

No. 21-1112

IN THE
SUPREME COURT OF THE UNITED STATES

SONYA GORBEA,
Petitioner,

v.

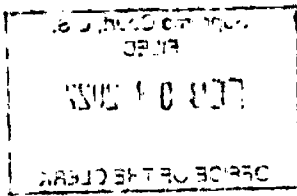
VERIZON NEW YORK INCORPORATED
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL



QUESTIONS PRESENTED FOR REVIEW

Gorbea appealed to The US Court of Appeals for the Second Circuit Pro Se requesting the consideration of the "extraordinary circumstances" and if considered, then the questions for review are

1. How can Verizon dereliction of duty and reckless disregard for the necessary medical treatment be acceptable under the ADA/Title VII in much as not to accept and provide reasonable accommodations for PTSD requested by Gorbea when medical documentation provided by Verizon's Carrier and provided by Gorbea's Physicians have been received by Verizon in accordance with Verizon policy just as similar situated technicians do?
2. How can Verizon establish a pretext of job abandonment when Verizon issued a written warning, adverse employment action, for Gorbea "TO LEAVE VERIZON'S PREMISE." and refused to provide reasonable accommodation for her PTSD?
3. How could Gorbea return to work safely "to perform essential functions of her job/show up to work" at Verizon in any capacity, when Verizon refused to acknowledge and provide necessary reasonable accommodation for her PTSD?

PARTIES TO THE PROCEEDINGS

Petitioner Sonya Gorbea

Respondent Verizon New York Incorporated

RELATED CASES

- *Sonya Gorbea v Verizon New York Incorporated*, No. 11-CV3758 (KAM) (LB) United States District Court Eastern District of New York. Settled Resolution August 2014.
- *Sonya Gorbea v Verizon New York Incorporated*, No. 18-CV-420 (NGG) (ST) United States District Court Eastern District of New York. Judgement entered August 27, 2020.
- *Sonya Gorbea v Verizon New York Incorporated*, No. 203486, United States Court of Appeals For The Second Circuit. Judgement entered October 19, 2021.
- *Sonya Gorbea v Verizon New York Incorporated*, No. 203486, United States Court of Appeals For The Second Circuit. Judgement entered December 7, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Sonya Gorbea petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The Second Circuit opinion is reproduced at appendix 1. The Second Circuit's denial of petitioner's motion for reconsideration and rehearing en banc is reproduced at appendix 31. The opinions of the United States District Court Eastern District of New York are reproduced at App. 11.

JURISDICTION

The Court of Appeals entered Judgement on October 19, 2021 appendix. 1. The court denied a timely petition for rehearing *en banc* on December 7, 2021 appendix 31. This Court has jurisdiction under U.S.C. 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS

42 U.S.C. § 12101 et seq. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; [Section 703] SEC. 2000e-3. [Section 704] SEC. 2000e-3. ("Title VII") Title VII, the Americans with Disabilities Act of 1990, section 102 section 1977 (42 U.S.C. 1981) and section 501 of the Rehabilitation Act of 1973. (i) engaged in unlawful interference under the Family Medical Leave Act (FMLA), 29 U.S.C. § 2601 et seq.; (ii) unlawfully retaliated under the FMLA, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the ADA, 42 U.S.C. § 12101 et seq., and the NYSHRL, N.Y. Exec. Law § 290 et seq.; (iii) unlawfully discriminated under Title VII, the ADA, and the NYSHRL; and (iv) failed to provide a reasonable accommodation under the ADA, the NYSHRL, New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 296, New York State Human Rights Law ("NYSHRL"), codified at N.Y. State Exec. Law § 290 et seq.; and New York City Human Rights Law ("NYCHRL"), codified at N.Y.C. Admin. Code § 8-101 et seq. ,the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-107.1.

14 Amendment deprivation of due process

PROCEDURAL HISTORY

Honorable Justices, Thank you all for your time and consideration. This case before this UNITED STATES SUPREME COURT is one of Verizon New York Incorporated's Abusive Power over their Employees and the Judicial System in NewYork State. Verizon New York Incorporated has had ample time both on the job andthroughout court proceedings, to right the wrong done to Sonya Marie Gorbea (thereafter known as Gorbea) but has not provided reasonable accommodations for her PTSD. Therefore, the systems in place to protect an employee Sonya Gorbea v Verizon New York Incorporated has failed her.

On March 17, 2017, Plaintiff filed a charge with the Equal Employment Opportunity Commission for disability discrimination arising out of her termination from Verizon New York Incorporated (thereafter known as Verizon) on December 29, 2016. The EEOC issued Plaintiff a Notice of Right to Sue Letter and Plaintiff commenced this action on January 22, 2018, in the United States District Court for the Eastern District of New York On April 20, 2018, Plaintiff amended her complaint, asserting that Verizon fired Plaintiff due to her disability and failed to provide her with a reasonable accommodation, therefore violating the ADA, Title VII, NYSHRL, and the NYCHRL. Verizon filed a motion for summary judgement on November 21, 2019. On August 27, 2020, the Honorable Nicholas G. Garaufis,

U.S.D.J. granted Verizon's motion for summary judgment and dismissed Plaintiff's complaint with prejudice. On January 25, 2021, Plaintiff preserved her rights and filed an appeal.

BACKGROUND FACTS

Gorbea, is Credible and the history of discrimination exist as Verizon did not willfully accommodate Gorbea in the workplace in 2009. In fact, they went above and beyond not to accommodate her from 2009-2014 and she filed Disability Discrimination claim. Justice prevailed from United States District Court, presided by Judge Matsumoto and Magistrate Judge Lois Bloom, in the Eastern District of New York. (SONYA GORBEA v. VERIZON NEW YORK INC., 11-CV-3758 (KAM)(LB) and a resolution for a permanent reasonable accommodations settlement was reached in September 2014.

This was opportunity to resume working full-time for Verizon as a Field Technician in Manhattan with permanent reasonable accommodations - An approval of intermittent absence of 5 episodes per month with each episode to be 2 calendar days and no climbing ladders or lifting in excess of 20 to 25 pounds. Verizon unfortunately reneged on the 2014 resolution for permanent reasonable accommodations to work in the field, triggering trauma and symptoms of Gorbea's 2011 diagnoses of her causal related Post Traumatic Stress Disorder (P.T.S.D).

STATEMENT OF THE FACTS

The record before the Courts reflects Gorbea's Good Faith requests that evidence offered in her appeals be considered due to "extraordinary circumstances"/her unfair incompetent legal representation. Gorbea, is a single woman advocating for her rights and safety on the job - reasonable accommodations for PTSD. Verizon has repeatedly conducted their business subversive of constitution law. We must admit and agree Verizon turning the blind eye on Gorbea's mental health crisis is unsafe. Holding Verizon accountable for the permanent causal related injuries due to her unsafe work environment, which was permeated in such cultures of disability discrimination, inequality, injustices on the job toward Gorbea is fair and proper.

Forced to be a Pro Se litigant, she has offered in her appeals to the District Court and the Second Circuit, genuine material evidence of disability discrimination, including Bad Faith on Verizon's part for her Hostile Working Environment and their failure to provide reasonable accommodations for Gorbea's PTSD.

How can repeated violations of the ADA and Title VII and FMLA be acceptable when Verizon refuses to acknowledge, accept or provide a reasonable accommodation for PTSD, when indeed medical documentation was submitted by Gorbea in a mental health crisis, just as similar situated

employees? Verizon had provided her with various reasonable accommodations for her back and asthma, but for her PTSD, the wrongful action of termination.

In fact, instead of granting necessary medical leave for the medically documented PTSD (depression/anxiety) for Gorbea to recover and better manage symptoms with medication therapy treatments for her disabilities so that she can return to work safely, Verizon terminated her employment December 2016. To be made whole, Gorbea's 25-year employment with Verizon, and a safe return to the workplace with reasonable accommodations. The alternative, is to offer her disability retirement under Employee Retirement Income Security Act of 1974 ("E.R.I.S.A"), 29 U.S.C. 1001 et seq.

Gorbea, a Field Technician, with a 2014 resolution for permanent accommodations only caused chaos and confusion to the administration. Since [their unwritten policy is not to accommodate technicians out in the field] then management did not know "what to do with Gorbea." They told her to go home but she insists she had the right to work in the field as part of the 2014 reasonable accommodations, requesting the necessary Fios Training, just as similar situated field technicians.

Already having a prevalent lack of communication, adding to this chaos a reassigned

manager, John Ryan, was Gorbea's new reporting manager. She was forced to sit inside in isolation where she was bullied, ridiculed, and harassed about not being disabled. She heard inappropriate and Disparaging comments made by random men, such as "who's that, why is she here" "you must not know what disability is" "you must be crazy" "why do you keep coming back" "she is a crazy bitch" "who is telling you to come back into this location" "Go Make yourself invisible" "why don't you just kill yourself " "go sit down you stupid bitch" "you should be happy you still have a job you crazy bitch" " fresh meat" "go stuff envelopes inside with the rest of the women" "she will look good in heels" "You look good to me." These men "trying to be nice" approached her, attempting to put their hands on her (i.e., massage her shoulders), or talk to her in a manner/tone outside of the codes of conduct in the workplace coupled with the undue stress of no recourse for their misconduct, her safety was of great concern and her support dog was a reasonable request for PTSD.

Disparaging treatment includes but not limited to inappropriate sexual comments and conduct misogynistic and toxic workplace, renege of 2014 permanent accommodations, denied FIOS training, disenfranchised privilege of employment such as requested vacation days, deprivation of protected rights, denied grievance requests to address issues with payroll discrepancies, changes to schedule without my knowledge, and failure to

accommodate. "Administrative Errors" all prevented her from going out into the field and "performing the essential functions of her job" of which "she otherwise qualifies."

Verizon fostered a toxic misogynistic culture of the 'good ole boys,' Abusive Power to prey over a person with disabilities. The "He said/She said" culture of casual misogynistic inappropriate language in the workplace, with no support for Gorbea's safety.

Gorbea takes responsibility of simply showing up each day excited, willing, ready, and able to work, but extremely overwhelmed with having Asthma (where a "smoke free" environment is NOT enforced), PTSD, Depression, Anxiety and Fibromyalgia. She followed every Verizon policy and protocol to seek treatment for PTSD but to no avail. Verizon's unfair policies and practices while having to manage the side effects of medication therapy for PTSD does create stress greater than normal in the workplace.

Gorbea was subjected to hostile working conditions and hostile working environment. The Crisis of Gorbea's Mental Health notice was repeatedly ignored, and the systemic corruption well settled within Verizon bureaucracy manipulated and misrepresented data they provided to the courts.

It is Verizon's reckless dereliction of duty for the mental health crisis of Gorbea, the side effects caused by the medication that Gorbea must take because of the limitations resulting from the disability. Verizon's constant harassment of her disability, the deprivation of protected property and interest i.e., wages and disability benefits, as well as, negative behaviors including, but not limited to, abusive jokes, crude name-calling, threats, and inappropriate sexual remarks against Gorbea only fostered a hostile work environment that severely interfered with her ability to perform her duties creating unsafe working conditions.

Verizon circumvented her workplace Safety, her union employees procedural due process on the job and terminated Gorbea's employment. Verizon interfered with FMLA, deprivations of Gorbea's protected property such as wages, benefits and privileges of employment which further disfranchised her. Verizon's violation of Procedural Due Process and Violating ADA/Failure to reasonable accommodation for her spiraling PTSD requests on April 11, 2016, July 9, 2016, July 11, 2016, August 4, 2016, August 8, 2016-December 29, 2016.

Additional Proof of Facts of Material Evidence is the discriminatory animus in 2016 of unpaid medical leave and the retaliatory discharge constitutes separation of property interest triggering due process when suffering a financial loss and no recourse to maintain a normal salary, 3/4 salary or

half pay causing undue stress.

Gorbea's creditable medical evidence points to Broken Ankle, Fibromyalgia, PTSD, Depression a causal relationship to the culminating series of events on the job. Verizon's own carrier medical evidence supports causal related PTSD (**see 20-3486 brief App 78,125**). Gorbea suffers from: Asthma diagnosed in 2007, PTSD/ Depression/Anxiety diagnosed in 2011, and Fibromyalgia diagnosed in 2016. Plaintiff proffered her medical providers request medical leave for PTSD on 04-11-2016 ,08-08-2016 and Fibromyalgia 12-19-2016 as she was under their carefor necessary medical treatment and did not abandon the job she loved. Here, Gorbea established she has a disability under the ADA. Gorbea submits a preponderance of Certified Board Medical evidence including their carrier's medical opinion of her disability in addition to her own testimony (**see 20-3486 brief App 78, 79, 101-103, 116-118, 125, 127-129**).

Accordingly, Gorbea has establish she is disabled under the ADA. She needed a reasonable accommodation for PTSD to return to work safe and Verizon refused and has never changed their position to provide Gorbea with the necessary accommodations for PTSD instead they terminated her protected employment and deprived her due process on the job. Any rational jury could infer discrimination from medical evidence proffered by plaintiff.

SUMMARY OF PETITION

The 2nd circuit court of appeals err and did not consider the "extraordinary circumstances" which would have allowed new facts and evidence that Gorbea offers on appeal. Considering the "extraordinary circumstances" would allow the claims that Gorbea raises for the first time in her appeal, including repeated violations of ADA, Title VII of the Civil Rights Act of 1964, 42 U.S.C.2000e *et seq.*, the interference of Family Medical Leave Act, 29 U.S.C. 2601*et seq.* and *Theft of Wages*.

Gorbea has properly preserved her argument that United States District Judge NICHOLAS LG. GARAUFIIS erred in granting summary judgment to Verizon. He attacked Gorbea's credibility, the credibility of medical evidence of her PTSD and the causal relationship to her hostile unsafe work environment verified by the medical opinions of Verizon's carrier. He did not exercise the power to reject the underlying credibility of Verizon and proximity to the discharge as retaliatory when there is history of disability discrimination. **[SONYA GORBEA v. VERIZONNEW YORK INC., 11-CV-3758 (KAM) (LB)]**

REASON FOR GRANTING THIS PETITION

There are "genuine material facts" and due to "extraordinary circumstances" of incompetent legal representation Gorbea appealed to the US Court of Appeals for the Second Circuit, for

reconsideration. She was not at any time, informed by her attorney, who was supposed but did not file a Rule 56.1 counterstatement and did not conduct any depositions in the course of discovery failing to offer any evidence, on her behalf, to support an inference that Verizon New York Incorporated fired Plaintiff because of her disability, complaints of discrimination and complaints of Theft of wages. Title VII prohibits hostile work environments. The severity of the discrimination Gorbea presented genuine material fact that should be resolved by an unprejudiced jury, not the court.

Gorbea is requesting the US Court of Appeals for the Second Circuit to reconsider the "extraordinary circumstances" and, consider evidence she provided to the courts in her appeal as part of trial record. All factual genuine material medical evidence, Verizon's repeated violations of ADA, Title VII failure to provide reasonable accommodations and engaged in unlawful interference under Family Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq., Gorbea v Verizon history of disability discrimination in The United States District Court Eastern District, considered the nexus for Retaliation, Verizon Breach of their non-disclosure Contract of 2014, discrimination complaints of Deprivation of Due Process, Rights to Employee Retirement Income Security Act and Theft of Wages for engaging in unlawful interference under the Family Medical Leave Act (FMLA), 29 U.S.C. § 2601 et seq.,

interference with privileges of employment, Disability Benefits Plan, Interference in Worker's Compensation and Terminated employment not willing to provide PTSD permanent accommodations. Gorbea argues that she established a prima facie case for disability discrimination, retaliation, Theft of Wages, and a jury could find that she was terminated from her position in retaliation for complaining about the hostile work environment due to disability discrimination.

The Second Circuit must consider total impact on Gorbea of the many episodes of harassment, requests of reasonable accommodations and necessary FIOS training over a decade from 2005 thru 2016 all which prevented Gorbea from doing the essential duties of her job. Under the ADA, a covered employer "shall [not] discriminate against a qualified individual on the basis of disability in regard to . . . terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a) The admissible facts submitted in Gorbea's appealed to the District Court did support the claims and circumstances, which does give rise to an inference of disability discrimination.

The Second Circuit holds that hostile work environment claims are cognizable under the ADA, persuaded by the sister Circuits, which have reasoned that claim for hostile work environment are actionable under the ADA. The ADA and the ADA guidelines recognize two forms of

discrimination: Disparate treatment (based on actual or perceived disability) and Failure to Accommodate. As case law is clear that when the same individuals engage in some harassment that is explicitly discriminatory and some that is not, the entire course of conduct is relevant to a hostile work environment claim. "[A] [d]iscrete ac[t] such as termination, failure to promote, denial of transfer, or refusal to hire," *id.*, at 114, we explained, "'occur[s]' on the day that it 'happen[s].'" "[D]ifferent in kind from discrete acts," we made clear, are "claims ... based on the cumulative effect of individual acts" Hostile work environment claims in that category.

Disparate Treatment includes but not limited to inappropriate sexual comments and conduct, misogynistic toxic workplace, removal of permanent accommodations, denied FIOS on the job training, denied privilege of employment-vacation days, deprivation of protected rights, denied grievance requests to address issues with payroll discrepancies, changes to schedule without my knowledge, disparate treatment, over managing, constant demands to leave Verizon's premise, and failure to accommodate. The question presented was whether a "single event, if extraordinarily severe, could alter the conditions of a working environment." A jury could find "pervasive" harassment that was "offensive" and "degrading" discrimination altered the conditions of Gorbea's employment.

For "months and months" her supervisors did nothing to change the outcome and by denying due process they circumvented Union Collective Bargaining Agreement for such inappropriate conduct considered disparate treatment and hostile environment - hearing these disparaging comments on the job such as "You look good to me," "who's that, why is she here" "you must not know what disability is" "you must be crazy" "why do you keep coming back" "she is a crazy bitch" "who is telling you to come back into this location" "Go Make yourself invisible" "why don't you just kill yourself" "go sit down you stupid bitch" "you should be happy you still have a job you crazy bitch" "fresh meat" "go stuff envelopes inside with the rest of the women" "she will look good in heels". Random men "trying to be nice" attempting to put their hands on her in a manner outside the workplace codes of conduct coupled with stress of no recourse for their misconduct. **Case law 09-1306-cv Pucino v. Verizon Communications** finds similar evidence of hostility towards women field technicians. For her safety, a reasonable request on the job for her PTSD her support dog. Verizon had not (1) exercised reasonable care to prevent and correct any disability-harassing behavior; and (2) Gorbear reasonably took advantage of any preventative or corrective opportunities provided by Verizon to avoid harm." I.E request reasonable accommodations escort/support dog, necessary medical leave to better manage symptoms from

emotional, mental, and physical health treatments.

All of which gives rise to a strong inference that Gorbea's workplace conditions had been materially altered. "A hostile work environment is one in which "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" (Forrest v Jewish Guild for the Blind, 3 NY3d 295, 310 [2004], quoting Harris v Forklift Sys., Inc., 510 US 17, 21 [1993]; see Matter of New York State Dept. of Correctional Servs. v State Div. of Human Rights, 28 AD3d 906, 906-907 [2006].

September 14, 2015 - December 31, 2015, Everyday Verizon told Gorbea to go home, "there is no light duty" and she was placed on administrative hold inside the garage (see **20-3486 brief App 74**). Verizon violation of the resolution settlement from 2014 permanent reasonable accommodations to work as an outside Field Technician triggering symptoms of Gorbea's PTSD a reasonable request of her support dog for her safety.

January 1, 2016-April 11, 2016, on the few days Verizon decided to honor the 2014 permanent reasonable accommodations, she was given and completed all job assignments "performing the essentials duties of her job" with an escort for

safety.

On April 11, 2016, an acute exacerbation of PTSD her requested medical leave was denied due to Verizon's manipulations of change in schedules without Gorbea's knowledge or consent, and July 1, 2016, she returned to work.

July 1, 2016-August 8, 2016, once again the Administration told Gorbea to go home and placed holds each morning which prevented dispatch of work assignments outside. Each day was more intimidating, degrading, and very condescending because Gorbea was subjected to inappropriate conduct in a work environment conducive to mental and physical health abuse with no recourse. Again, a reasonable accommodation request for her support dog for her safety.

January 2016 - August 2016, she was to service only the Copper lines for Government, Business, and residential customers. The Copper Lines were not properly maintained, grossly neglected, and had irate/hostile customers. Her work ethics and productivity are impeccable, proven "otherwise qualified" "to perform the essential duties of her job" (**see brief App 107,108**) with an escort for safety. As a woman in this male dominated field, Verizon has failed to allow her the equal opportunity to earn the same wages as her Male counterparts from 1997-2016. Verizon continued to Bypass Gorbea necessary FIOS on the job training

or issue tools to "perform the essential functions of her job" outside in the field from 2007-2016 an equal opportunity for growth in the company. She was strong to stand up to these men every day who refused to correct the daily administrative scheduling issues preventing dispatching of job assignments and necessary training to qualify for FIOS 2016, but it continued to trigger her PTSD.

The facts are matters on record. **April 11, 2016, and August 8, 2016**, requested necessary medical leave to treat PTSD and Verizon falsified medical leave request FMLA denied providing reasonable accommodations when needed.

From August 9, 2016, to December 29, 2016, Verizon never addressed Gorbea's 2014 permanent reasonable accommodations/PTSD accommodations. Verizon subsequently issued a personal letter without official company letterhead (form of harassment) as Gorbea termination letter (**see brief App 107**).

The disinformation/cover-up between Verizon's private insurance carriers, and Workers' Compensation Board is pervasive, unfair deceptive practices triggering deprivation of protected pay, due process and leads to termination. This common unfair practice of Verizon N.Y. INC. "Absence Control Plan" led to the EEOC class action lawsuit charges. (**DMd, No 1-110cv-01832-JKB**). Gorbea was informed that the manager and her local CWA union will take care

of her absence, they "dropped the ball" they never did. Gorbea was not aware of any new policies.

Verizon disputed credible medical findings and deprived Gorbea of her protected property of disability benefits and wages. They violated Gorbea's right to **due process** on the job (**see brief App18-22**).

The duty to provide reasonable accommodation is an ongoing one which fueled Verizon's Hostility towards Gorbea's safe return to work. Reasonable accommodation extends to all limitations resulting from a disability. Employees with disabilities need time off work for surgery, therapy, recovery, rest, or ongoing medical treatment. Treatment and recuperation do not always permit exact timetables and Gorbea did provide periodic updates on her condition. There were unforeseen medical developments where Gorbea could not provide a fixed date of return, and Verizon determined not to provide an accommodation for PTSD instead they terminated her employment. Verizon cannot claim undue hardship solely because an employee can provide only an approximate date of return.

Another discriminatory animus the denial for her medical leave, Facts of Material Evidence 2016 unpaid medical leave and retaliatory discharge which constitutes deprivation of property interest triggering due process when suffering a financial

loss and no recourse to maintain a normal salary, 3/4 salary or half pay. Verizon has intentionally caused undue hardship for Gorbea. In 2016 Verizon 1) falsified records to interfere with medical leave and 2) did not approve necessary medical leave triggering unpaid days nor an accommodation for PTSD/Depression. The Due Process Clause is violated when a claimant is deprived of a protected liberty or property interest without adequate process. See *Ciambrello v. Cty. of Nassau*, 292F.3d 307, 313 (2d Cir. 2002).

A procedural due process claim requires the plaintiff to establish (1) possession by the plaintiff of a protected liberty or property interest, and (2) deprivation of that interest without constitutionally adequate process. See *O'Connor v. Pierson*, 426 F. 3d 187, 195-96 (2d Cir. 2005). Under the Circuit's precedents, an employee who is placed on unpaid leave has been deprived of a protected property interest, but "an employee who is on leave and receiving his normal salary" has not. (*O'Connor*, 426F.3d at 199)

A court must consider "the totality of the circumstances, including: the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with the victim's [job] performance." "Although the victim must subjectively perceive the conduct as abusive, the misconduct shown also must be "severe or pervasive enough to

create an objectively hostile or abusive work environment." *Id.* at 374 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993))." A plaintiff, to prevail, need not recount each and every instance of abuse to show pervasiveness. In *Torres v. Pisano*, 116 F.3d 625 (2d Cir. 1997) The focuses on both objective and subjective hostility: "A work environment will be considered hostile if a reasonable person would have found it to be so and if the plaintiff subjectively so perceived it." *Brennan v. Metro. Opera Ass'n*, 192 F.3d 310, 318 (2d Cir.1999) Gorbea has introduced a preponderance of discrimination evidence and issues of material facts to be on record, which should be resolved by a jury, not the court.

Gorbea does show discriminatory incidents that were "sufficiently continuous and concerted to have altered the conditions of [the employee's] working environment." 2nd circuit must consider total impact on Gorbea of the many episodes of harassment over the course over a decade from 2005 thru 2016. Gorbea filing unsafe workplace complaints against Verizon did constitute discriminatory actions on similar grounds. Gorbea's claims raise disputed issues of material fact—as to whether the abusive comments of which Gorbea complained were material facts sufficiently pervasive or chronic conduct constituting consciously discriminatory animus. Gorbea claim of wage theft more than any discriminatory animus.

Not providing reasonable accommodations on the job and not approving medical leave for Gorbea's PTSD is the discriminatory animus. The job abandonment is Pretext for termination, Verizon New York Incorporated common deceptive but unfair practice. Verizon has no incentive to stop this deceptive business practice because it has proven over time to significantly reduce payroll, where its profits over employees with ADA covered disabilities. This pattern is replicated throughout the NYS Worker's Compensation Board as they are aware of the 1000's+ employees injured on the job and are not accommodated on the job. **(I.E. Fios Technician Anthony England, and Gorbea (see brief App 137,138) (see brief App 140,141.)**

September - December 2015, returned to work, with permanent reasonable accommodations for this reassignment into a FIOS FIELD OPERATION at 638-44 W132nd, New York N. Y., she reported to work every morning with the reasonable expectation of an escort for safety, the necessary FIOS/on-the-job training to qualify for any advancement within the group as a FIOS Technician in FIOS Field Operations. Without FIOS training it "prevents her from performing the essential duties of the job." She wanted the opportunity to earn equal wages without disability discrimination as the other technicians similar situated. This non- diversified administrative office, all men "Good Ole Boys Club" misogynistic culture made her stay inside the administrative offices (a violation of the 2014 resolution). Gave her a

number to call for any accommodations and brought in an ergonomic chair. Her reasonable request was an escort or her support dog for safety.

Relevant circumstances include: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris, 510 U.S. at 23.

In the present procedural context, Gorbea's hostile work environment proffer sufficient evidence is Objective & Subjective Hostility. A hostile work environment, the emphasis is on the hostility of the work environment as a whole, not the motivation of one decision maker, and liability is "determined only by looking at all the circumstances." Gorbea does show merely that discriminatory incidents were "sufficiently continuous and concerted to have altered the conditions of [the employee's] working environment." "Although the victim must subjectively perceive the conduct as abusive, the misconduct shown also must be "severe or pervasive enough to create an objectively hostile or abusive work environment." *Id.* at 374 [quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)]."

In establishing this element, a plaintiff need not show that her hostile working environment was both severe and pervasive; only that it was sufficiently severe or sufficiently pervasive, or a

sufficient combination of these elements, to have altered her working conditions. See *Terry v. Ashcroft*, 336 F.3d 128, 148-49 (2d Cir.22 2003); see also *Brennan*, 192 F.3d at 318 ("[A] plaintiff must still prove that the incidents were 'sufficiently continuous and concerted' to be considered pervasive, or that a single episode is 'severe enough' to establish a hostile working environment.") The 2nd Circuit considers the totality of circumstances. In assessing the "totality of the circumstances" offered to prove a hostile work environment, a factfinder may consider only abusive conduct proven to be "based on sex." *Alfano v. Costello*,

Any rational juror could find the treatment of Gorbea-Plaintiff to be sufficiently severe or sufficiently pervasive to alter the conditions of her employment. Similar situated field technician Pucino offered evidence showing that Verizon subjected women to disparately harsh working conditions. (09-1306-cv Pucino v. Verizon Communications) Relevant circumstances include: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23.

NYSHRL and NYCHRL Claims

The district court should not have granted summary judgement to Verizon on Gorbea's ADA,

NYSHRL, and NYCHRL claims because she does satisfy "the essential functions of the job," shows up for work ready, willing, and able with reasonable accommodations. Verizon pervasive and deceptive unfair practices triggering deprivation of protected pay procedural due process, unpaid medical leave termination and is common practice on the job for Verizon disabled employee's that is well settled. (DMd, No 1-110cv-01832-JKB)

Gorbea's ADA, NYSHRL, and NYCHRL failure to accommodate claim is a matter of law. Verizon's benign neglect of 'Absence Control Plan' (which is well settled to be permeated with unfair disability discrimination practices case law EEOC v. Verizon (DMd, No 1-11-cv-01832-JKB)), caused toxic hostility in the workplace. The facts are Gorbea arrived to work ready, willing, and able but for Verizon's refusal to reasonable accommodations and demanded her to leave the premises. Verizon's benign neglect of their duty of care for Gorbea's mental health crisis in itself is unsafe, intentional for the exploitation of her medical disability used to silence her, as there is a stigma with mental health patients.

