

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Gloria Hill

(Your Name)

— PETITIONER

VS.

Life Line Screening RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Santa Clara

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: \_\_\_\_\_, or \_\_\_\_\_

a copy of the order of appointment is appended.

Gloria Hill

(Signature)

RECEIVED

APR - 9 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Gloria Hill, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 6,500	\$ _____	\$ 6,500	\$ _____
Self-employment	\$ _____	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____	\$ _____	\$ _____
Gifts	\$ _____	\$ _____	\$ _____	\$ _____
Alimony	\$ _____	\$ _____	\$ _____	\$ _____
Child Support	\$ _____	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ 6,500	\$ _____	\$ 6,500	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
MDIS	3505 S CONSON	1/2021 -	\$ 2,000 -
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ 500 -

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
CHECKING	\$ 100 -	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home  
Value \_\_\_\_\_

Other real estate  
Value \_\_\_\_\_

Motor Vehicle #1  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_

Motor Vehicle #2  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_

Other assets  
Description \_\_\_\_\_  
Value \_\_\_\_\_

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>500-</u>	\$ _____
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u>	\$ _____
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ _____
Food	\$ <u>50</u>	\$ _____
Clothing	\$ <u>0</u>	\$ _____
Laundry and dry-cleaning	\$ <u>0</u>	\$ _____
Medical and dental expenses	\$ <u>0</u>	\$ _____

	<b>You</b>	<b>Your spouse</b>
Transportation (not including motor vehicle payments)	\$ <u>6</u>	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ <u>200</u>	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle	\$ <u>520</u>	\$ _____
Credit card(s)	\$ <u>200</u>	\$ _____
Department store(s)	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
<b>Total monthly expenses:</b>	<b>\$ _____</b>	<b>\$ _____</b>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes  No If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form?  Yes  No

If yes, how much? \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes  No

If yes, how much? \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

RECENTLY BROKE LEG NOT WORKING OR RECEIVING DISABILITY BENEFITS.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: MARCH 18, 2024

blma phill  
(Signature)

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IN THE  
Supreme Court of the United States

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GLORIA E. HILL,

*Petitioners,*

*v.*

LIFE LINE SCREEENING OF AMERCIA, LLC,

*Respondent.*

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*ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT*

---

**PETITION FOR A WRIT OF CERTIORARI**

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**GLORIA E. HILL**

**PETITIONER PRO SE**

**PO BOX 1585**

**Gilroy, CA 95021**

(i)

**QUESTION PRESENTED**

When an individual petitions to the U.S. Court of Appeals to review a final decision of a district court, Rule 40 of the Federal Rules of Appellate Procedure (FRAP) provides that the petition must be filed within a 14-day period. In the decision below, the Circuit Court has relied on settled circuit precedent of strictly enforcing the limitation period despite recent opinions from other Circuits that consider similar filing to be nonjurisdictional.

The question presented is whether the 14-day period given in Rule 40 of the Federal Rules of Appellate Procedure jurisdiction.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Gloria Hill respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

### **OPINIONS BELOW**

The decision of the United States Court of Appeals for the Eighth Circuit, which is the subject of the petition filed June 07, 2022, is attached herewith as Appendix A. The Appeals Court's cover letter of the June 07, 2022, decision is attached as Appendix B. The District Court of Nebraska's judgment that denied the Petitioner relief is attached as Appendix C.

In addition, the Memorandum and Order of the initial review by the District Court of Nebraska is attached as Appendix D. Appendix E is the Memorandum and Order of the second review by the District Court of Nebraska. EEOC's information related to filing suit under the laws enforced by the EEOC is attached as Appendix F.

### **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. §1254(1), which grants it authority to review decisions of the United States Courts of Appeal by certiorari. The Court of Appeals denied relief to the Petitioner through its judgement entered on June 7<sup>th</sup>, 2022. In this decision, the Court of Appeals denied the Petitioner's appeal for lack of jurisdiction from the decision given by the District Court of Nebraska on May 6<sup>th</sup>, 2022. The Petitioner is filing a writ of certiorari to challenge the decision of the Court of Appeals.

### **STATUTORY PROVISIONS INVOLVED**

The case involves FRAP 40 of the Federal Rules of Appellate Procedure, which requires any petition for rehearing to be filed within 14 days after entry of judgment. Furthermore the case involves claims under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e to 2000e-17 (Westlaw 2021); the Nebraska Fair Employment Practice Act (“NFEPA”), Neb. Rev. Stat. §§ 48-1101 to 48-1125 (Westlaw 2021); the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 to 634 (Westlaw 2021); the Nebraska Age Discrimination in Employment Act (“NADEA”), Neb. Rev. Stat. §§ 48-1001, *et seq.* (Westlaw 2021); and the Americans With Disabilities Act (“ADA”), 42 U.S.C. §§ 12112 to 12117 (Westlaw 2021).

#### **STATEMENT OF THE CASE**

Petitioner is a 55-year-old Hispanic, Christian woman with a disability and a record of disability. She worked as an ultrasound technician at her employer’s Omaha, Nebraska, location from May 14, 2018, to the date of her termination on April 25, 2019, and her performance was satisfactory during that time. She was harassed and treated poorly by coworkers and a manager due to her age, national origin, and religion, after which Petitioner complained to her employer twice. One of her coworkers harassed her on a daily basis by talking to others about Petitioner and purposely losing Petitioner’s paperwork. Petitioner claims that a manager would talk to other coworkers about Petitioner in a voice loud enough that patients could hear and allege her of not knowing the protocol. After the Petitioner complained about this treatment, she received a bonus that was half as much as was promised.

Petitioner states that she was injured on the job on March 22, 2019, resulting in a doctor’s order that she could not lift more than 10 pounds, avoid standing for long periods of time, and not load and unload the van. Petitioner “requested and received medical leave as a reasonable accommodation” after her injury. She returned to work from medical leave on April 24, 2019, after her employer verified her doctor’s restrictions. Petitioner claims she was then terminated the next day for the purported reason that she “was not a good fit.” Finally, Petitioner alleges that her employer refused to give her a paycheck for the one day

she worked after returning from medical leave and for the “remainder of [her] Paid Time Off leave,” claiming that the amount allegedly owed to Petitioner “went to deductions and they did not owe [Petitioner] anything.”

Petitioner’s former employer has also failed to send her a letter she requested six times in order to “take the state boards for a Registered Vascular Technician.” Petitioner complains that because of her national origin, religion, age, and disability, her employer unlawfully terminated her, failed to promote her, subjected her to unequal terms and conditions of employment, and retaliated against her, and that her employer failed to accommodate her disability. Petitioner makes her claims under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e to 2000e-17 (Westlaw 2021); the Nebraska Fair Employment Practice Act (“NFEPA”), Neb. Rev. Stat. §§ 48-1101 to 48-1125 (Westlaw 2021); the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 to 634 (Westlaw 2021); the Nebraska Age Discrimination in Employment Act (“NADEA”), Neb. Rev. Stat. §§ 48-1001, *et seq.* (Westlaw 2021); and the Americans With Disabilities Act (“ADA”), 42 U.S.C. §§ 12112 to 12117 (Westlaw 2021).

After initial review of Petitioner’s Complaint to determine whether summary dismissal was appropriate under 28 U.S.C. § 1915(e)(2), the court decided that

- (1) Petitioner’s retaliation claims under the ADA, Title VII, the NFEPA, the ADEA, and the NADEA may proceed to service of process against Defendant Life Line Screening of America, LLC;
- (2) Petitioner must file an amended complaint with additional facts if she wished to proceed with claims for national-origin or religious discrimination, disability discrimination, and age discrimination; and
- (3) Defendants Michaelle L. Baumert and the Nebraska Equal Employment Opportunity Commission would be dismissed from this action without prejudice.

Later on, the Court dismissed the Petitioner's claims. The Petitioner appealed to the United States Court of Appeals for The Eighth Circuit. The Circuit Court dismissed the appeals on groups of lack of jurisdiction. The Court rules that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. This court strictly enforces the 14-day period. No grace period for mailing is granted for pro-se-filed petitions.

