

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**DONNA KISLEK**, on behalf of  
herself and all others similarly  
situated individuals,

Plaintiff,

CASE NO.

vs.

**QUALITY ENCLOSURES, INC.**,  
a Florida for Profit Corporation, and  
**QUALITY ENCLOSURES  
TEMPERING, INC.**, a Florida for  
profit corporation,

Defendants.

\_\_\_\_\_ /

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, DONNA KISLEK (“Plaintiff” or ”Kislek”), through undersigned counsel, files this Original Complaint and Demand for Jury Trial against Defendants, QUALITY ENCLOSURES, INC., a Florida for profit corporation, and QUALITY ENCLOSURES TEMPERING, INC., a Florida for profit corporation, (collectively “Defendants” or “Quality”), and states as follows:

**PRELIMINARY STATEMENT**

1. In enacting the Family Medical Leave Act, as amended, 29 U.S.C. § 2601, et seq. (“the FMLA”), Congress wished to remedy its finding that employees with serious health conditions have “inadequate job security” when they have to leave work for temporary periods. *See* 29 U.S.C. § 2601(a)(4). The FMLA provides eligible employees, like Kislek, with unpaid, job-protected leave in the event they are suffering from a serious medical condition. 26 U.S.C. § 2612(a)(1). An employee that takes FMLA protected leave is entitled to return to the same position after coming back to work. 29 U.S.C. § 2614(a)(1). Further, the FMLA makes it

unlawful for an employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the FMLA. 29 U.S.C § 2615(a)(1). Likewise, it is unlawful for an employer to discharge or discriminate against any individual for opposing any practice made unlawful under the FMLA. 29 U.S.C. § 2615(a)(2).

2. Donna Kislek suffers from a disability that is also a chronic severe health condition entitling her to benefits under the FMLA. Ms. Kislek made Defendants aware of her condition, her anticipated treatment plan, and her need for leave. Defendant's managers had knowledge of Kislek's exigent request for leave and failed to provide Plaintiff notice of her FMLA rights or to designate Kislek's leave request as FMLA protected leave. Further, with direct and actual knowledge of Plaintiff's medical condition and her need for continuing treatment, Defendants terminated Plaintiff. Ms. Kislek seeks: (i) compensatory damages in whatever amount she is found to be entitled; (ii) liquidated damages in whatever amount she is found to be entitled; (iii) an award of interest, costs and reasonable attorney's fees and expert witness fees; (iv) equitable relief; (v) declaratory relief; (vi) pre-judgment and post-judgment interest (where allowable); and (vii) a jury trial on all issues so triable.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and the FMLA, and has authority to grant declaratory relief under the FMLA and pursuant to 28 U.S.C. § 2201 et seq.

4. Venue properly lies in this judicial district under 28 U.S.C. §1391 because Defendants do business in this judicial district.

### **PARTIES**

5. At all times material to this action, Plaintiff was a resident of Volusia, Florida.

6. At all times material to this action, QUALITY ENCLOSURES, INC., was, and

continues to be a Florida profit corporation.

7. At all times material to this action, QUALITY ENCLOSURES TEMPERING, INC., was, and continues to be a Florida profit corporation.

8. Further, at all times material to this action, Defendants were, and continue to be, engaged in business in Florida, doing business in Sarasota County, Florida.

9. From in or around February 2013 to her termination on or about July 1, 2016, Plaintiff was employed as an office manager working primarily in Defendants' Port Orange location.

10. At all times material to this action, Plaintiff was "engaged in commerce" within the meaning of §6 and §7 of the FLSA.

11. QUALITY ENCLOSURES, INC., is a family owned and operated company. They manufacture and fabricate a complete line of shower and tub enclosures. [www.qualityenclosures.com](http://www.qualityenclosures.com).

12. On information and belief, QUALITY ENCLOSURES TEMPERING, INC., is a wholly owned and integrated subsidiary of QUALITY ENCLOSURES, INC., and operates the tempering facilities of the company at 4421 Eastport Parkway, Port Orange, FL 32127.