This Claim establishes a prima facie case of disability discrimination presenting evidence that (1) Verizon is subject to the ADA, NYSHRL and NYCHRL; (2) Gorbea has "PTSD"; (3) Verizon was aware of her disability; (4) Gorbea was qualified for her job; (5) Gorbea could perform the essential

functions of her job with a reasonable accommodation; and (6) Gorbea was subject to an adverse employment action because of her disability "New York State disability discrimination claims are governed by the same legal standards as federal ADA claims." Jones, 2020 WL 1550582, at *9 (collecting cases). And while "courts must analyze NYCHRL claims separately and independently from any federal and state law claims, a plaintiff bringing a claim under the NYCHRL must still show that the conduct complained of is caused by a discriminatory motive." *Id.*; see also *Ya-Chen Chen v. City Univ. of New York*, 805 F.3d 59, 75-76 (2d Cir. 2015).

Standard of Review Qualified Disability Under ADA.

A "qualified individual" is "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). "Discrimination in violation of the ADA includes, inter alia, 'not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability.'" *McBride v. BIC Consumer Products Mfg. Co., Inc.*, 583 F.3d 92, 96 (2d Cir. 2009) (quoting 42 U.S.C. § 12112(b)(5)(A)). Under the ADA, the term "disability" means: "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(1).

As evidence of Gorbea's qualifications, Charlie Olveras, Charles Hankins, James Herring, Kim Marshall, Steven Bledsoe, Anthony England and Charissa Brown, all field technicians in Manhattan, as a ride along for safety reasons and vice a versa, witness Gorbea work assignments. Charissa Brown also documents her work time that could corroborate dates and times assigned together, for safety reasons, specifically April 11, 2016.

The preponderance of documents supplied by Gorbea, also Verizon's policies, shows their discriminatory policies in which Gorbea has asserted safety on the job with Verizon management, Labor Union CWA, National Labor Relations Board, EEOC, Worker's Compensation Board and Verizon has zero incentive to stop discriminatory practices (**see brief App 83-89**). Gorbea ask this Court to recognize Verizon blatant disregard for accountability to their employees.

Verizon's decision to fire Gorbea was intentional and influenced by discrimination contrary to (**doc 72-1-page 7 ln1,2**) Discriminatory animus, an adverse employment action: deprivation of protected property wages and disability benefits, unpaid medical leave; 2016 she received warning for not leaving Verizon's premise and her Termination preventing her from entering the premise. The termination was **intentional** and close proximity of her PTSD disability complaints listed below:

July 9, 2016, On July 8, 2016, Gorbea was scheduled at the "Top of the Overtime List for July 9, 2016," as agreed with manager Chris Pagan. He verified I was scheduled to work on July 9, 2016. When I arrived at work on July 9, 2016, ready and willing to perform my duties with reasonable accommodations, a discussion took place with John Ryan who said, "what was I doing here, who told you to come into work"? He also referred to my daily documentation of my work time which reflect administrative issues that occurred every morning. I explained that Chris Pagan said I was scheduled to work. John Ryan, Manager, was adamant, disrespectful and told me to go home because I was not scheduled to work. He then accused me of trespassing and threatened to get me removed by police. This unexpected change of the work schedule and how it was handled by John Ryan triggered anxiety, panic attack, asthma, possible seizures all manifestations of the PTSD symptoms, Gorbea feared for her life. The manager called for an ambulance.

Upon subpoena the record of the 911 call could be admissible evidence showing what he said when reporting the medical emergency. The EMT arrived and approached me without oxygen. EMT staff had to rolled me out of the premise into the ambulance. I was incapacitated and unresponsive due to medical condition. Verizon protocol requires a manager accompany any

employee that needs medical treatment while on work premises. No one accompanied Gorbea as per Verizon protocol. After Gorbea received the necessary oxygen, she panicked frightened for her life, not in her right state of mind, suffering with a bout of acute PTSD, she left the ambulance and drove anxiously home.

But for the unexpected continued intentional schedule changes from September 2014 to July 2016 causing confusion and the spiraling of the PTSD symptoms, progression, and instability would not have occurred causing Gorbea to be exposed to an unhealthy work environment, especially April 12, 2016, & July 9, 2016.

July 29, 2016, she filed EEOC for retaliation, falsified records interfered with FMLA disability benefits (**see brief App 49-53**).

August 2, 2016, - Gorbea files a PTSD claim WCB (G1654114), for compensation benefits for the denied medical leave starting April 12, 2016.

August 3, 2016, Gorbea followed up with Verizon's EAP documenting the discrimination, retaliation, and not honoring reasonable accommodations (**see brief App 54**).

August 4, 2016, as retaliation for the submission of her WCB claim, Verizon management resurfaced the already resolved

events from July 9, 2016, and Ms. Gorbea was punished with a written warning for insubordination for the manifestation of disability on that day due to her inability to leave the premise of her own capacity, caused by an asthma and panic attack (**see brief Appx55**).

August 09, 2016, due to the culmination of the on-the-job series of events. Gorbea filed PTSD WCB (G2146472) benefits/wages and benefits/wages issued by Verizon's carrier, both were denied. CWA grievance with Verizon managers regarding unwarranted adverse employment action handed down on August 4, 2016 (**see brief App 60-65**).

