

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

2006 FEB -6 P 2:30

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,  
Plaintiff,

LA SHONDA BURNS  
Intervenor-Plaintiff,

Civil Action No.: 3:05-CV-990-J-32 TEM

v.

MOTHERS WORK, INC.  
D/B/A MOTHERHOOD,  
Defendant.

---

**INTERVENOR-PLAINTIFF, LASHONDA BURNS' COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Intervenor- Plaintiff, LASHONDA BURNS, by and through her undersigned counsel, hereby sues Defendant, Mothers Work, Inc., D/B/A Motherhood (hereinafter, "Mothers Work"), and alleges the following:

**Introduction**

1. This action involves claims of pregnancy discrimination and retaliation for Plaintiff's objections to Defendant's discriminatory practices, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq. 1991, as amended by the Civil Rights Act of 1991, and pursuant to the Florida Civil Rights Act of 1992, Florida Statutes §760.01, et seq. and the Florida Whistleblower Act, Florida Statute §448.101 et seq. and is brought by Intervenor Burns (hereafter "Burns").

**Jurisdiction, Venue and Parties**

2. This action arises, in part, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 et seq., as amended by the Civil Rights Act of 1991. This Court has

original jurisdiction to grant relief pursuant to 28 U.S.C. §§1331, 1332(a)(1), and 1343(4). This Court is vested with jurisdiction to order an injunction, front pay, back pay or any other equitable relief as may be proper, and compensatory and punitive damages, attorney's fees and costs pursuant to 42 U.S.C. §§1981a and 2000e – 2(a) and 5(k). This action also arises in part under the Florida Civil Rights Act of 1992, Florida Statutes §760.01 et seq. (The "FCRA"), and the Florida Whistleblower Act, Florida Statutes §448.101 et seq. This Court has jurisdiction over all state law claims pursuant to 28 U.S.C. §§1332(a)(1) and 1367. The state claims herein are for damages in excess of \$75,000.00 and are therefore within the jurisdiction of this Court.

3. Venue is proper in the Jacksonville Division of the Middle District of Florida pursuant to 28 U.S.C. §1391(a) and (c) because Defendant has a place of business located in St. Augustine, Florida, where Burns was employed and suffered the discriminatory and retaliatory actions complained of, such that the unlawful employment practices giving rise to this action were committed within this judicial district.

4. Plaintiff, EEOC, made a finding of pregnancy discrimination and retaliation against Mothers Work and filed suit in its own right on behalf of Burns, giving her the right to intervene as a plaintiff. Burns brings her claims herein as an intervening plaintiff. A copy of the EEOC's letter of determination is attached to this Complaint as Intervenor's Exhibit "A."

5. Intervenor-Plaintiff Burns is an individual who resides in St. John's County, Florida during the time of her employment with Mothers Work. Burns was employed by Mothers Work in the position of Sales Associate and Assistant Manager. She is female and is therefore protected from discrimination in employment under the

FCRA and Title VII.

6. Defendant, Mothers Work, is incorporated in Delaware and has its principal executive office in Pennsylvania, and at all times material was and is engaged in providing retail sale of maternity clothing and items in the United States, Canada and Puerto Rico, including in the State of Florida, and including in the city of St. Augustine, Florida. Mothers Work is an “employer” as defined by 42 U.S.C. §2000e(b) and §760.02(7), Florida Statutes and §448.101(3), Florida Statutes because it employs fifteen or more employees for each working day and each of twenty or more calendar weeks in the current or proceeding calendar year.

**Compliance with Procedural Requirements**

7. Burns timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission and the Florida Commission on Human Relations, alleging pregnancy discrimination and retaliation. A copy of the Charge of Discrimination is attached as Exhibit “B.” Burns has satisfied any and all administrative requirements precedent to the filing of this action pursuant to Title VII and §750.11, Florida Statutes. This action has been filed after receipt of the Letter of Determination from the EEOC attached as Exhibit “A,” and more than 180 days after Burns filed her charge with the FCHR, with no action having been taken by the FCHR on her charge prior to the filing of this action.

**General Allegations Applicable to all Counts**

8. Burns was employed with Mothers Work as a Sales Associate and Assistant Manager from approximately November 2001, until her discriminatory and retaliatory termination in August 2004.

