

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC
SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EP35WB-65991
EEOC DOCKET NO. 17E-2016-00331

<p>██████████</p> <p>Complainant,</p> <p>v.</p> <p>NORTH JERSEY DERMATOLOGY CENTER, P.C.</p> <p>Respondent.</p>	<p>NEGOTIATED SETTLEMENT AGREEMENT</p>
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WHEREAS, ██████████ (hereinafter "Complainant") filed a verified complaint on June 27, 2016 with the New Jersey Division on Civil Rights ("DCR") alleging that her former employer, North Jersey Dermatology Center, P.C. (hereinafter "Respondent") committed unlawful discrimination in violation of the New Jersey Law Against Discrimination ("LAD") and the New Jersey Family Leave Act ("NJFLA") by not permitting her to return to work following permissible leave taken after the birth of her twin children;

WHEREAS, Respondent is an employer doing business in the State of New Jersey with multiple facilities, including one facility located at 35 Green Pond Road, Rockaway, New Jersey 07866; and

WHEREAS, Respondent maintains a business relationship with J.T. Mase & Co., a business management company;

WHEREAS, Respondent outsources or delegates certain administrative tasks and human resources duties to J.T. Mase Co., Inc. and another business entity, Alliance Benefit Counseling;

WHEREAS, Complainant was hired as a Physician's Assistant on or about April 1, 2011;

WHEREAS, Respondent and JT Mase Co. deny that any act of unlawful discrimination occurred; and

WHEREAS, the DCR Director has not made any findings on the merits of this matter and does not waive the right to enforce the LAD or NJFLA against Respondent regarding similar alleged conduct; and

WHEREAS, both Complainant and Respondent desire to resolve the matter without the necessity and expense of further litigation.

NOW THEREFORE, it is agreed between the parties that:

1. Respondent agrees that all employment decisions shall comply with the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49 and the New Jersey Family Leave Act (NJFLA), N.J.S.A. 34:11B-1 to 16.
2. Respondent agrees to comply with all posting and notice requirements for employers and owners of public accommodations pursuant to N.J.A.C. 13:8-1.2, N.J.A.C. 13:8-1.4, and N.J.A.C. 13:8-2.2.
3. Respondent and Complainant agree not to engage in any retaliatory conduct against each other or any participant in these proceedings, and Respondent shall instruct its employees, independent contractors, or outside consultants to not engage in any such conduct.

4. Effective Date: The effective date of this Agreement is the date by which all parties and a DCR representative have signed the agreement.

MONETARY RELIEF & RELEASE

5. Respondent shall pay the Complainant the total sum of one hundred and fifty thousand (\$150,000) dollars to resolve this matter.

6. Respondent releases Complainant from all obligations of her employment agreement, including but not limited to any non-competition provisions or restrictive covenants contained in her employment agreement.

7. Respondent has represented that its consent to this Agreement is contingent on Complainant entering into a separate agreement with Respondent. DCR is not a party to any such agreement, and will not review any such agreement. DCR is not a party to that separate agreement and cannot be bound by any of its terms or conditions nor does it make any representation as to that agreement.

EQUITABLE RELIEF

8. Leave of Absence Policy: As part of the resolution of this matter, Respondent agrees by forty-five (45) days from the effective date of this Agreement to review and revise as necessary its Leave of Absence Policy to ensure it is in compliance with the LAD and the NJFLA.

- a. Where an employee does not request Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage by himself or herself, or otherwise provides in writing his or her desire to separate from employment,

Respondent agrees to cease characterizing its employees who are taking a leave of absence based on pregnancy or for medical purposes as an “end of employment” separation or a “reduction in work hours.”;

b. At minimum, the Policy should be memorialized in writing and provide an employee with:

- i. Respondent’s procedure regarding requesting leave and returning from leave; and
- ii. Clear and concise information pertaining to employee benefits, leave rights, leave notification procedures, and responsibilities under the NJFLA and the federal Family Medical Leave Act (“FMLA”); and
- iii. A statement that an employee on a leave of absence based on the NJFLA or FMLA is entitled to continuation of his or her group health insurance coverage on the same terms as if the employee had not taken leave.

c. Respondent may find it helpful to provide its employees with a link to the FMLA fact sheet on the U.S. Department of Labor’s website and the NJFLA fact sheet on DCR’s website.

9. Dissemination of Leave of Absence Policy: By no later than sixty (60) days from the effective date, the Leave of Absence Policy as set forth in paragraph 8 shall be distributed to all of Respondent’s employees. The Leave of Absence Policy shall also be distributed to those independent contractors and outside contractors who are responsible for handling and processing Respondent’s administrative or human resources duties which relate to these leave requests.