## **REASONS FOR GRANTING WRIT**

### **I. The Jurisdictional Character of Rule 40 of the FRAP is an important issue of Federal Law**

The Appeals Court's jurisdictional characterization as per Rule 40 of the FRAP is an important issue warranting the Court's review because it blindsides disable individuals, often pro se, who understand deadlines to be subject to flexibility. Disable individuals from a racial background that is subject to a higher chance of discrimination. They are already susceptible to the exploitative segments of society and are to be protected by this court to a greater extent.

Thus, the jurisdictional treatment of Rule 40 of the FRAP has the tendency to impact a number of people considering getting a panel review on the judgement of the District Court. The provision has a material impact on whether an individual can exercise their right to appeal as provided in the law in a case in which the decision of the court has affected them adversely.

Rule 40 of the Federal Rules of Appellate Procedure (FRAP) should not be construed as jurisdictional and should not serve as a sole basis for summarily dismissing cases due to timeliness. To support this contention, it's crucial to draw from a range of case law and legal principles that emphasize the evolving view of procedural rules as non-jurisdictional.

First and foremost, *Arbaugh v. Y & H Corp.* (2006) remains a seminal case in this context. In *Arbaugh*, the Supreme Court held that time limits, including those associated with procedural rules, should not be considered jurisdictional unless there is clear and unmistakable congressional intent to make them so. This decision established a presumption against classifying rules as jurisdictional unless Congress explicitly states otherwise, and it highlighted the need for clarity in legislative intent to treat rules as jurisdictional. This principle directly applies to Rule 40 of the FRAP, reinforcing the argument that its time requirements should not be elevated to jurisdictional status.

Moreover, in recent years, the Supreme Court has consistently emphasized the importance of differentiating between rules that govern the procedures for filing appeals and rules that pertain to the court's authority to hear a case. In *Sebelius v. Auburn Regional Medical Center* (2012), the Court reiterated the importance of congressional intent and clear legislative language when it comes to establishing jurisdictional rules. This underscores that procedural rules, like Rule 40, should not be deemed jurisdictional without a compelling legislative mandate.

*Keed Elsevier, Inc. v. Muchnick* (2010) further reinforces the argument against characterizing Rule 40 as jurisdictional. In this case, the Supreme Court reiterated that not all rules containing time limits should automatically be deemed jurisdictional. The Court highlighted that rules should be classified as jurisdictional only if Congress has expressly intended them to be so. This notion aligns with the assertion that Rule 40 should not be treated as jurisdictional, given the absence of such express congressional intent.

The principle established in *Bowles v. Russell* (2007) also merits consideration. This case clarified that exceptions might exist even when a rule has a strict time limit, provided that certain facts, such as equitable tolling, warrant leniency. This legal precedent underscores the need for flexibility in applying procedural rules, especially when faced with unique circumstances like those involving disabled individuals who may face undue hardships in adhering to strict timelines.

In conclusion, the legal landscape, as outlined through relevant case law, indicates that the characterization of Rule 40 as jurisdictional is neither warranted nor appropriate. The principle established in Arbaugh, the differentiation between procedural and jurisdictional rules emphasized in Sebelius and Reed Elsevier, and the potential for exceptions such as equitable tolling underscore the need for a more flexible and equitable approach. This approach ensures that appeals, particularly those involving disabled individuals from marginalized racial backgrounds, are not unjustly dismissed due to procedural technicalities but instead receive the fair consideration they deserve.

**II. The Appeals Court has erred in applying the standard of review necessary in the case at hand**

It is settled law within the United States that pleadings filed by a pro se plaintiff are to be construed liberally and must be subject to a less stringent standard than pleadings drafted by qualified lawyers.

“When [a] plaintiff proceeds *pro se*, . . . a court is obliged to construe his pleadings liberally.” *McEachin v. McGuinnis*, 357 F.3d 197, 200 (2d Cir. 2004) (citing *Weinstein v. Albright*, 261 F.3d 127, 132 (2d Cir. 2001)). The Supreme Court has also observed that “a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 127 S.Ct. 2197, 2200, 161 L.Ed.2d 1081 (2007) (per curiam) (internal quotation marks omitted). This is particularly so when the *pro se* plaintiff alleges that her civil rights have been violated. See *McEachin*, 357 F.3d at 200.

Accordingly, the “dismissal of a *pro se* claim as insufficiently pleaded is appropriate only in the most unsustainable of cases.” *Boykin v. KeyCorp*, 521 F.3d 202, 216 (2d Cir. 2008). The legal precedent set by relevant case law underscores the importance of taking a less stringent view towards the appellant for missing a deadline, given her *pro se* status. As established by the Second Circuit in *McEachin v. McGuinnis* (2004) and reaffirmed in *Boykin v. KeyCorp* (2008), the courts are obligated to construe pleadings filed by

pro se litigants hoerally. This obligation stems from the recognition that pro se litigants, without the benefit of legal counsel, may lack the legal expertise and resources available to qualified attorneys. This principle is particularly significant when the pro se litigant alleges that her civil rights have been violated, as highlighted in McEachin (2004).

ERICKSON v. FARDUS (2007), as cited in the previous response, firmly establishes that "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." This is not a mere suggestion but a fundamental legal principle that underscores the necessity of applying leniency and flexibility when evaluating the pleadings and actions of pro se litigants. It serves to ensure that individuals who are representing themselves are not unfairly disadvantaged and that they have a fair opportunity to present their cases in court.

In the case of the appellant, who contends that she was terminated from her job due to her disability, this legal precedent becomes highly relevant. Her pro se status, combined with the serious nature of the allegations concerning civil rights violations, makes it essential for the court to adopt a compassionate and understanding approach. The court should recognize that her lack of legal acumen or resources available to retain professional representation might have contributed to any missed deadlines.

This adherence to established case law, with the knowledge that "dismissal of a pro se claim as insufficiently pleaded is appropriate only in the most unsustainable of cases" (Boykin v. KeyCorp, 2008), reinforces the imperative of erring on the side of caution when dealing with pro se litigants. It reflects the idea that their pleadings and actions should not be judged by the same rigorous standards as those of experienced attorneys. The overarching goal is to ensure that individuals, regardless of their legal expertise or financial resources, can have their claims heard and receive a fair opportunity to seek redress when they believe their rights have been violated.

THE SUM, THE APPLICATION OF THE ESTABLISHED CASE LAW PRINCIPLES EMPHASIZING INTEGRITY TOWARDS PRO SE litigants is not just a matter of preference; it is a legal obligation rooted in the pursuit of justice and fairness within the legal system. IN CASES INVOLVING CIVIL RIGHTS VIOLATIONS AND PRO SE litigants, THIS OBLIGATION TAKES ON heightened significance, as it underscores the essential need for equitable access to justice, irrespective of one's legal background or financial means. BY UPHOLDING THESE PRINCIPLES, THE COURT ENSURES THAT THE APPELLANT'S RIGHTS ARE PROTECTED, AND THAT THE INTEGRITY OF THE LEGAL SYSTEM IS MAINTAINED.

**III. THE CASE CONCERNING THE VIOLATION OF FUNDAMENTAL RIGHTS AND OF PUBLIC IMPORTANCE, PROVIDED THAT THEY MUST BE PROTECTED.**

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments.