9. At all times material in her employment with Mothers Work, Burns was a fully qualified, competent and dedicated employee. Burns received reprimands and other disciplinary action after she objected to Defendant's discriminatory practices. The discipline received after her objections, including her suspension without pay while her claims of discrimination were investigated by Mothers Work, was not warranted and was in retaliation for her objections.

10. Since at least October 2003, Mothers Work has engaged in unlawful employment practices at its St. Augustine, Florida location in violation of Ms. Burns' rights under §703(a)(1) of Title VII, 42 U.S.C. §2000e – 2(a) and Florida Statutes §760.01 et seq. and Florida Statutes §448.101, et seq., including:

A. Burns began working for Mothers Work at its St. Augustine, Florida store in or about November 2001.

B. Burns performed her duties without incident until on or about October 2003.

C. In or about November 2003 and continuing throughout approximately June 2004, Burns began to interview applicants for available Sales Associate positions at the location where Burns was employed.

D. Defendant failed to hire applicants who were visibly pregnant or who through interview questions it learned the applicants were pregnant.

E. Burns opposed Defendant's practices of not hiring qualified pregnant women into Sales Associate positions.

F. Mothers Work subsequently advised Burns that it believed Burns to be pregnant.

G. On or about late June through early August 2004, Defendant disciplined and subsequently terminated Burns in retaliation for her opposition to Mothers Work's pattern and practice of not hiring qualified pregnant women and/or because it believed that Burns was pregnant.

11. The effect of the unlawful employment practices complained of in Paragraph 10 above has been to deprive Burns of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex, female.

12. The unlawful employment practices complained of above were intentional.

13. The unlawful employment practices complained of above were done with malice or with reckless indifference to Burns' Federal and State law rights.

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

15. Burns has engaged the services of undersigned legal counsel and is obligated to pay legal counsel their fees incurred in the prosecution of her claims in this action.

**Count I Violation of Title VII of the Civil Rights Act of 1964, as Amended**

**Pregnancy Discrimination**

16. Burns repeats and realleges the allegations in Paragraphs 1 through 15.

17. Burns had all the necessary qualifications and did, in fact, adequately and effectively perform all of the duties of her position.

18. The adverse employment action to which Burns was subjected was based upon her gender, female, in that Mothers Work believed that she was pregnant and

subjected her to the adverse employment action as a consequence of this belief.

19. Mothers Work, by and through its owners, agents, directors, and/or supervisors violated 42 U.S.C. §2000e – 2(a) and 5(k) by perpetrating, tolerating and/or condoning pregnancy discrimination in the workplace and subjecting Burns to adverse employment action due to such discriminatory practices.

20. Burns suffered an adverse employment action when Mothers Work suspended her without pay and terminated her due to its belief that she was pregnant.

21. The conduct of Mothers Work, by and through its agents, employees, managers, partners, supervisors and/or corporate executives, and Mothers Work's failure to investigate and/or to take prompt remedial action to prevent continued discrimination deprived Burns of her statutory rights under Title VII.

22. Neither a legitimate non-discriminatory reason nor bona fide occupational qualification exists to justify Mothers Work's intentional disparate treatment of Burns. Mothers Work failed to institute an adequate complaint procedure and further failed to take reasonable care to prevent incorrectly reported pregnancy discrimination.

23. The actions of Mothers Work and/or its agents, were willful, wanton, intentional and with malice or with reckless indifference to Burns Federal and State protected rights, entitling Burns to damages in the form of compensatory and punitive damages pursuant to §2000(e) – 5(g) to punish Mothers Work for these actions and to deter Mothers Work, and others, from such actions in the future.

24. The actions of Mothers Work make reinstatement ineffective as a make whole remedy, entitling Burns to front pay in lieu of reinstatement.

25. As a direct, proximate and foreseeable result of the actions of Mothers

Work, Burns has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

**Demand for Relief**

WHEREFORE, Intervenor-Plaintiff La Shonda Burns, demands judgment against Defendant Mothers Work, Inc., d/b/a Motherhood, for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorney's fees, costs of this action and such other relief as this Court deems just and proper.