- a. Respondent shall provide a copy of the Leave of Absence Policy to DCR at least ten (10) days prior to its distribution to its employees. Respondent shall provide the Policy by mail to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, 31 Clinton Street; P.O. Box 46001; Newark, New Jersey 07102.
 - b. Each of Respondent's employees shall sign a statement acknowledging that he or she received the Leave of Absence Policy, reviewed the policy, and had the opportunity to ask questions about the revised policy. By no later than one hundred (100) days from the effective date of this Agreement, Respondent shall provide a copy of Respondent's employees' acknowledgement statements by mail to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, 31 Clinton Street; P.O. Box 46001, Newark, New Jersey 07102.
 - c. Respondent shall also maintain a hard copy of the Leave of Absence Policy in a readily accessible location in each of its facilities.
 - d. Respondent shall provide a copy of Leave of Absence Policy to any employee inquiring about a leave of absence for pregnancy or medical reasons.
10. Anti-Harassment and Anti-Discrimination Policy: As part of the resolution of this matter, Respondent agrees by no later than forty-five (45) days from the effective date of this Agreement to review and revise as necessary its Anti-Harassment and Anti-Discrimination Policy to ensure it is in compliance with the LAD and applicable federal anti-discrimination laws.
- a. At minimum, the Policy shall include the following:

- i. A statement that informs an employee that discrimination or harassment will not be tolerated in the workplace; and
- ii. A clearly defined complaint process that sets forth specific individuals to whom an employee should report alleged discrimination and/or harassment along with each individual's work phone number, work address, and email address;
- iii. A clearly defined timeline for how Respondent, its employees, independent contractors, or outside contractors will receive, process, and respond to discrimination or harassment complaints;
- iv. Specific measures that will ensure an impartial investigation, including but not limited to, safeguards to protect the confidentiality of discrimination and harassment complaints to the extent reasonably possible;
- v. A statement that informs an employee that he or she will not be subject to any retaliation as a result of making a complaint of discrimination and/or harassment in good faith or for cooperating with investigations of complaints and that if an employee believes he or she has been subject to retaliation, he or she should follow the same complaint procedures as described above; and
- vi. A statement that informs an employee that he or she may file a discrimination or harassment complaint with the New Jersey Division on Civil Rights and/or the U.S. Equal Employment Opportunity Commission.

Such statement shall provide the telephone and address for the two

agencies and the applicable statute of limitations for the relevant state and federal laws.

11. Dissemination of Anti-Discrimination and Harassment Policy: By no later than sixty (60) days from the effective date of this Agreement, the Anti-Discrimination and Anti-Harassment Policy as set forth in paragraph 10 shall be distributed to all of Respondent's employees.

- a. Respondent shall provide a copy of the Anti-Discrimination and Harassment Policy at least ten (10) days prior to distribution by mail to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, 31 Clinton Street; P.O. Box 46001, Newark, New Jersey 07102.
- b. Each of Respondent's employees shall sign a statement acknowledging that he or she received the Anti-Discrimination and Anti-Harassment Policy, reviewed the policy, and had the opportunity to ask questions about the policy. By no later than one hundred (100) days from the effective date of this Agreement, Respondent shall provide a copy of Respondent's employees' acknowledgement statements by mail to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, 31 Clinton Street; P.O. Box 46001, Newark, New Jersey 07102.
- c. Respondent shall also maintain a hard copy of the Anti-Discrimination and Anti-Harassment Policy in a readily accessible location in each of its offices.

12. Training on Policies and Conducting Impartial Discrimination or Harassment

Investigations: Respondent agrees to ensure that its employees, independent contractors or

outside consultants who are responsible for handling and processing Respondent's administrative or human resources duties receive training on: the Leave of Absence Policy, the Anti-Harassment and Anti-Discrimination Policy, and how to conduct impartial discrimination or harassment investigations.

- a. Such training on the Leave of Absence Policy, at minimum, shall include:
 - i. Measures on how to properly implement Respondent's Leave of Absence Policy; and
 - ii. An explanation of an employer's responsibilities and employee's rights under the NJFLA and FMLA with an acknowledgement that an employee on a leave of absence based on the NJFLA or FMLA is entitled to continuation of his or her group health insurance coverage on the same terms as if the employee had not taken leave; and
 - iii. An explanation that Respondent should not characterize an employee's leave of absence due to pregnancy, by itself, and without any affirmative actions by that employee, as a "end of employment" or "reduction in hours" qualifying event under COBRA.
- b. Such training on conducting impartial discrimination and harassment investigations should be conducted by a person with knowledge of the LAD, applicable federal anti-discrimination and anti-harassment laws, the NJFLA, and the federal FMLA, and at minimum, should include:
 - i. Measures on how to conduct an impartial investigation; and

- ii. Measures on how to protect the confidentiality of the employees filing the complaint to the extent reasonably possible; and
- iii. Safeguards on how to minimize any retaliation to individuals filing complaints or cooperating with investigations of complaints.

