

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THOMAS E. PEREZ,)	
SECRETARY OF LABOR, UNITED STATES)	CIVIL ACTION
DEPARTMENT OF LABOR,)	CASE NO.
Plaintiff,)	COMPLAINT – Labor
v.)	29 U.S.C. §651, <i>et seq.</i>
IFCO SYSTEMS N.A., INC.,)	
Defendant.)	

COMPLAINT

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor (“Plaintiff” or “the Secretary”) brings this action to enjoin Defendant, IFCO SYSTEMS N.A., INC. (“IFCO”), from violating provision 11(c) of the Occupational Safety and Health Act of 1970 (“the Act”), (29 U.S.C. §651 *et seq.*), and for a judgment against Defendants for back wage compensation, reinstatement and/or front wages, and any other relief found by the Court to be due to former employee Deborah Walters.

I

Plaintiff brings this action for injunctive and other relief, pursuant to §11(c) of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 *et seq.*), (“the Act”) seeking to enforce the provisions of §11(c) of the Act.

II

Jurisdiction of this action is conferred upon the Court by 29 U.S.C. §660(c)(2), namely

§11(c)(2) of the Act.

III

Defendant is a corporation under the laws of the State of Delaware and is headquartered at 13100 Northwest Freeway, Houston, TX 77040. Defendant also has a place of business located at 3177 Biglerville Rd, Biglerville, PA 17307, which is where the conduct alleged in this Complaint occurred. As such, this Court is the proper venue for this action.

IV

Defendant is now, and has been at all times material herein, a person as defined in 29 U.S.C. §652(4) because it is a corporation.

V

Defendant is now, and has been at all times material herein, an employer within the meaning of 29 U.S.C. § 652(5) because it is a person engaged in a business affecting commerce who has employees.

VI

At all times material herein, Deborah Walters was an employee as defined by 29 U.S.C. §652(5) and Defendant was an employer as defined by 29 U.S.C. §652(6) because Ms. Walters worked at Defendant's Biglerville, Pennsylvania location as the office manager, beginning on February 20, 2013.

VII

On April 8, 2014, Ms. Walters complained to Defendant about suspected mold that was found behind the filing cabinets in the plant office.

VIII

On April 17, 2014, when Defendant still had not taken any action to correct the unhealthful

condition, Ms. Walters made an anonymous complaint to the Occupational Safety and Health Administration (OSHA), a component of the Department of Labor, regarding the mold and a potential electrical hazard.

IX

On April 17, 2014, OSHA notified Defendant of this safety complaint by telephone and facsimile.

X

Following notification of the OSHA complaint, Defendant hired contractor GES to sample the mold. In a letter dated April 25, 2014, GES informed Respondent that there was “significant active mold growth occurring on the wall behind the filing cabinet” and that there were elevated spore counts of Stachbotrys Mold, a “toxigenic and neurological mold.” The letter states that mold remediation will be required and “should be completed as quickly as possible.”

XI

Between April 8, 2014, and June 13, 2014, Complainant made repeated complaints to Defendant about her continued exposure to the mold hazard in the plant office and Defendant’s delay in removing all affected employees from that work space.

XII

On July 1, 2014, less than three weeks after Ms. Walters’ most recent request not to work in the moldy office because of the negative impact the continued mold exposure was having upon her health, Defendant discharged Ms. Walters.

XIII

Ms. Walters filed a complaint with OSHA on July 15, 2015, alleging that the Defendant discharged her in violation of §11(c)(1) of the Act. 29 U.S.C. §660(c)(1).

XIV

Plaintiff thereafter investigated the above complaint in accordance with §11(c)(2) of the Act and determined that Defendant violated §11(c)(1) of the Act when it discharged Ms. Walters because she had engaged in the protected activities set forth in paragraphs VII, VIII, and XI. 29 U.S.C. §660(c)(1) and (c)(2).

XV

By the act described in paragraph XII, Defendant discharged Ms. Walters because she engaged in protected activity under the Act, as set forth in paragraphs VII, VIII, and XI, and thus Defendant violated §11(c)(1) of the Act. 29 U.S.C. §660(c)(1).

XVI

To date, Defendant has failed to reinstate Ms. Walters and to compensate her for lost wages and other damages suffered as a result of her improper termination, in continued violation of §11(c)(1) of the Act. 29 U.S.C. §660(c)(1).

WHEREFORE, cause having been shown, Plaintiff prays for a Judgment against Defendant as follows:

(1) For an Order permanently enjoining Defendant, its officers, agents, servants, employees and all persons acting or claiming to act in their behalf and interest from violating the provisions of §11(c)(1) of the Act (29 U.S.C. §660(c)(1)); and

(2) For all appropriate relief, including reinstatement, payment to Ms. Walters for lost wages and benefits, including interest thereon, compensatory damages, including damages for emotional distress, interest on compensatory damages for pecuniary losses, consequential damages, including attorney's fees, and punitive damages to deter such conduct by Defendant in the future;

and

(3) For an Order requiring posting in a prominent place for 60 (sixty) consecutive days of a notice stating Defendant will not in any manner discriminate against employees because of engagement, whether real or perceived, in activities protected by §11(c) of the Act, and for the costs of this action; and

(4) For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted this 3rd day of March, 2016.

M. PATRICIA SMITH
Solicitor of Labor

OSCAR L. HAMPTON III
Regional Solicitor

JENNIFER L. BLUER
Trial Attorney
PA Bar 307299



Jennifer L. Bluer

ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS: Thomas E. Perez, Secretary of Labor, United States Department of Labor. (b) County of Residence of First Listed Plaintiff. (c) Attorneys: Jennifer L. Bluer, Esq., 170 S. Independence Mall West, Suite 630E, Philadelphia, PA 19106. DEFENDANTS: IFCO SYSTEMS N.A., INC. County of Residence of First Listed Defendant. NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys: James (Jay) Seegers, Esq., Baker Hostetler Sun Trust Center, 200 South Orange Street, Suite 2300, Orlando, FL 32801.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only). III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant). Includes checkboxes for U.S. Government Plaintiff/Defendant, Federal Question, Diversity, and various citizenship options (Citizen of This State, Another State, Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only). Grid with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only). Includes checkboxes for Original Proceeding, Removed from State Court, Remanded from Appellate Court, Reinstated or Reopened, Transferred from Another District, Multidistrict Litigation.

VI. CAUSE OF ACTION. Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. section 651, et seq. Brief description of cause: Violation of section 11(e) of the Occupational Safety and Health Act.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: 03/03/2016 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY: RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE