came outside and observed Plaintiff's symptoms. Defendant's management then told Plaintiff to leave. The next day, Chad called Plaintiff and told her that Defendant had terminated her employment.

4. Plaintiff sues under the Americans with Disabilities Act and the Florida Civil Rights Act of 1992 for that discharge. Plaintiff also sues under section 440.205, Florida Statutes, for statements Williams made to Plaintiff in December 2023, after Plaintiff filed a workers' compensation claim for a knee injury she suffered in Defendant's kitchen.

I. JURISDICTION AND VENUE

5. Count I arises under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"). This Court has jurisdiction over Count I under 28 U.S.C. § 1331 and 42 U.S.C. § 12117(a).

6. Count II arises under the Florida Civil Rights Act of 1992, chapter 760, Florida Statutes ("FCRA"). Count II challenges the same termination of Plaintiff's employment that Count I challenges. This Court has supplemental jurisdiction over Count II under 28 U.S.C. § 1367(a).

7. Count III arises under section 440.205, Florida Statutes. Count III challenges statements that Williams made to Plaintiff on or about December 6, 2023, after Plaintiff filed a workers' compensation claim for a knee injury she suffered at work. The knee injury and the events that followed it, pleaded in Sections B through D below, caused Plaintiff's anxiety symptoms to intensify, as pleaded in Section E. Williams received Plaintiff's disclosure of the anxiety condition in or about September 2024 and observed Plaintiff's panic attack on or about April 23, 2025. This Court has supplemental jurisdiction over Count III under 28 U.S.C. § 1367(a).

8. Plaintiff worked for Defendant in Hillsborough County, Florida. But for the termination of her employment, Plaintiff would have continued to work for

Defendant in Hillsborough County, Florida. The events pleaded in this Second Amended Complaint occurred in Hillsborough County, Florida.

9. Venue is proper in this District under 42 U.S.C. § 2000e-5(f)(3), made applicable to Count I by 42 U.S.C. § 12117(a), and under 28 U.S.C. § 1391(b)(2).

10. Hillsborough County lies within the Tampa Division of this Court.

II. PARTIES AND PERSONS

11. Plaintiff is an adult individual.

12. Defendant is a Florida profit corporation. Defendant operates a restaurant in Hillsborough County, Florida.

13. Defendant is engaged in an industry affecting commerce. At all times material, Defendant employed 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

14. Defendant employed Plaintiff from on or about August 17, 2007 until on or about April 24, 2025.

15. Lauren Williams ("Williams") was Defendant's Human Resources Representative and a member of Defendant's management in November and December 2023. Williams worked in Defendant's Human Resources department in or about September 2024. Williams was at Defendant's restaurant on or about April 23, 2025.

16. Joseph Cabra ("Cabra") was one of Defendant's managers in 2024.

17. Chad ("Chad") was Defendant's Head Chef on or about April 23 and April 24, 2025.

III. ADMINISTRATIVE PROCEEDINGS

18. On or about February 17, 2026, Plaintiff filed a charge of discrimination

against Defendant with the U.S. Equal Employment Opportunity Commission ("EEOC"). Plaintiff dual-filed the charge with the Florida Commission on Human Relations ("FCHR"). The charge alleged disability discrimination and retaliation by Defendant.

19. On or about February 25, 2026, the EEOC issued Plaintiff a notice of right to sue on the charge.

20. Plaintiff commenced this action on May 22, 2026, within 90 days after receiving the EEOC notice.

21. On or about August 31, 2026, more than 180 days after Plaintiff filed the charge, the FCHR issued Plaintiff a Notice of State Rights on the charge.

22. All conditions precedent to this action have occurred, have been performed, or have been waived.

IV. SCOPE OF THE CLAIMS

23. Counts I and II challenge Defendant's termination of Plaintiff's employment on or about April 24, 2025. Count III challenges the statements Williams made to Plaintiff on or about December 6, 2023.