13. By no later than ninety (90) days from the effective date of this Agreement, the investigation training for impartial investigations as set forth in paragraph 12 shall be completed.

a. Prior to ten (10) days before the training or trainings, Respondent shall provide a copy of all and any training materials used in this training, including but not limited to any and all handouts or PowerPoint slides, by mail to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, P.O. Box 46001, Newark, New Jersey 07102.

b. Each of Respondent's employees, independent contractors, or outside consultants that receive such training shall sign a statement acknowledging his or her participation, comprehension, and completion of the training. By no later than one hundred days (100) days from the effective date of this Agreement, Respondent shall provide a copy of these acknowledgement statements by mail to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, P.O. Box 46001, Newark, New Jersey 07102.

14. Sexual Harassment, Anti-Discrimination, and NJFLA/FMLA Training for all Employees: Respondent shall arrange for sexual harassment, discrimination, and NJFLA and FMLA training for its employees.

- a. Such training should be conducted by a person with knowledge of the LAD, applicable federal anti-discrimination and anti-harassment laws, the NJFLA, and the federal FMLA.
- b. Such training shall include examples of conduct that constitutes sexual harassment and discrimination in the workplace.
- c. All such training shall be completed within ninety (90) days from the effective date of this Agreement.
- d. Prior to ten (10) days before the training or trainings, Respondent shall provide a copy of any and all training materials used in the training, including, but not limited to, any and all handouts or PowerPoint slides, to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, 31 Clinton Street; P.O. Box 46001, Newark, New Jersey 07102.
- e. Each of Respondent's employees that receive such training shall sign a statement acknowledging his or her participation, comprehension, and completion of the training. By no later than one hundred (100) days, Respondent shall provide a copy of Respondent's employee acknowledgement statements by mail to Northern Regional Manager J. Manuel Castillo at the Division on Civil Rights, P.O. Box 46001, Newark, New Jersey 07102.

MONITORING AND COMPLIANCE

15. Respondent agrees to maintain records pertaining to: (a) the number of employees requesting and receiving a leave of absence based on a pregnancy and (b) the number of employees requesting and receiving a medical leave of absence. DCR may also request access to Respondent's employee records regarding any paperwork related to the continuation of health benefits during a leave of absence. Respondent shall make such records available to DCR upon request for three (3) years following the effective date of this Agreement:

- a. In the event DCR seeks any of these records, DCR shall make its request in writing to Respondent and Respondent will respond to DCR's request in a reasonable time frame, but not later than ten (10) business days from DCR's request, with copies of such records or a date and time certain for a DCR employee to examine such records at Respondent's facility.

MISCELLANEOUS

16. If Respondent fails to comply with the timelines set forth for the equitable relief as set forth in paragraph 8 to paragraph 14, DCR will provide notice to Respondent in writing non-compliance. Respondent shall be afforded five (5) business days to respond to and cure its non-compliance.

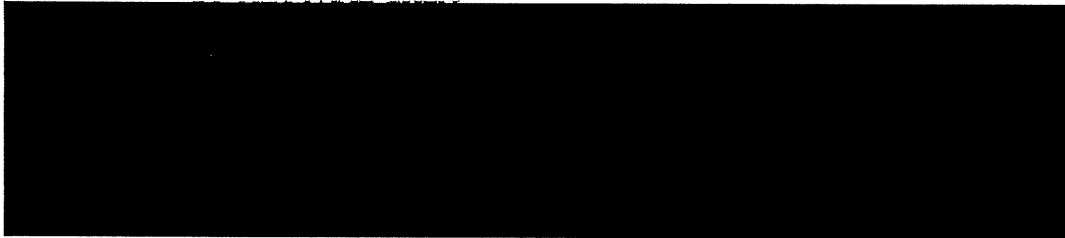
17. In the event that Respondent defaults with respect to any provision herein, Respondent hereby consents to DCR seeking intervention and relief from the New Jersey Superior Court to enforce this Negotiated Settlement Agreement.

18. The above shall represent full satisfaction of all claims arising out of this matter, as well as all claims filed with the Equal Employment Opportunity Commission ("EEOC") under

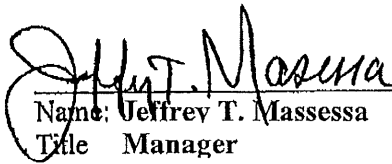
Federal Charge No. 17E-2016-00331. Complainant agrees that she will take any and all action necessary to terminate any proceedings before the EEOC related to this matter.

19. This Agreement shall operate as a full and final disposition with prejudice of the allegations set forth in the verified complaint filed with DCR and the Equal Employment Opportunity Commission, subject only to the fulfillment of all the foregoing provisions.

20. Any signature for the entry of this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same negotiated settlement agreement.



FOR RESPONDENT NORTH JERSEY
DERMATOLOGY CENTER, P.C.


Name: Jeffrey T. Massessa
Title: Manager

Dated: February 1, 2017