**Count II Violation of Title VII of the Civil Rights Act of 1964, as Amended**

**Retaliation**

26. Burns repeats and realleges the allegations in Paragraphs 1 through 15 above.

27. Mothers Work violated Title VII of the Civil Rights Act of 1964, as Amended, 42 USC § 2000e-3(a), by retaliating against Burns for complaining about the pregnancy discrimination to which she was subjected and Mothers Work's discriminatory practice of not hiring pregnant applicants and firing applicants it believed were pregnant, which is an unlawful employment practice under Title VII. Ultimately, this retaliation culminated in Burns unlawful termination in August, 2003.

28. The actions of Mothers Work and/or its agents were willful, wanton, intentional and with malice or reckless indifference to Burns federally protected rights, entitling Burns to damages in the form of compensatory and punitive damages pursuant to §2000e – 5(g) to punish Mothers Work for these actions and to deter Mothers Work,

and others, from such actions in the future.

29. The actions of Mothers Work make reinstatement ineffective as a make whole remedy, entitling Burns to front pay in lieu of reinstatement.

30. As a direct, proximate and foreseeable result of the actions of Mothers Work's actions, Burns has suffered past and will suffer future pecuniary losses, emotional pain and suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

### **Demand for Relief**

WHEREFORE, Intervenor-Plaintiff La Shonda Burns, demands judgment against Defendant Mothers Work, Inc., d/b/a Motherhood, for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorney's fees, costs of this action and such other relief as this Court deems just and proper.

### **Count III Violation of the Florida Civil Rights Act of 1992**

#### **Pregnancy Discrimination**

31. Burns repeats and realleges the allegations in Paragraphs 1 through 15 above.

32. The discrimination to which Burns was subjected was based upon her gender, female, in that Mothers Work believed that she was pregnant and subjected her to the adverse employment action as a consequence of this belief.

33. Mothers Work violated Florida Statute §760.01, et seq., by intentionally discriminating against Burns and subjecting her to different terms and conditions of



employment on the basis of her sex, including termination from employment, as more specifically alleged in the general allegation section of this Complaint above.

34. There was no legitimate non-discriminatory reason to justify Mothers Work intentional disparate treatment of burns.

35. The actions of Mothers Work and/or its agents, employees, managers, supervisors, and/or corporate executives were willful, wanton, intentional and were performed with malice or with reckless indifference to Burns legally protected rights, entitling Burns to damages in the form of compensatory and punitive damages pursuant to Florida Statutes §760.11(5) to punish Mothers Work for its action and to deter it, and others, from taking such actions in the future.

36. The actions of Mothers Work make reinstatement ineffective as a make whole remedy, entitling Burns to front pay in lieu of reinstatement.

37. As a direct, proximate and foreseeable result of the of Mothers Work's actions, Burns has suffered past and will suffer future pecuniary losses, emotional pain suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

#### **Demand for Relief**

WHEREFORE, Intervenor-Plaintiff La Shonda Burns, demands judgment against Defendant Mothers Work, Inc., d/b/a Motherhood, for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorney's fees, costs of this action and such other relief as this Court deems just and proper.

**Count III Violation of the Florida Civil Rights Act of 1992**

**Retaliation**

38. Burns repeats and realleges the allegations in Paragraphs 1 through 15 above.

39. Mothers Work violated Florida Statutes §760.10(7) by retaliating against Burns for complaining about the pregnancy discrimination to which she was subjected and to the discriminatory practice of Mothers Work in not hiring pregnant applicants and firing applicants it believed to be pregnant, an unlawful employment practice under Florida Statutes §760.10(1). Ultimately this retaliation culminated in Burns' unlawful termination in August, 2003.

40. The actions of Mothers Work and/or its agents were willful, wanton, intentional and were performed with malice or with reckless indifference to Burns protected rights, entitling Burns to damages in the form of compensatory and punitive damages pursuant to Florida Statutes §760.11(5) to punish Mothers Work for these actions and to deter Mothers Work, and others, from such actions in the future.

41. The actions of Mothers Work make reinstatement ineffective as a make whole remedy, entitling Burns to front pay in lieu of reinstatement.

42. As a direct, proximate and foreseeable result of Mothers Work's actions, Burns has suffered past and future pecuniary losses, emotional pain and suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

**Demand for Relief**

WHEREFORE, Intervenor-Plaintiff La Shonda Burns, demands judgment against Defendant Mothers Work, Inc., d/b/a Motherhood, for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorney's fees, costs of this action and such other relief as this Court deems just and proper.