THE II OF THE AMERICANS WITH DISABILITIES ACT, MANDATES THAT PEOPLE WITH DISABILITIES SHALL NOT BE DENIED ACCESS TO COURT FACILITIES AND PROGRAMS BECAUSE OF THEIR DISABILITY. THE CASE AT HAND UNQUESTIONABLY CONCERNES THE VIOLATION OF FUNDAMENTAL RIGHTS AND IS UNDOUBTLY OF PUBLIC IMPORTANCE. IN A SOCIETY THAT PLACES PARAMOUNT IMPORTANCE ON INCLUSIVENESS AND NON-DISCRIMINATION, THE DISMISSAL OF AN INDIVIDUAL FROM THEIR EMPLOYMENT DUE TO A DISABILITY IS A MATTER THAT STRIKES AT THE VERY CORE OF OUR SHARED VALUES. IT UNDERSCORES THE NECESSITY OF SAFEGUARDING THE FUNDAMENTAL RIGHTS OF ALL CITIZENS, REGARDLESS OF THEIR PHYSICAL OR MENTAL CONDITIONS, AND THE IMPORTANCE OF UPHOLDING THE PRINCIPLES OF EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION IN THE WORKPLACE. SUCH CASES ARE EMBLEMATIC OF BROADER ISSUES THAT IMPACT NOT ONLY THE INDIVIDUALS DIRECTLY INVOLVED BUT ALSO HAVE WIDER IMPLICATIONS FOR THE GENERAL PUBLIC, AS THEY EXEMPLIFY THE BROADER STRUGGLE TO CREATE AN EQUITABLE AND JUST SOCIETY WHERE THE RIGHTS AND DIGNITY OF EVERY INDIVIDUAL ARE UPHELD AND PROTECTED.

~~THIS CASE SERVES AS A DIRENDAR TESTIMONIAL OF THE INTEGRITY OF THE PROGRESS WE HAVE MADE IN SECURING THE RIGHTS OF INDIVIDUALS WITH DISABILITIES. THE AMERICANS WITH DISABILITIES ACT (ADA) AND OTHER LEGISLATIVE MEASURES WERE UNDERTAKEN SPECIFICALLY TO PREVENT SUCH INCIDENTS AND TO GUARANTEE EQUAL EMPLOYMENT OPPORTUNITIES. THUS, THE ALLEGED FIRING OF THIS INDIVIDUAL DUE TO HER DISABILITY RAISES A CRUCIAL QUESTION: WHETHER THE LEGAL SAFEGUARDS IN PLACE ARE BOTH EFFECTIVELY ENFORCED AND WHETHER THEY ARE SUFFICIENT TO ADDRESS THE ONGOING CHALLENGES INDIVIDUALS WITH DISABILITIES FACE IN THE WORKPLACE. IT IS IN THIS CONTEXT THAT THE CASE CAN BE SEEN AS A CRUCIAL TEST FOR THE EFFECTIVENESS OF EXISTING ANTI-DISCRIMINATION LAWS. AND AS SUCH, IT IMPLIES THE WIDER PUBLIC PARTIES INVOLVED, AFFECTING THE BROADER PUBLIC WHO RELY ON THESE LEGAL PROTECTIONS.~~

~~THEMATIC PUBLIC IMPORTANCE DERIVES FROM THE PROFOUND EFFECT OF SUCH CASES, AS THEY INFLUENCE THE PERCEIVED AND ATTITUDES OF SOCIETY AT LARGE. IN A DIVERSE AND DYNAMIC NATION LIKE THE UNITED STATES, THE OUTCOME OF THIS CASE WILL HAVE FAR-REACHING IMPLICATIONS, SHAPING THE EXPECTATIONS OF INDIVIDUALS WITH DISABILITIES AND THE BEHAVIOR OF EMPLOYERS. A FAVORABLE RESOLUTION CAN REINFORCE THE BELIEF IN EQUAL OPPORTUNITY AND INSPIRE OTHERS TO SEEK JUSTICE WHEN THEY FACE DISCRIMINATION. CONVERSELY, A NEGATIVE OUTCOME COULD FOSTER A SENSE OF DISILLUSIONMENT AND PERPETUATE DISCRIMINATORY PRACTICES, AFFECTING NOT ONLY THE IMMEDIATE PARTIES BUT ALSO PERPETUATING SYSTEMIC INJUSTICES THAT HAVE FAR-REACHING IMPLICATIONS FOR SOCIETY AS A WHOLE.~~

~~THE CASE INVOLVING THE DISMISSAL OF AN INDIVIDUAL WITH A DISABILITY, WHO CONTENTS THAT HER TERMINATION WAS DUE TO HER DISABILITY, ENCAPSULATES A BROADER NARRATIVE THAT TOUCHES UPON THE FUNDAMENTAL RIGHTS AND PUBLIC IMPORTANCE OF CREATING AN INCLUSIVE, NON-DISCRIMINATORY SOCIETY. THE LEGAL PROCEEDINGS AND EVENTUAL OUTCOME IN THIS CASE WILL UNDOUBTEDLY SET A PRECEDENT AND SEND A RESOUNDING MESSAGE ABOUT OUR COMMITMENT TO PROTECTING THE RIGHTS AND DIGNITY OF ALL INDIVIDUALS, PARTICULARLY THOSE WHO ARE MOST VULNERABLE. IT IS A CASE THAT DEMANDS OUR COLLECTIVE ATTENTION AND UNDERSCORES THE VITAL IMPORTANCE OF SAFEGUARDING THE RIGHTS OF ALL CITIZENS, IN THE PURSUIT OF A MORE EQUITABLE AND JUST SOCIETY FOR EVERYONE.~~

## Conclusion

THE PETITIONER PRESENTS THESE ARGUMENTS AND STIPULATIONS AS STATED, THE PETITIONER FURTHERMORE requests this Honorable Court to grant certiorari in this case. The issue at hand revolves around the jurisdictional characterization of Rule 40 of the Federal Rules of Appellate Procedure to test its constitutionality, whether it should be construed as jurisdictional and serve as a sole basis for the summary dismissal of cases due to untimeliness.

THE PETITIONER CONSIDERS THAT, IN ACCORDANCE WITH THE PRINCIPLES ESTABLISHED IN *SAUBER v. U.S.* (2006), *Sebelius v. Auburn Regional Medical Center* (2012), *Reed Elsevier, Inc. v. Muchnick* (2010), and *Dowling v. Russell* (2007), Rule 40 of the F.R.A. SHOULD NOT BE CONSIDERED JURISDICTIONAL. THESE CASES UNDERSCORE the evolving view of procedural rules as non-jurisdictional and emphasize the necessity of clear congressional intent to establish rules as jurisdictional.

MOREOVER, THE PETITIONER AGREES THAT THE JURISDICTIONAL CHARACTERIZATION OF RULE 40 HAS FAR-REACHING implications for access to justice, particularly for disabled individuals, many of whom may be representing themselves pro se. THIS CHARACTERIZATION MAY UNDUE DISADVANTAGE THOSE, ESPECIALLY DISADVANTAGED INDIVIDUALS appeals. The Petitioner also stresses the disproportionate impact on disabled individuals from marginalized racial backgrounds who already face numerous challenges and vulnerabilities in society.

THE PETITIONER BELIEVES THAT BY GRANTING CERTIORARI AND PROVIDING CLARITY ON THE JURISDICTIONAL STATUS OF RULE 40, THIS HONORABLE COURT HAS THE OPPORTUNITY TO NOT ONLY CLARIFY AN IMPORTANT PROCEDURAL MATTER BUT ALSO TO SUCERVARD THE PRINCIPLES OF FAIRNESS, EQUALITY, AND ACCESS TO JUSTICE. IN REVIEWING THIS CASE, THE COURT CAN affirm its commitment to ensuring that justice is not denied due to procedural technicalities and remains accessible to all, irrespective of their circumstances.

FOR THESE REASONS, AND IN THE INTEREST OF UPHOLDING THE INTEGRITY OF THE FEDERAL SYSTEM AND THE PRINCIPLES OF JUSTICE, THE PETITIONER HUMBLY REQUESTS THIS HONORABLE COURT TO GRANT THE WRIT OF CERTIORARI AND CONSIDER THE MERITS OF THE CASE.

Respectfully Submitted,

Gloria E. Hill

Petitioner Pro Se

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 22-2187

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Gloria Hill

Plaintiff - Appellant

v.

Life Line Screening of America, LLC

Defendant - Appellee

Michaelle L. Baumert; Nebraska Equal Employment Opportunity Commission

Defendants

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Appeal from U.S. District Court for the District of Nebraska - Omaha  
(8:21-cv-00161-JMG)

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**JUDGMENT**

Before GRUENDER, KELLY, and STRAS, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction.