V. FACTUAL ALLEGATIONS

A. Plaintiff worked for Defendant for about seventeen years, principally as a Server

24. Defendant hired Plaintiff as a Server on or about August 17, 2007.

25. Plaintiff worked for Defendant until Defendant terminated her employment on or about April 24, 2025.

26. Plaintiff worked as a Server for most of that period. Plaintiff also worked

for Defendant in a Front Desk position and in a Reservations Department position during the periods described in Sections C and D.

27. Plaintiff's Server duties included serving the guests at the tables assigned to Plaintiff's section.

28. Plaintiff performed her job duties satisfactorily during her employment.

29. Plaintiff had no significant history of non-medical attendance, disciplinary, or performance issues during her employment.

B. Plaintiff injured her knee at work and filed a workers' compensation claim

30. On or about November 5, 2023, Plaintiff was walking through Defendant's kitchen while working. A wine steward stretched his leg backward. Plaintiff tripped and injured her left knee.

31. Plaintiff delayed filing an incident report. Plaintiff delayed because she understood that other employees had been retaliated against after reporting workplace injuries.

32. By on or about November 7, 2023, Plaintiff's knee pain had increased. On or about November 7, 2023, Plaintiff filed a workers' compensation claim for the knee injury and sought medical treatment.

33. After Plaintiff's hospital visit, Plaintiff's medical provider issued Plaintiff crutches. Plaintiff's medical provider placed Plaintiff on work restrictions. The restrictions temporarily prevented Plaintiff from performing her regular Server duties.

34. During that period, Plaintiff experienced pain and instability in her left knee. The knee injury limited Plaintiff's ability to walk, stand, bend, lift, and climb

stairs.

35. After Plaintiff filed the workers' compensation claim, Williams and other members of Defendant's management questioned Plaintiff repeatedly about when Plaintiff would be fit to return to work.

36. Plaintiff told Williams that returning to work before medical clearance could jeopardize Plaintiff's recovery.

C. Williams told Plaintiff that refusing a Front Desk position would end her employment and her workers' compensation case

37. On or about December 6, 2023, Williams told Plaintiff that Plaintiff needed to return to work in a Front Desk position.

38. Williams told Plaintiff that if Plaintiff did not accept the Front Desk position, Defendant would terminate Plaintiff's employment, and Plaintiff's workers' compensation case would be cancelled.

39. Williams knew of Plaintiff's workers' compensation claim when Williams made those statements.

40. Plaintiff reluctantly accepted the Front Desk position. Plaintiff began working at the Front Desk on or about December 9, 2023.

41. The Front Desk position required prolonged standing. The prolonged standing exacerbated Plaintiff's knee pain and limitations.

42. On or about December 24, 2023, Plaintiff returned to work as a Server. Plaintiff continued to experience symptoms from the knee injury.

D. Plaintiff reinjured her knee while running trays and later returned to serving

43. After returning to serving, Plaintiff worked a smaller section to limit the use of her knee. Plaintiff took moments of rest and moved at a slower pace when working. Defendant's managers questioned Plaintiff frequently about her knee.

44. On or about January 30, 2024, Plaintiff underwent an MRI. The MRI showed a high-grade tear of the posterior cruciate ligament in Plaintiff's left knee.

45. Plaintiff told Williams of the diagnosis. Plaintiff told Williams that, while awaiting further treatment, Plaintiff needed to exercise caution and limit activities that could aggravate the knee.

46. After that report, Defendant continued to assign Plaintiff duties that required extended walking and carrying trays, including running trays exclusively.

47. On one occasion in 2024, another Server covered the tables in Plaintiff's section. Plaintiff told Cabra that she had no tables left to serve. Cabra instructed Plaintiff to spend about two more hours running trays. The trays weighed about 40 pounds.

48. The tray-running assignment aggravated Plaintiff's knee injury. After returning home, Plaintiff could not walk. Plaintiff contacted Williams that day and reported that her knee pain had become so severe that she was unable to walk.

49. Plaintiff asked Williams for an accommodation limiting the walking and physical exertion required of her while she continued treatment. Defendant reassigned Plaintiff to a position in the Reservations Department.

50. After completing some physical therapy, Plaintiff returned to serving

tables on or about July 28, 2024.

E. Plaintiff's anxiety intensified, and Plaintiff disclosed her conditions to Defendant

51. Plaintiff has anxiety and post-traumatic stress disorder ("PTSD").

52. Before September 2024, Plaintiff told one of Defendant's managers that she has anxiety and PTSD. Plaintiff gave Defendant medical documentation concerning those conditions.

53. Plaintiff had generally been able to manage her anxiety and to minimize significant flare-ups.

54. After Plaintiff returned to serving in July 2024, Plaintiff experienced anxiety that her knee would be aggravated again if she were required to run trays repeatedly or to perform other duties that required extended walking and carrying. Plaintiff feared that requesting limits on those duties would jeopardize her employment.

55. The knee injury, together with Plaintiff's concerns about her physical limitations and her continued employment, caused Plaintiff's anxiety symptoms to intensify.

56. In or about September 2024, Plaintiff suffered a panic attack. Plaintiff sought medical treatment. A medical provider prescribed Plaintiff medication to manage her anxiety.

57. Plaintiff told Williams, in Defendant's Human Resources department, of the anxiety condition and the prescribed medication.

58. When Plaintiff experiences a significant flare-up of anxiety or a panic

attack, the condition substantially limits Plaintiff's ability to breathe, communicate, concentrate, and think clearly. During an episode, Plaintiff must rest and regulate her breathing and heart rate before her symptoms worsen.

59. To monitor her symptoms and prevent further flare-ups, Plaintiff began wearing a heart monitor at work.

60. Plaintiff's anxiety had been present for more than six months before April 23, 2025.

F. Plaintiff had a panic attack at work on or about April 23, 2025

61. On or about April 23, 2025, Plaintiff was running behind schedule for work. Plaintiff became concerned that Defendant would discipline her for arriving late. A panic attack began.

62. That day, before arriving at work, Plaintiff contacted Defendant's call-out line. Plaintiff told Defendant that she was experiencing a panic attack and was attempting to report to work as soon as she was able.

63. Plaintiff arrived at work by the start of service. Plaintiff began performing her Server duties.

64. While Plaintiff was introducing herself to a new employee, Chad approached Plaintiff. Chad accused Plaintiff of being drunk. Chad directed Plaintiff to accompany him outside.

65. Chad's accusation and confrontation worsened Plaintiff's anxiety symptoms. Plaintiff experienced another or continued panic attack.

66. Outside, Plaintiff attempted to explain to Chad that she was experiencing a panic attack. During the panic attack, Plaintiff struggled to breathe, to communicate,

and to form words.

67. Williams came outside. Williams observed Plaintiff while Plaintiff was experiencing the symptoms.

68. After Plaintiff's symptoms subsided, Defendant's management instructed Plaintiff to leave work. Plaintiff drove herself home.

G. Defendant terminated Plaintiff's employment the next day

69. On or about April 24, 2025, Chad called Plaintiff. Chad told Plaintiff that Defendant had terminated her employment, effective immediately.

70. Plaintiff was working as a Server when Defendant terminated her employment.

71. When Defendant terminated Plaintiff's employment, Defendant had received the disclosures pleaded in paragraphs 52 and 57 and the call-out message pleaded in paragraph 62, Chad had heard Plaintiff attempt to explain that she was experiencing a panic attack, and Williams had observed Plaintiff's panic attack.

H. Plaintiff's losses

72. The termination caused Plaintiff to lose wages and benefits. The termination caused Plaintiff future pecuniary losses.

73. The termination caused Plaintiff emotional pain and suffering, humiliation, inconvenience, mental anguish, and loss of enjoyment of life.

COUNT I
Discrimination Through Discharge — 42 U.S.C. § 12112(a)

74. Plaintiff incorporates paragraphs 5 and 8 through 23, and Sections A through H of the Factual Allegations (paragraphs 24 through 73).