**Count V Violation of the Florida Whistleblower Act**

43. Burns repeats and realleges the allegations in Paragraphs 1 through 15 above.

44. Burns objected to and/or refused to participate in Mothers Work's discriminatory practice of not hiring pregnant applicants and firing employees that it believed to be pregnant. Burns objected to her direct supervisor, and to corporate management. Burns was suspended, without pay, after her complaint to corporate management, while corporate management said it was investigating her complaint. Corporate management either did not conduct an investigation, or conducted an inadequate investigation of Burns' complaint.

45. As a result of Burns' objection to and/or refusal to participate in the discriminatory practices of Mothers Work, she was subjected to retaliatory adverse employment action, including the termination of her employment, in violation of Florida Statute § 448.101, et. seq.

46. As a direct, proximate and foreseeable result of Mothers Work's actions, Burns has suffered past and will suffer future pecuniary losses, emotional pain and suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity,

emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

47. The actions of Mothers Work make reinstatement ineffective as a make whole remedy, entitling Burns to front pay in lieu of reinstatement.

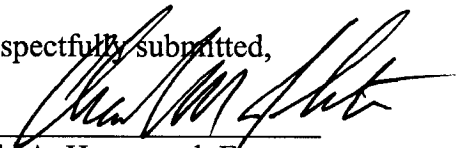
**Demand for Relief**

WHEREFORE, Intervenor-Plaintiff La Shonda Burns, demands judgment against Defendant Mothers Work, Inc., d/b/a Motherhood, for back pay, front pay in lieu of reinstatement, compensatory damages, prejudgment interest, attorney's fees, costs of this action and such other relief as this Court deems just and proper.

**Demand for Jury Trial**

Intervenor-Plaintiff, La Shonda Burns, demands a trial by jury on all issues so triable in each Count of the Intervenor-Complaint.

Respectfully submitted,

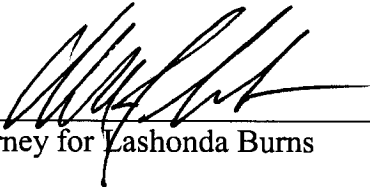


\_\_\_\_\_  
Ada A. Hammond, Esq.  
Florida Bar No.: 318302  
Charles M. Johnston, Esq.  
Florida Bar No.: 264741  
JOHNSTON & HAMMOND  
2223 Oak Street  
Jacksonville, Florida 32204  
Tel.: (904) 358-7400  
Fax: (904) 358-7301  
Attorneys for Lashonda Burns

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY**, that a true and correct copy of the foregoing has been furnished by eFacsimile (877) 432-9652 and U.S. Mail to Mark E. Zelek, Esq., and

Douglas C. Adams, Esq., Morgan, Lewis & Bokus LLP, 5300 Wachovia Financial Center, 200 South Biscayne Boulevard, Miami, FL 33131, attorneys for Defendant, and by Facsimile (305) 536-4494 and U.S. Mail to Cheryl A. Cooper, Esq., Equal Employment Opportunity Commission, Miami District Office, One Biscayne Tower, Suite 2700, Two Biscayne Boulevard, Miami, FL 33131, attorney for Plaintiff, on this Monday, February 06, 2006.

  
\_\_\_\_\_  
Attorney for Lashonda Burns



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Miami District Office**

One Biscayne Tower  
2 South Biscayne Blvd, Suite 2700  
Miami, FL 33131  
(305) 536-4491  
TTY (305) 536-5721  
FAX (305) 536-4011

EEOC Charge No: 150-2004-04281

La Shonda Burns  
52 Lamanch Drive  
Palm Coast, FL 32137

Charging Party

Mothers Work, Inc., d/b/a Motherhood  
2700 State Road 16, Suite 806  
St. Augustine, FL 32092

Respondent

**LETTER OF DETERMINATION**

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended. Timeliness, deferral, and all other requirements for coverage have been met.

Charging Party alleged that the Respondent has a practice of not hiring pregnant women and that Respondent terminated her because Respondent thought she was pregnant and because she opposed the Respondent's policy and practice of pregnancy discrimination in violation of Title VII.