August 24, 2016, and September 7, 2016, Verizon sent letters notifying that the short-term disability claim was denied. Gorbea responded to each letter requesting a reasonable accommodation PTSD from Verizon.

September 14, 2016, Gorbea responded to Verizon letter and sent a signed Authorization to Release Information for medical information from Yandria Melon, LCSW of Verizon EAP, to speak with treating psychiatrist, Dr. Ashraf El-Shafei and Laura Hussian, therapist to assist with a plan to return to work with permanent reasonable accommodations (**see brief App 16,17,70, 71**).

On October 4, 2016, Gorbea's union grievance complaints about Verizon's non-compliance with

ADA reasonable accommodations and request for FMLA, she submitted Grievance C16-1253 Denial of Benefits, documenting Verizon would not accommodate her in the workplace due to her permanent restrictions "In 2015 it was a blanket No" (**see Brief App 16, 17, 72, 72a, 73, 74**). The grievance documents the fact that Verizon adheres to an "**Unwritten rule of 'No Light Duty Policy'**" which led to many months of interference with the opportunity to perform the essential function necessary for a field technician with her permanent reasonable accommodations. This conflicts with the original agreement settled in 2014.

November 3, 2016, Gorbea emails HR with complaints managers lied and theft of company time (**see brief App 96-97**).

November 7, 2016, Gorbea files claim with the National Labor Relations Board. Case numbers - 02-CA-187895 and 02-CB-187875 (**see brief App 86-91**).

December 7, 2016, affidavit from NLRB (**see brief App 103**). Plaintiff does allege that she requested a reasonable accommodation for medical leave from Verizon between August 9, 2016, and December 29, 2016. Gorbea responded to a Verizon letter dated Dec. 16, 2016, furnishing them with notice from her Treating neurologist Dr Perel requesting for medical leave for Fibromyalgia 32

Dec.19, 2016 (**see brief App 104**) and Dr. Ashraf El-shafei (**see brief App105,106**). Despite acknowledging receipt of the medical evidence for qualified disabilities Verizon communicated, whereas,

Verizon failed to offer permanent accommodations in light of all the medical evidence, and instead terminated employment on December 29, 2016 (**see brief App107**).

Therefore, from August 9, 2016, to December 29, 2016, without the requested reasonable accommodations for PTSD, Gorbea could not return to work safe at Verizon in any capacity. "In any [disability discrimination] case where the need for a reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job." N.Y.C Admin. Code & 8-107(15)(b) This is not the case, for Gorbea could return to work with reasonable accommodation. Verizon never addressed and refused to provide Gorbea with PTSD permanent reasonable accommodation. THIS SHOULD NOT IN ANY WAY BE CONSIDERED JOB ABANDONMENT as Verizon proffered pretext.

Similar situated Fios Technician Anthony England will testify Verizon also terminated him due to disability. His termination letter was on official company

letterhead (see brief App 137,138) Gorbea termination letter was a personal letter without official company letterhead (form of harassment) (see brief App 107). He was reinstated but Gorbea was not. Discriminatory animus targeting employees with permanent medical conditions whereas accommodations were not given to similar situated employees. List of Witnesses, Lisa Tilley, Kendal Moultrie, and Anthony England all were terminated due to disability and not provided reasonable accommodations. Verizon offers their employees disability retirement, but they terminated Gorbea, as well as access to her vested pension. She does have serious concerns upon her death; her family would have to deal with Verizon similar to case law in the second circuit case 18-1591 Sullivan-Mestecky v. Verizon.

The injustices and inequities further disenfranchised Gorbea as Verizon's Administrative hold and failure to provide reasonable accommodations for PTSD, prevented her from performing her essential duties of a field technician further causing injury to Gorbea. Their agenda to discharge is retaliatory. Termination of employment is intentionally to prevent her from entering the workplace. Alternatively, an employee fighting for her safety in the workplace for an equal opportunity as her rights were grossly violated. The record before the district court should be accepted as "extraordinary circumstances" as genuine material evidence does reflect that Gorbea could perform the essential functions of her position with a reasonable

accommodation.

The preponderance of medical evidence, including carriers medical opinions unanimous conclude a causal relationship to PTSD and

Depression and Verizon's actions in the workplace as the stigma associated with mental health patients does create additional issues for Gorbea's creditability. Gorbea Life Matters! She followed every policy and protocol Verizon has in place to seek treatment for her mental health crisis, but Verizon terminated her employment on false grounds of abandonment. She has yet to abandon her position and her request for reasonable accommodations for her PTSD for her safe return. If her employer for 25 years would not provide accommodations, then who would? She remains unemployable with a termination on her record and must be made whole.

CONCLUSION

I, therefore, respectfully ask that this Court reverse the judgment of the District Court with a finding of fact in favor of Gorbea. In the alternative, the court should remand the case for a fair and impartial trial before an unprejudiced jury on proper evidence and under correct instructions as it is just and proper. Amen God Bless!

Respectfully Submitted,

Sonya Gorbea