June 07, 2022

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

---

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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No: 22-2187

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**Appendix A**

Appellate Court of the United States Court  
of Appeals for the Eighth Circuit

**06/07/2022**

Michaelle L. Baumert, Nebraska Equal Employment Opportunity Commission

Defendants

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Appeal from U.S. District Court for the District of Nebraska - Omaha  
(8:21-cv-00161-JMG)

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**JUDGMENT**

Before GRUENDER, KELLY, and STRAS, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and  
orders that this appeal be dismissed for lack of jurisdiction.

June 07, 2022

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**Cover letter of Decision of the  
United States Court of Appeals  
the Eighth Circuit**

**06/07/2022**

United States Court of Appeals

*For The Eighth Circuit*

Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24329

St. Louis, Missouri 63102

Michael E. Gans  
*Clerk of Court*

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June 07, 2022

Ms. Gloria Hill  
P.O. Box 1585  
Gilroy, CA 95021

RE: 22-2187 Gloria Hill v. Life Line Screening of America

Dear Ms. Hill:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. [REDACTED] petitions. A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

Michael E. Gans  
Clerk of Court

BNW

Enclosure(s)

cc: Ms. Michaelle L. Baumert  
Mr. Quinn Robert Eaton  
Ms. Denise M. Lucks

District Court/Agency Case Number(s): 8:21-cv-00161-JMG

**United States District Court for the**

**Eastern District of Michigan**

**04/06/2022**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

GLORIA E. HILL,

Plaintiff,

8:21-CV-161

vs.

LIFE LINE SCREENING OF  
AMERICA, LLC,

Defendant.

JUDGMENT

For the reasons stated in the Court's memorandum and order of September 27, 2021 (filing 13), memorandum and order of February 7, 2022 (filing 17), and the accompanying memorandum and order, the plaintiff's claims are dismissed.

Dated this 6th day of April, 2022.

BY THE COURT:

  
John M. Gerrard  
United States District Judge

**Memorandum and Order of the**

~~THE HONORABLE JUDGE~~

**District Court for the District of**

~~the District of Columbia~~

**09/27/2021**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

GLORIA HILL,

Plaintiff,

vs.

LIFE LINE SCREENING OF  
AMERICA, LLC, MICHAELLE L.  
BAUMERT, and NEBRASKA EQUAL  
EMPLOYMENT OPPORTUNITY  
COMMISSION,

Defendants.

**8:21CV161**

**MEMORANDUM  
AND ORDER**

Plaintiff, a non-prisoner, has been given leave to proceed in forma pauperis. (Filing 11.) The court now conducts an initial review of Plaintiff's claims to determine whether summary dismissal is appropriate under 28 U.S.C. § 1915(e)(2).

**I. SUMMARY OF COMPLAINT**

Plaintiff alleges that she is a 55-year-old Hispanic, Christian woman with a disability and a record of disability. She claims she worked as an ultrasound technician at her employer's Omaha, Nebraska, location from May 14, 2018, to the date of her termination on April 25, 2019, and her performance was satisfactory during that time. Plaintiff alleges that she was "harassed" or "treated poorly" by coworkers and a manager due to her age, national origin, and religion, after which Plaintiff complained (presumably to her employer) twice. Plaintiff states that one of her coworkers harassed her on a daily basis by talking to others about Plaintiff and purposely losing Plaintiff's paperwork. Plaintiff claims that a manager told Plaintiff she was doing things wrong and did not know protocol, as well as talked to other coworkers about Plaintiff in a voice loud enough that patients could hear. After

Plaintiff complained about this treatment, she received a bonus that was half as much as was promised. (Filing 1 at CM/ECF p. 6.)

Plaintiff alleges that she was injured on the job on March 22, 2019, resulting in a doctor's order that she not lift more than 10 pounds, avoid standing for long periods of time, and not load and unload the van.<sup>1</sup> Plaintiff "requested and received medical leave as a reasonable accommodation" after her injury. (Filing 1 at CM/ECF p. 6.) She returned to work from medical leave on April 24, 2019, after her employer verified her doctor's restrictions. Plaintiff claims she was then terminated the next day for the purported reason that she "was not a good fit." (Filing 1 at CM/ECF p. 6.)

Finally, Plaintiff alleges that her employer refused to give her a paycheck for the one day she worked after returning from medical leave and for the "remainder of [her] Paid Time Off leave," claiming that the amount allegedly owed to Plaintiff "went to deductions and they did not owe [Plaintiff] anything." Plaintiff's former employer has also failed to send her a letter she requested six times in order to "take the state boards for a Registered Vascular Technician." (Filing 1 at CM/ECF p. 6.)

Plaintiff complains that because of her national origin, religion, age, and disability, her employer unlawfully terminated her, failed to promote her, subjected her to unequal terms and conditions of employment, and retaliated against her, and that her employer failed to accommodate her disability. Plaintiff makes her claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e to 2000e-17 (Westlaw 2021); the Nebraska Fair Employment Practice Act ("NFEPA"), Neb. Rev. Stat. §§ 48-1101 to 48-1125 (Westlaw 2021); the Age Discrimination in

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<sup>1</sup> In one part of Plaintiff's Complaint, she alleges that her disability or perceived disability is: "Doctor advised me not to lift above 50lbs due to backache." (Filing 1 at CM/ECF p. 4.) In another part of her Complaint, Plaintiff says she was placed on "limited duty" by her doctor, consisting of "not lifting more than 10 pounds, not standing for long periods of time, and I was unable to load and unload the van." (Filing 1 at CM/ECF p. 6.)

Employment Act (“ADEA”), 29 U.S.C. §§ 621 to 634 (Westlaw 2021); the Nebraska Age Discrimination in Employment Act (“NADEA”), Neb. Rev. Stat. §§ 48-1001, *et seq.* (Westlaw 2021); and the Americans With Disabilities Act (“ADA”), 42 U.S.C. §§ 12112 to 12117 (Westlaw 2021).

## II. STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. *See* 28 U.S.C. § 1915(e). The court must dismiss a complaint or any portion of it that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

Pro se plaintiffs must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569-70 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”).

“The essential function of a complaint under the Federal Rules of Civil Procedure is to give the opposing party fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved.” *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014) (internal quotation marks and citations omitted). However, “[a] pro se complaint must be liberally construed, and pro se litigants are held to a lesser pleading standard than other parties.” *Topchian*, 760 F.3d at 849 (internal quotation marks and citations omitted).

### III. DISCUSSION

#### A. Exhaustion of Administrative Remedies

To pursue discrimination and retaliation claims under Title VII, the ADA, and the ADEA, a plaintiff must exhaust all administrative remedies. To accomplish this, a plaintiff must seek relief through the Equal Employment Opportunity Commission (“EEOC”) or the Nebraska Equal Opportunity Commission (“NEOC”). 42 U.S.C. § 2000e-5(f)(1) (Title VII); 42 U.S.C. § 12117(a) (stating that the remedies and procedures set forth in Title VII, including those pertaining to exhaustion, apply to disability discrimination claims under the ADA); *Parisi v. Boeing Co.*, 400 F.3d 583, 585 (8th Cir. 2005) (“Exhaustion of administrative remedies is a condition precedent to the filing of an action under the ADEA in federal court.”). The EEOC/NEOC will then investigate the charge and determine whether to file suit on behalf of the charging party or make a determination of no reasonable cause. If the EEOC/NEOC determines that there is no reasonable cause, the agency will then issue the charging party a right-to-sue notice. 42 U.S.C. § 2000e-5(f)(1). In Title VII and ADA cases, the charging party has 90 days from the receipt of the right-to-sue notice to file a civil complaint based on her charge. 42 U.S.C. § 2000e-5(f)(1).

Here, the right-to-sue letter attached to the Complaint is dated November 16, 2020. (Filing 1 at CM/ECF p. 9.) The Complaint alleges that Plaintiff received the right-to-sue letter on November 22, 2020. (Filing 1 at CM/ECF p. 7.) She had 90 days from her receipt of the letter—or until February 22, 2021<sup>2</sup>—to file a lawsuit under Title VII and the ADA. It appears she did so, as Plaintiff has attached to her Complaint letters from the Douglas County District Court dated February 23, 2021, and March 4, 2021, indicating that Plaintiff twice attempted to file her Complaint entitled “United States District Court” in that court, but she was directed to either send them to the [REDACTED] (Filing 1 at CM/ECF

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<sup>2</sup> Ninety days from November 22, 2020, was actually February 20, 2021, which was a Saturday. The next business day was February 23, 2021.

pp. 12-13.) For purposes of this initial review only, I shall assume Plaintiff exhausted her administrative remedies. Whether such exhaustion actually occurred is an issue that can be raised during motion practice should service of process eventually be ordered.

**B. Proper Defendants**

The Defendants in this case include Michaelle L. Baumert, a lawyer at the Jackson Lewis law firm in Omaha, Nebraska, and the Nebraska Equal Employment Opportunity Commission. Because the federal laws under which Plaintiff seeks to bring her claims apply to the actions of "employers," and because Defendants Michaelle L. Baumert and the Nebraska Equal Employment Opportunity Commission are not alleged to be Plaintiff's employers, these Defendants will be dismissed from this action. *Powell v. Yellow Book USA, Inc.*, 445 F.3d 1074, 1079 (8th Cir. 2006) ("Title VII addresses the conduct of employers only"); *Coleman v. Jass*, No. 8:13CV82, 2013 WL 4041860, at \*2 (D. Neb. Aug. 8, 2013) (coworkers and supervisors may not be held personally liable under ADEA because ADEA authorizes suits against "employers"; collecting cases); *Smith v. PayPal, Inc.*, No. 8:12CV226, 2013 WL 2444032, at \*8 (D. Neb. June 4, 2013) (NADEA's express terms limit liability to "employers"); 42 U.S.C. § 12111(2) (the ADA only applies to employers, employment agencies, labor organizations, and joint labor-management committees); Neb. Rev. Stat. § 48-1104 (the NFEPA prohibits "employers" from committing unlawful employment practices).

**C. National-Origin & Religious Discrimination (Title VII/NFEPA)**

Title VII makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Discrimination claims arising under the NFEPA are analyzed in the same manner as discrimination claims arising under Title VII. See *Edwards v. Hiland Roberts Dairy, Co.*, 860 F.3d 1121, 1124 n.3 (8th Cir. 2017).

Plaintiff alleges she was discriminated against based on her national origin and religion. Discrimination “because of” one’s national origin or religion within the meaning of 42 U.S.C. § 2000e-2(a)(1) means that “a particular outcome would not have happened ‘but for’ the purported cause”—which here is Plaintiff’s national origin and religion. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1739 (2020). “When it comes to Title VII, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some *other* factor that contributed to its challenged employment decision. So long as the plaintiff’s [national origin or religion] was one but-for cause of that decision, that is enough to trigger the law.” *Id.*

The court looks to the elements of a prima facie case of discrimination in assessing whether Plaintiff has pled enough facts to make entitlement to relief plausible. To state a prima facie claim of discrimination, Plaintiff must allege facts showing that (1) she is a member of a protected class; (2) she met her employer’s legitimate expectations; (3) she suffered an adverse employment action; and (4) the circumstances give rise to an inference of intentional discrimination. *Pye v. Nu Aire, Inc.*, 641 F.3d 1011, 1019 (8th Cir. 2011); *see also Lucke v. Solsvig*, 912 F.3d 1084, 1087 (8th Cir. 2019); *Tyler v. University of Arkansas Board of Trustees*, 628 F.3d 980, 990 (8th Cir. 2011).

Here, Plaintiff alleges that she is Hispanic and Christian—protected classes—and she was terminated from her employment—an adverse employment action. Plaintiff alleges that her performance was satisfactory during her term of employment, but she also alleges that a manager told Plaintiff she was doing things wrong and did not know protocol, indicating that she was *not* meeting her employer’s legitimate expectations. Further, Plaintiff simply declares that she was discriminated against because of her national origin and religion, but alleges no facts giving rise to an inference that such factors were a but-for cause of her termination. *Iqbal*, 556 U.S. at 678 (“A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement.”

(internal quotation marks and citation omitted)). Therefore, Plaintiff has failed to state a national-origin or religious-discrimination claim upon which relief can be granted. However, the court will permit Plaintiff to amend her Complaint to make such factual allegations, if they exist.

#### D. Disability Discrimination (ADA/NFEPA)

Plaintiff also alleges that she was discriminated against based on her disability. The ADA prohibits discrimination “against a qualified individual on the basis of disability.” 42 U.S.C. § 12112(a). A “qualified individual” must be able to perform the essential functions of the employment position, with or without reasonable accommodation. 42 U.S.C. § 12111(8). “Disability” under the ADA means that the individual (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment. See 42 U.S.C. § 12102(1); 29 C.F.R. § 1630.2(g)(2). “An individual may establish coverage under any one or more of these three prongs of the definition of disability. . . .” 29 C.F.R. § 1630.2(g)(2).

As is relevant to this case, a “physical impairment” is a “physiological disorder or condition . . . affecting one or more body systems, such as neurological [or] musculoskeletal . . .” 29 C.F.R. § 1630.2(h)(1). “Major life activities” include, but are not limited to, “performing manual tasks . . . standing, . . . lifting, . . . and working . . .” 29 C.F.R. § 1630.2(i)(1)(i). “Major” is “not [to] be interpreted strictly to create a demanding standard for disability.” 29 C.F.R. § 1630.2(i)(2). Whether a physical impairment “substantially limits” a major life activity is to “be construed broadly in favor of expansive coverage . . . ‘Substantially limits’ is not meant to be a demanding standard.” 29 C.F.R. § 1630.2(j)(1)(i). “An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.” 29 C.F.R. § 1630.2(j)(1)(ii). Deciding “whether an impairment

‘substantially limits’ a major life activity should not demand extensive analysis”; requires an “individualized assessment”; and requires applying a lower standard than that applied to the phrase “substantially limits” prior to the enactment of the ADA Amendments Act of 2008.<sup>3</sup> 29 C.F.R. § 1630.2(j)(1)(iii, iv). Finally, “[t]he effects of an impairment lasting or expected to last fewer than six months can be substantially limiting” within the meaning of the ADA. 29 C.F.R. § 1630.2(j)(1)(ix).

The NFEPA makes it an unlawful employment practice for an employer to “discharge[] or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment[] because of such individual’s . . . disability . . . .” Neb. Rev. Stat. § 48-1104. “The disability discrimination provision[s] in the NFEPA are patterned after the ADA, and the statutory definitions of ‘disability’ and ‘qualified individual with a disability’ contained in the NFEPA are virtually identical to the definitions of the ADA.” *Ryan v. Capital Contractors, Inc.*, 679 F.3d 772, 777 n.3 (8th Cir. 2012) (internal quotation marks and citation omitted); *Morriess v. BNSF Ry. Co.*, 817 F.3d 1104, 1106 n.2 (8th Cir. 2016); see Neb. Rev. Stat. §§ 48-1102(9) & (10).

As noted above, in one part of Plaintiff’s Complaint, she alleges that her disability or perceived disability is that her “Doctor advised me not to lift above 50lbs due to backache.” (Filing 1 at CM/ECF p. 4.) In another part of her Complaint, Plaintiff says that after she was “injured on the job” on March 22, 2019, she was placed on “limited duty” by her doctor, consisting of “not lifting more than 10 pounds, not standing for long periods of time, and I was unable to load and unload the van.” (Filing 1 at CM/ECF p. 6.) According to Plaintiff, she “requested and received medical leave as a reasonable accommodation” after her injury, and she returned to work on April 24, 2019. (*Id.*) However, she was terminated from her job

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<sup>3</sup> The ADA Amendments Act of 2008, which broadened the definition of a “disability,” became effective January 1, 2009. See ADA Amendments Act of 2008, Pub. L. No. 110-325, § 8, 122 Stat. 3553, 3559 (2008).

one day later for the purported reason that she “was not a good fit.” (*Id.*) She also claims she was not paid for one day of work after she returned from medical leave and for her “Paid Time Off.”