75. Count I arises under 42 U.S.C. § 12112(a).

76. Defendant is a covered entity and an employer within the meaning of the ADA.

77. Plaintiff has anxiety. Anxiety is a mental impairment. When Plaintiff's anxiety is active in a significant flare-up or panic attack, the anxiety substantially limits Plaintiff's ability to breathe, communicate, concentrate, and think clearly. Plaintiff's anxiety was active on or about April 23, 2025. Plaintiff is an individual with a disability under the ADA.

78. In the alternative, Defendant regarded Plaintiff as having a mental impairment. Williams knew of Plaintiff's anxiety condition and medication from Plaintiff's disclosure in or about September 2024. On or about April 23, 2025, Plaintiff told Defendant's call-out line that she was experiencing a panic attack, attempted to explain to Chad that she was experiencing a panic attack, and displayed the symptoms of the panic attack in Williams's presence. Plaintiff's anxiety had been present for more than six months before April 23, 2025. Defendant terminated Plaintiff's employment the next day because of that actual or perceived impairment.

79. Plaintiff was a qualified individual. Plaintiff could perform the essential functions of the Server position. Plaintiff worked as a Server for most of about seventeen years. Plaintiff returned to serving tables on or about July 28, 2024 and was working as a Server when Defendant terminated her employment. Plaintiff had generally been able to manage her anxiety and to minimize significant flare-ups. On or about April 23, 2025, Plaintiff arrived by the start of service and performed her Server duties until Chad directed her outside. Before that day, Plaintiff had no significant

history of non-medical attendance, disciplinary, or performance issues.

80. Defendant knew of Plaintiff's anxiety before it terminated her employment, by the routes pleaded in paragraph 71.

81. On or about April 24, 2025, Defendant terminated Plaintiff's employment. Chad communicated the termination to Plaintiff.

82. Defendant terminated Plaintiff's employment one day after Plaintiff's panic attack at work. Chad, who had accused Plaintiff of being drunk while Plaintiff was experiencing the panic attack, communicated the termination. Williams, who had received Plaintiff's disclosure of her anxiety condition in or about September 2024, observed the panic attack. Defendant's management sent Plaintiff home after the panic attack.

83. Defendant terminated Plaintiff's employment because of her disability. Plaintiff's disability was a but-for cause of the termination.

84. Defendant acted with malice or with reckless indifference to Plaintiff's federally protected rights. Williams, who worked in Defendant's Human Resources department when Plaintiff disclosed her anxiety condition and medication to her, observed the panic attack. Defendant terminated Plaintiff's employment the next day.

85. The termination caused Plaintiff the losses pleaded in Section H.

86. Plaintiff is entitled to recover her reasonable attorney's fees and costs under 42 U.S.C. § 12205.

WHEREFORE, Plaintiff requests judgment against Defendant on Count I for: (a) back pay and lost benefits caused by the termination; (b) reinstatement to the Server position or, in the alternative, front pay; (c) compensatory damages for the pecuniary

and non-pecuniary losses caused by the termination, including emotional pain and suffering, humiliation, inconvenience, mental anguish, and loss of enjoyment of life; (d) punitive damages; (e) prejudgment and post-judgment interest; (f) reasonable attorney's fees and costs under 42 U.S.C. § 12205; and (g) such other relief as the Court finds proper.

COUNT II
Discrimination Through Discharge — Section 760.10(1)(a), Florida Statutes

87. Plaintiff incorporates paragraphs 6 and 8 through 23, and Sections A through H of the Factual Allegations (paragraphs 24 through 73).

88. Count II arises under section 760.10(1)(a), Florida Statutes.

89. Defendant is an employer within the meaning of the FCRA.

90. Plaintiff has anxiety. Anxiety is a mental impairment and a handicap within the meaning of section 760.10, Florida Statutes. When Plaintiff's anxiety is active in a significant flare-up or panic attack, the anxiety substantially limits Plaintiff's ability to breathe, communicate, concentrate, and think clearly. Plaintiff's anxiety was active on or about April 23, 2025.