I have determined that the evidence obtained during the investigation, and Respondent's failure to cooperate, establishes that there is reasonable cause to believe that Respondent discriminated against qualified applicants for hire because they were pregnant in violation of Title VII of the Civil Rights Act of 1964. Additionally, I have determined that the Charging Party was discriminated against because of her sex, female, in violation of Title VII of the Civil Rights Act of 1964. Moreover, I have determined that Respondent retaliated against Charging Party for opposing Respondent's policy and practice of discrimination against pregnant employees and applicants for hire, by terminating her employment, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Upon finding that there is reason to believe that a violation has occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation.

**EXHIBIT A**

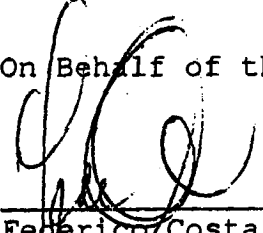
Letter of Determination  
EEOC Charge No. 150-2004-04281  
Page 2

Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Sections 706 and 709 of Title VII and the Commission Regulations apply to information obtained during conciliation.

Please complete the enclosed Invitation to Conciliate and return to the Commission at the above address no later than **Monday, September 12, 2005**. You may fax your response directly to (305)536-4011 to the attention of Dennis Kendrick, Investigator. Failure to respond **by Monday, September 12, 2005** will indicate that you are not interested in conciliating this matter and the Commission will determine that efforts to conciliate this charge as required by Title VII of the Civil Rights Act of 1964, as amended, have been unsuccessful.

On Behalf of the Commission:

08/29/2005  
Date

  
\_\_\_\_\_  
Federico Costales  
District Director

Enclosure: Invitation to Conciliate

cc: **Sent by mail and telefax: 215-625-9379**

Craig Schwartz, Esq., General Counsel  
Mothers Work, Inc.  
456 N. 5<sup>th</sup> St.  
Philadelphia, PA 19123

*CPR.*

Ada Hammond, Esq.  
2223 Oak St.  
Jacksonville, FL 32092

<b>CHARGE OF DISCRIMINATION</b>		AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974: See Privacy Act Statement before completing this form.		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
FLORIDA COMMISSION ON HUMAN RELATIONS and EEOC <i>state or local Agency, if any</i>			
NAME (Indicate Mr., Ms., Mrs.) Mrs. La Shonda Burns		HOME TELEPHONE (Include Area Code) (386) 445-9924	
STREET ADDRESS 52 Lamanch Drive, Palm Coast, Florida 32137		CITY, STATE AND ZIP CODE DATE OF BIRTH 01/07/80	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME Mothers Work, Inc. d/b/a Motherhood		NUMBER OF EMPLOYEES, MEMBERS 15+	TELEPHONE (Include Area Code)
STREET ADDRESS 2700 State Road 16, Suite 806, St. Augustine, Florida 32092		CITY, STATE AND ZIP CODE COUNTY St. Johns	
NAME Mothers Work, Inc.		TELEPHONE NUMBER (Include Area Code) (215) 873-2200	
STREET ADDRESS 456 North 5th Street, Philadelphia, PA 19123		CITY, STATE AND ZIP CODE COUNTY Philadelphia	
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE EARLIEST LATEST	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input checked="" type="checkbox"/> OTHER (Specify) <span style="margin-left: 100px;">Pregnancy</span>		08/05/04	
<input checked="" type="checkbox"/> CONTINUING ACTION			
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
<ol style="list-style-type: none"> <li>1. My former employer has a policy and practice of discrimination against pregnant applicants and employees in violation of Title VII of the Civil Rights Act and its Pregnancy Act provisions, and the Florida Civil Rights Act.</li> <li>2. I opposed the policy and practice and also complained to my immediate supervisor and to higher management about it.</li> <li>3. I was asked if I was pregnant when I became ill and I was told I could not work here if I was.</li> <li>4. I was discriminated against because my employer believed I may be pregnant and retaliated against for my opposition and complaints about the discriminatory practices and received hostile and adverse employment action, including termination in violation of Federal and State discrimination laws.</li> </ol>			
I want this charge filed with both the EEOC and the state or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements) See Attached Notary Certification I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
I declare under penalty of perjury that the foregoing is true and correct.		SIGNATURE OF COMPLAINANT La Shonda Burns	
Date _____ Charging Party (Signature) La Shonda Burns		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)	

EEOC FORM 5 (Test 10/94)