To establish a claim of discrimination under the ADA, a plaintiff must demonstrate that she (1) “was disabled within the meaning of the ADA; (2) that [she] was qualified to perform the essential functions of the job with or without a reasonable accommodation; and (3) a causal connection between an adverse employment action and the disability.” *Evans v. Coop. Response Ctr., Inc.*, 996 F.3d 539, 545 (8th Cir. 2021) (internal quotation marks and citation omitted).

Liberally construed, Plaintiff plausibly alleges facts indicating that she had a disability within the meaning of the ADA (a back injury/condition that affected her musculoskeletal system and substantially limited her ability to perform manual tasks, stand, lift, carry, and work); she received a reasonable accommodation for such disability (a month of medical leave); and she was discriminated against for having a disability or for taking advantage of the accommodation by being terminated from her job within one day of returning from such leave.

However, Plaintiff has not alleged that she was qualified to perform the essential functions of her job with or without a reasonable accommodation. The two-part test for determining whether an individual is “qualified” within the meaning of the ADA are (1) “whether the individual possesses the requisite skills, education, certification or experience necessary for the job” and (2) “whether the individual can, despite [her] impairments, perform the essential functions of the job either with or without reasonable accommodation,” with essential functions being “the fundamental job duties of the employment position.” *Moses v. Dassault Falcon Jet-Wilmington Corp.*, 894 F.3d 911, 923 (8th Cir. 2018) (internal quotation marks and citations omitted). Here, because Plaintiff performed her job for almost one year before being terminated, her allegations allow an inference that she possessed the necessary skills, educations, certification, and experience to perform her job. However, Plaintiff has not alleged facts sufficient to satisfy the second element—

that is, whether her physician's limitations still applied after she returned to work and whether, when she returned from medical leave, she could perform the essential functions of her job with those limitations. *Lipp v. Cargill Meat Solutions Corp.*, 911 F.3d 537, 546 (8th Cir. 2018) ("an employee invoking ADA protection must show she can perform her essential job functions *at the time of her termination*" (internal quotation marks and citation omitted; emphasis in original)).

The Plaintiff will be given leave to amend her Complaint to allege facts showing that she was able to perform the essential functions of her job, with or without reasonable accommodation, at the time of her termination.

#### **E. Age Discrimination (ADEA/NADEA)**

Plaintiff asserts an age-discrimination claim under the ADEA and the Nebraska ADEA. The ADEA protects individuals over 40 years of age and prohibits an employer from failing or refusing to hire, discharging, or otherwise discriminating against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual's age. 29 U.S.C. § 623(a); *Anderson v. Durham D & M, L.L.C.*, 606 F.3d 513, 523 (8th Cir. 2010). "[T]he Nebraska ADEA is so closely patterned after the federal ADEA that Nebraska courts look to federal law when deciding Nebraska ADEA claims." *Starkey v. Amber Enterprises, Inc.*, 987 F.3d 758, 765 (8th Cir. 2021).

The court looks to the elements of a prima facie case of discrimination in assessing whether Plaintiff has pled enough facts to make entitlement to relief plausible. To set forth a prima facie claim of age discrimination, a plaintiff must establish that (1) she is over 40 years of age; (2) she met the applicable job qualifications; (3) she suffered an adverse employment action; and (4) similarly situated employees outside the class were treated more favorably. *Anderson*, 606 F.3d at 523; *see also Faulkner v. Douglas Cty. Nebraska*, 906 F.3d 728, 734 (8th Cir. 2018). Under the ADEA, "age must be the 'but-for' cause of the employer's

decision.” *Tusing v. Des Moines Indep. Cmty. Sch. Dist.*, 639 F.3d 507, 516 (8th Cir. 2011).

Plaintiff alleges that she is over 40 years of age and that she suffered adverse employment actions in the form of a reduced bonus, refusal to pay earned compensation, and termination. She broadly declares that these adverse actions were due in part to her age. By virtue of the fact that Plaintiff performed her job for almost one year before being terminated, her allegations also allow an inference that she met the applicable job qualifications. However, Plaintiff fails to allege facts indicating that employees in similar circumstances who were under 40 years of age were treated more favorably—i.e., employees with similar medical restrictions received full bonuses, were not deprived of earned compensation, and were not terminated. *See Faulkner*, 906 F.3d at 734 (comparator in age-discrimination case was not similarly situated because comparator was released by her physicians with no restrictions, unlike the plaintiff, who had several lifting, pushing, pulling, and overhead-work restrictions).

The Plaintiff will be given leave to amend her Complaint to allege facts showing that similarly situated employees who were under 40 years of age were treated more favorably.

#### **F. Retaliation (all Acts)**

The ADA, Title VII, the NFEPA, the ADEA, and the NADEA prohibit retaliation. 42 U.S.C. § 12203(a) (prohibiting discrimination (i.e. retaliation) because an individual “has opposed any act or practice made unlawful by” the ADA or “made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under” the ADA); 42 U.S.C. § 2000e-3(a) (prohibiting discrimination (i.e. retaliation) because an employee or applicant “has opposed any practice made an unlawful employment practice by” Title VII or “has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under” Title VII); Neb. Rev. Stat. § 48-1114(1) (it is unlawful

for an employer to discriminate (i.e. retaliate) against an employee because she has “opposed any practice made an unlawful employment practice by the [NFEPA]” or “has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the [NFEPA] . . . .”); 29 U.S.C. § 623(d) (ADEA); Neb. Rev. Stat. § 48-1004(4) (NADEA).

To establish a prima facie case of retaliation under these acts, a plaintiff must show “(1) that he or she engaged in statutorily protected activity; (2) an adverse employment action was taken against him or her; and (3) a causal connection exists between the two events.” *Blackwell v. Alliant Techsystems, Inc.*, 822 F.3d 431, 436 (8th Cir. 2016) (internal quotation omitted) (Title VII retaliation); *Moses v. Dassault Falcon Jet-Wilmington Corp.*, 894 F.3d 911, 924 (8th Cir. 2018) (ADA); *Knapp v. Ruser*, 901 N.W.2d 31, 48 (Neb. 2017) (NFEPA).

Plaintiff alleges that because she requested and took medical leave as a reasonable accommodation for her back injury, her employer terminated her from her employment within a day of returning from such leave, and her employer also failed to pay her compensation she previously earned. This sufficiently alleges a retaliation claim under the ADA and the NFEPA, although solely relying on the temporal proximity between Plaintiff taking medical leave and her termination may ultimately prove inadequate to prove causation. *Lors v. Dean*, 746 F.3d 857, 865 (8th Cir. 2014) (temporal proximity between protected conduct and adverse action must be “very close” for timing alone to support finding of causation for retaliation under ADA); *Hill v. Walker*, 737 F.3d 1209, 1219 (8th Cir. 2013) (ten days between state employee’s letter requesting that supervisor “respect” her medical leave time and employee’s termination was insufficient, standing alone, to raise inference of causation, as would support prima facie case of retaliation under ADA); *Kirkeberg v. Canadian Pac. Ry.*, 619 F.3d 898, 908 (8th Cir. 2010) (requesting reasonable accommodation is protected activity under ADA). After initial review of Plaintiff’s amended complaint, Plaintiff’s ADA/NFEPA retaliation claim may proceed to service of process along with any other viable claims.