91. In the alternative, Defendant regarded Plaintiff as having a mental impairment, by the facts pleaded in paragraphs 57, 60, 62, 66, and 67. Defendant terminated Plaintiff's employment the next day because of that actual or perceived impairment.

92. Plaintiff could perform the essential functions of the Server position, by the facts pleaded in paragraphs 24 through 29, 50, 53, 63, and 70.

93. Defendant knew of Plaintiff's anxiety before it terminated her

employment, by the routes pleaded in paragraph 71.

94. On or about April 24, 2025, Defendant terminated Plaintiff's employment. Chad, who had accused Plaintiff of being drunk while Plaintiff was experiencing the panic attack, communicated the termination one day after the panic attack. Williams, who had received Plaintiff's disclosure of her anxiety condition, observed the panic attack.

95. Defendant discharged Plaintiff because of her handicap.

96. Defendant acted with malice or with reckless indifference to Plaintiff's rights under section 760.10, Florida Statutes, by the facts pleaded in paragraph 94.

97. The termination caused Plaintiff the losses pleaded in Section H, including mental anguish and loss of dignity.

98. Plaintiff is entitled to recover her reasonable attorney's fees and costs under section 760.11(5), Florida Statutes.

WHEREFORE, Plaintiff requests judgment against Defendant on Count II for: (a) back pay and lost benefits caused by the termination; (b) reinstatement to the Server position or, in the alternative, front pay; (c) compensatory damages for the pecuniary and non-pecuniary losses caused by the termination, including mental anguish, loss of dignity, and other intangible injuries; (d) punitive damages as permitted by section 760.11(5), Florida Statutes; (e) prejudgment and post-judgment interest; (f) reasonable attorney's fees and costs under section 760.11(5), Florida Statutes; and (g) such other relief as the Court finds proper.

COUNT III

Threat to Discharge, Intimidation, and Coercion — Section 440.205, Florida Statutes

99. Plaintiff incorporates paragraphs 7 through 17 and 23, and Sections A through D of the Factual Allegations (paragraphs 24 through 50).

100. Section 440.205, Florida Statutes, provides: "No employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law."

101. Defendant was Plaintiff's employer in November and December 2023.

102. On or about November 7, 2023, Plaintiff filed a valid claim for compensation under the Workers' Compensation Law for the knee injury she suffered at work on or about November 5, 2023.

103. After Plaintiff filed the claim, Williams and other members of Defendant's management questioned Plaintiff repeatedly about when Plaintiff would be fit to return to work. Plaintiff told Williams that returning to work before medical clearance could jeopardize her recovery.

104. On or about December 6, 2023, about one month after Plaintiff filed the claim, Williams told Plaintiff that Defendant would terminate Plaintiff's employment if Plaintiff did not accept a Front Desk position, and that Plaintiff's workers' compensation case would be cancelled if Plaintiff did not accept the Front Desk position.

105. Williams made those statements as Defendant's Human Resources Representative and a member of Defendant's management, in the course of Defendant's communications with Plaintiff about her return to work.

106. Williams's statements threatened Plaintiff with discharge. Williams's statements referred to Plaintiff's workers' compensation case. Williams made the statements by reason of Plaintiff's claim for compensation.

107. Plaintiff reluctantly accepted the Front Desk position after Williams made those statements. Plaintiff began working at the Front Desk on or about December 9, 2023. The Front Desk position required prolonged standing. The prolonged standing exacerbated Plaintiff's knee pain and limitations.

108. Williams's statements, and the prolonged standing in the Front Desk position Plaintiff accepted after those statements, injured Plaintiff.

WHEREFORE, Plaintiff requests judgment against Defendant on Count III for: (a) compensatory damages for the injury caused by the conduct alleged in Count III; (b) prejudgment and post-judgment interest; (c) costs; and (d) such other relief as the Court finds proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

Dated this ___ day of October 2026.

Signature block omitted.