Plaintiff's Complaint also states that before her termination, she "complained" about her coworkers harassing her due to her age, national origin, and religion; she "filed a harassment complaint" with the regional operations leader about one of her coworkers; and she "informed . . . via email" the regional operations leader of her experience with a clinical manager who told Plaintiff she was doing things wrong and didn't know protocol and talked about Plaintiff to other employees. (Filing 1 at CM/ECF p. 6.) Very liberally construed, and for purposes of initial review only, these complaints to management opposing harassment based on Plaintiff's age, national origin, and religion consist of "protected conduct" under Title VII and the ADEA. *Wallace v. Interbake Foods, LLC*, 973 F. Supp. 2d 1067, 1081 (D.S.D. 2013) ("Complaints to management or objections to harassment can be protected conduct."); *Van Horn v. Specialized Support Servs., Inc.*, 241 F. Supp. 2d 994, 1010 (S.D. Iowa 2003) ("An employee is privileged to oppose workplace discrimination both by the filing of formal charges and by informal action including making informal complaints to management . . . ."); "There is no question that [Plaintiff's] repeated complaints to [her employer] about the conduct of her client constituted protected activity" for purposes of Title VII).

Further, Plaintiff alleges that she suffered the adverse employment actions of termination and reduced compensation after this protected activity and that her complaints (along with her use of medical leave) caused these adverse actions. Like Plaintiff's ADA retaliation claim discussed above, I conclude that these allegations, although sparse, sufficiently allege a retaliation claim under Title VII, the ADEA, and companion Nebraska acts, although solely relying on the temporal proximity between Plaintiff complaining to her employer and her termination and reduction of pay may ultimately prove inadequate to prove causation. After initial review of Plaintiff's amended complaint, Plaintiff's Title VII, NFEPA, ADEA, and NADEA retaliation claims may proceed to service of process along with any other viable claims.

#### IV. CONCLUSION

For purposes of initial review only, Plaintiff's Complaint states retaliation claims under the ADA, Title VII, the NFEPA, the ADEA, and the NADEA. However, Plaintiff's Complaint fails to state a plausible claim for relief for national-origin or religious discrimination, disability discrimination, and age discrimination. The court on its own motion will grant Plaintiff leave to file an amended complaint that sufficiently alleges discrimination claims upon which relief may be granted. If Plaintiff fails to file an amended complaint in accordance with this Memorandum and Order, Plaintiff's discrimination claims will be dismissed without prejudice, and Plaintiff's retaliation claims will proceed to service of process.

#### IT IS ORDERED:

1. Defendants Michaelle L. Baumert and the Nebraska Equal Employment Opportunity Commission are dismissed without prejudice, and such parties shall no longer be parties to this action.
2. Plaintiff's Complaint states retaliation claims under the ADA, Title VII, the NFEPA, the ADEA, and the NADEA. However, Plaintiff's Complaint fails to state plausible claims for relief for national-origin or religious discrimination, disability discrimination, and age discrimination. Plaintiff shall have 30 days to file an amended complaint in accordance with this Memorandum and Order. Failure to file an amended complaint within the time specified by the court will result in the dismissal of Plaintiff's discrimination claims without prejudice, and Plaintiff's retaliation claims will proceed to service of process.
3. Plaintiff's amended complaint shall consist of relevant allegations from her original Complaint (Filing 1) and any new allegations. Failure to consolidate all claims into one document may result in the abandonment of claims. Plaintiff is warned that an amended complaint will supersede, not supplement, her prior pleadings.

4. The court reserves the right to conduct further review of Plaintiff's claims pursuant to 28 U.S.C. § 1915(e) in the event she files an amended complaint.

5. The Clerk of the Court is directed to set a pro se case management deadline using the following text: October 27, 2021—amended complaint due.

6. Plaintiff shall keep the court informed of her current address at all times while this case is pending. Failure to do so may result in dismissal without further notice.

DATED this 27th day of September, 2021.

BY THE COURT:

*Richard G. Kopf*  
Richard G. Kopf  
Senior United States District Judge

APPENDIX E

**Memorandum and Order of the  
Second review by United States  
District Court for the District of**

*Reback*

**02/07/2022**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

GLORIA HILL,

Plaintiff,

vs.

LIFE LINE SCREENING OF  
AMERICA, LLC,

Defendant.

**8:21CV161**

**MEMORANDUM  
AND ORDER**

Plaintiff, a non-prisoner, has been given leave to proceed in forma pauperis. (Filing 11.) After initial review of Plaintiff's Complaint to determine whether summary dismissal was appropriate under 28 U.S.C. § 1915(e)(2), the court decided that (1) Plaintiff's retaliation claims under the ADA<sup>1</sup>, Title VII<sup>2</sup>, the NFEPA<sup>3</sup>, the ADEA<sup>4</sup>, and the NADEA<sup>5</sup> may proceed to service of process against Defendant Life Line Screening of America, LLC; (2) Plaintiff must file an amended complaint with additional facts if she wished to proceed with claims for national-origin or religious

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<sup>1</sup> Americans With Disabilities Act, 42 U.S.C. §§ 12112 to 12117 (Westlaw 2022).

<sup>2</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (Westlaw 2022).

<sup>3</sup> Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125 (Westlaw 2022).

<sup>4</sup> Age Discrimination in Employment Act, 29 U.S.C. §§ 621 to 634 (Westlaw 2022).

<sup>5</sup> Nebraska Age Discrimination in Employment Act, Neb. Rev. Stat. §§ 48-1001, *et seq.* (Westlaw 2022).

discrimination, disability discrimination, and age discrimination; and (3) Defendants Michaelle L. Baumert and the Nebraska Equal Employment Opportunity Commission would be dismissed from this action without prejudice. (Filing 13 at CM/ECF p. 14.)

Plaintiff has filed an Amended Complaint (Filing 15), but she has failed to allege any of the facts the court discussed in its initial review as being necessary to state a plausible claim for relief for national-origin or religious discrimination, disability discrimination, and age discrimination. Accordingly,

**IT IS ORDERED:**

1. Plaintiff's retaliation claims under the ADA, Title VII, the NFEPA, the ADEA, and the NADEA may proceed to service of process against Defendant Life Line Screening of America, LLC;
2. Plaintiff's Complaint and Amended Complaint fail to state plausible claims for relief for national-origin or religious discrimination, disability discrimination, and age discrimination, and such claims are dismissed without prejudice.
3. For service of process on Defendant Life Line Screening of America, LLC, the Clerk of Court is directed to complete a summons form and a USM-285 form for such Defendant using the address "Life Line Screening of America, LLC, Attn: Human Resource Director, 901 S. Mopac Expressway, Building 2, Suite 130, Austin, TX 78746" and forward them together with a copy of the Complaint (Filing 1), the Amended Complaint (Filing 15), a copy of this court's previous Memorandum and Order on initial review (Filing 13), and a copy of this Memorandum and Order to the Marshals Service.<sup>6</sup> The Marshals Service shall

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<sup>6</sup> Pro se litigants proceeding in forma pauperis are entitled to rely on service by the United States Marshals Service. *Wright v. First Student, Inc.*, 710 F.3d 782,

serve Defendant **Life Line Screening of America, LLC, at 901 S. Mopac Expressway, Building 2, Suite 130, Austin, TX 78746**. Service may also be accomplished by using any of the following methods: residence, certified mail, or designated delivery service upon any officer, director, managing agent, or registered agent, or by leaving the process at Defendant's registered office with a person employed therein, or by certified mail or designated delivery service to Defendant's registered office. *See Federal Rule of Civil Procedure 4(h); Neb. Rev. Stat. § 25-509.01.*

4. The United States Marshal shall serve all process in this case without prepayment of fees from Plaintiff.

5. Federal Rule of Civil Procedure 4(m) requires service of the complaint on a defendant within 90 days of filing the complaint. However, Plaintiff is granted, on the court's own motion, an extension of time until 90 days from the date of this order to complete service of process. The Clerk of Court shall set a case-management deadline accordingly.

6. Because this non-prisoner case is proceeding to service of process, and at the direction of the court, this case is removed from the pro se docket. The Clerk

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783 (8th Cir. 2013). Pursuant to 28 U.S.C. § 1915(d), in an in forma pauperis case, “[t]he officers of the court shall issue and serve all process, and perform all duties in such cases.” *See Moore v. Jackson*, 123 F.3d 1082, 1085 (8th Cir. 1997) (language in § 1915(d) is compulsory); Fed. R. Civ. P. 4(c)(3) (court must order that service be made by United States Marshal if plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915). *See, e.g., Beyer v. Pulaski County Jail*, 589 Fed. Appx. 798 (8th Cir. 2014) (unpublished) (vacating district court order of dismissal for failure to prosecute and directing district court to order the Marshal to seek defendant’s last-known contact information where plaintiff contended that the jail would have information for defendant’s whereabouts); *Graham v. Satkoski*, 51 F.3d 710, 713 (7th Cir. 1995) (when court instructs Marshal to serve papers for prisoner, prisoner need furnish no more than information necessary to identify defendant; Marshal should be able to ascertain defendant’s current address).

of Court shall randomly assign new judges to this case and shall request a reassignment order from the Chief Judge.

7. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Filing 16) is denied as moot because Plaintiff has already been granted leave to proceed in forma pauperis (Filing 11).

8. Plaintiff shall keep the court informed of her current address at all times while this case is pending. Failure to do so may result in dismissal without further notice.

DATED this 7th day of February, 2022.

BY THE COURT:

*Richard G. Kopf*  
Richard G. Kopf  
Senior United States District Judge

APPENDIX E

**U.S EEOC Information  
Related to Filing Suit**

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Gloria E. Hill**  
**14622 Norman St**  
**Bennington, NE 68007**

From: **St. Louis District Office**  
**1222 Spruce Street**  
**Room 8100**  
**Saint Louis, MO 63103**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(e))**

EEOC Charge No.

EEOC Representative

Telephone No.

32E-2019-00583

**Joseph J. Wilson,**  
**State & Local Program Manager**

(314) 798-1930

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

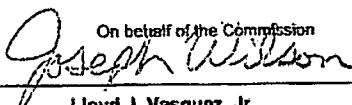
- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

  
On behalf of the Commission  
**Joseph J. Wilson**

Lloyd J. Vasquez, Jr.,  
District Director

November 16, 2020

(Date Mailed)

Enclosures(s)

cc: **LIFE LINE SCREENING OF AMERICA, LLC**  
ATTN: Human Resource Director  
901 S Mopac Expressway  
Building 2, Suite 130  
Austin, TX 78746

**Michael L. Baumert**  
**JACKSON LEWIS**  
10050 Regency Cir Ste 400  
Omaha, NE 68114

## INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),  
the Genetic Information Nondiscrimination Act (GINA), or the Age  
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

**PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

**ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

**ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

**IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.**

**NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA):** The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

**If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).**

**“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):**

- The limitations from the impairment no longer have to be severe or significant for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), “major life activities” now include the operation of major bodily functions, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- Only one major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, the beneficial effects of “mitigating measures” (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) are not considered in determining if the impairment substantially limits a major life activity.
- An impairment that is “episodic” (e.g., epilepsy, depression, multiple sclerosis) or “in remission” (e.g., cancer) is a disability if it would be substantially limiting when active.
- An impairment may be substantially limiting even though it lasts or is expected to last fewer than six months.

**“Regarded as” coverage:**

- An individual can meet the definition of disability if an employment action was taken because of an actual or perceived impairment (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively BOTH transitory (lasting or expected to last six months or less) AND minor.
- A person is not able to bring a failure to accommodate claim if the individual is covered only under the “regarded as” definition of “disability.”

**Note:** *Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).*



4. In 12/2018, I received a bonus but it was not in the amount that the manager, Megan Johnson (non-Hispanic, age late 30's or 40's, no known disability, Christian), told me it was going to be. I was told it would be about \$500 to \$600 but it was only \$300.

5. I was injured on the job on 03/22/2019 while working in Lincoln, NE. I was put on limited duty by my doctor, such as not lifting more than 10 pounds, not standing for long periods of time, and I was unable to load and unload the van.

6. I filed for Worker's Compensation on 3/29/2019 and was on it until I returned to work on 04/23/2019. When I returned to work on April 23, I provided the respondent with the information I got from American Family Urgent Care, which stated when I could go back to work and the requirements of that. I was asked to stay home from work the following day until the respondent could verify my doctor's note.

7. On 04/25/2019 I was terminated by Andy Schneider and Human Resources Representative, Molly Mendoza (national origin unknown, age unknown, disability unknown, religion unknown) via conference call. The reason I was told was because I was not a good fit.

8. I was supposed to receive my last paycheck for the one day I worked after returning from my medical leave on 05/17/2019. The check was also supposed to contain the remainder of my Paid Time Off leave. I confronted HR Representative Mendoza about the check and was told the total amount went to deductions and they did not owe me anything.

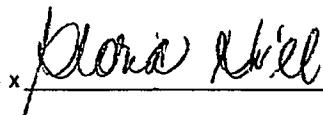
9. On 05/24/2019 I emailed the Clinic Manager, Nathalie Garbani (national origin unknown, age 60's, disability unknown, religion unknown), informing her that I needed a letter so I could take the state boards for a Registered Vascular Technician. I requested the letter about six times from Garbani. Every time I emailed Garbani, Mendoza would intervene and answer for Garbani, saying that she would get the letter to me as soon as she can. As of 06/10/2019 I have still not received it.

10. My performance was satisfactory.

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 phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I swear or affirm that I have read the above and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

  
Gloria E. Hill

State of Nebraska County of Buffalo

On this, the 1 day of July, 2019  
The Complainant appeared before me, known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument, and acknowledged that they executed the same for the purposes therein contained.

Notary Public

Notary Seal



# Printer Status Report

## Product Information

1. Model Name: HP DeskJet 2700 All-in-One Printer series
2. Model Number:
3. Serial Number: CN23LDZJGC
4. Product Number: 26K67A
5. Service ID: 33050
6. Printer Zone (PX): 2
7. Firmware Version: TCP1FN2327DR
8. FW Patch Version: 0
9. Country/Region: 15 / 1
10. Duplexer: Not installed
11. Quiet Mode: Off
12. Printer PIN: 59989740
13. DMR: DE

## Print Usage Information

14. Total Pages Printed: 208
15. Borderless Pages Printed: 0

## Connectivity Settings

16. Network Status: Ready
17. Active Connection Type: Wireless
18. URL: http://192.168.223.1
19. Hostname: HPC37242
20. Admin Password: Set
21. 2024-01-08

## Scan Settings

22. Front Panel Destinations List: 0
23. Scanner Glass Test: Not Run

## Scan Usage Information

24. Pages Scanned: 125

## HP instant ink

25. 50
26. 50
27. 2024-01-08
28. Yes
29. 107
30. 210
31. 208
32. 91
33. 2FKC-ZMMK-85OZ

## Ink Delivery System Information

34. Ink Supply:	Color	Black
35. Estimated Ink Level:	  	
36. Ink Zone:	2	1
37. Status:	0	0
38. HP:	1	1
39. Cartridge	HP Non-Instant Ink	HP instant ink

## Additional Assistance

For more information about changing settings and diagnosing problems, see the user documentation provided with the printer. Or visit the HP Support website ([www.hp.com/support](http://www.hp.com/support)) and enter "DeskJet 2700 series" in the search box.

## Wireless Network Test

To test the wireless setup, press the Wireless\* and the Information\* button at the same time. The printed reports include tips to help solve any problems.

## \*Icon Descriptions

Power



Information



Wireless



Cancel



Resume



No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Gloria Hill — PETITIONER  
(Your Name)

VS.

Life Line Screening — RESPONDENT(S)

PROOF OF SERVICE

I, Gloria Hill, do swear or declare that on this date,  
4-5, 2020, as required by Supreme Court Rule 29 I have  
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*  
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding  
or that party's counsel, and on every other person required to be served, by depositing  
an envelope containing the above documents in the United States mail properly addressed  
to each of them and with first-class postage prepaid, or by delivery to a third-party  
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Life Line Screening 901 S. Mopac, Expwy 130, Bldg 2  
Austin, TX 78746  
Supreme Court of US, 1 First St, Washington, DC  
20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4-4-20, 2020

Gloria Hill  
(Signature)