13. Plaintiff worked at the Port Orange, Florida tempering facilities.

14. The FMLA defines the term "employer" to broadly include "any person acting directly or indirectly in the interest of an employer in relation to any employee". 29 U.S.C. 2611(4)(ii)(I).

15. Defendants are an employer as defined under the FLMA.

16. "To be 'employed' includes when an employer 'suffer[s] or permit[s] [the employee] to work.'" *See Freeman v. Key Largo Volunteer Fire & Rescue Dept., Inc.*, 494 Fed. Appx. 940, 942 (11<sup>th</sup> Cir. 2012) cert. denied, 134 S.Ct. 62 (U.S. 2013).

17. Defendants employed Plaintiff as an office manager

18. Defendants jointly employed Plaintiff.

19. At all times material to this action Defendants directly or indirectly, jointly or severally, controlled and directed the day to day employment of Plaintiff, including: (i) timekeeping; (ii) payroll; (iii) disciplinary actions; (iv) employment policies and procedures; (v) scheduling and hours; (vi) terms of compensation; and (vii) working conditions.

20. QUALITY ENCLOSURES, INC., and QUALITY ENCLOSURES TEMPERING, INC., are employers under the FMLA because they were engaged in commerce or in an industry affecting commerce and employed 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

21. At all times relevant hereto, Plaintiff worked at a location where QUALITY ENCLOSURES, INC., and QUALITY ENCLOSURES TEMPERING, INC., employed 50 or more employees within 75 miles.

22. At all times relevant hereto, Plaintiff was an employee entitled to leave under the FMLA, based on the fact that he was employed by the employer(s) for at least 12 months and worked at least 1,250 hours during the relevant 12-month period prior to her seeking to exercise her rights to FMLA leave.

### **GENERAL ALLEGATIONS**

23. At all times relevant to this action, QUALITY ENCLOSURES, INC., and QUALITY ENCLOSURES TEMPERING, INC., failed to comply with 29 U.S.C. § 2601, et seq., because Plaintiff validly exercised her rights pursuant to the FMLA and Defendants interfered with Plaintiff's right to take FMLA leave, failed to maintain Plaintiff's medical information in a confidential manner, failed to provide Plaintiff with notice of her rights under

the FMLA, and discriminated and retaliated against Plaintiff because she took FMLA leave and would need additional leave.

24. Ms. Kislek began employment with Defendants in or around February 2013.

25. Ms. Kislek was hired as a full time office manager and worked at the Defendants' Port Orange, Florida location.

26. In or around late January or February 2015, during her employment with Defendants, Ms. Kislek experienced a work related injury.

27. Ms. Kislek sought treatment for her disability/serious health condition, and was advised by her medical providers that she required surgery.

28. Plaintiff disclosed to her managers Marvin Aguilar her disability/serious health condition, and her plan for surgery and treatment.

29. At no point, did Defendants provide Ms. Kislek with notice of her rights under the FMLA or the Defendants' policies and procedures for requesting FMLA protected leave.

30. On information and belief, although the leave qualified as FMLA protected leave, Defendants did not designate the leave as FMLA leave.

31. Mr. Kislek took FMLA qualifying leave on or about February 25, 2015 through and including March 18, 2015.

32. Ms. Kislek had a continuing need for FMLA leave and Defendants were aware of this need.

33. Plaintiff had not exhausted her entitlement to FMLA leave at the time.

34. Ms. Kislek continued treatment for her disability/serious health condition, and was advised in March 2016 by her medical providers that she required a second surgery.

35. Plaintiff had not exhausted her entitlement to FMLA leave at the time.

36. Plaintiff disclosed to her managers her disability/serious health condition, and her plan for a second surgery and continued treatment.

37. Defendants managers did not provide Ms. Kislek with notice of her rights under the FMLA or the Defendants' policies and procedures for requesting FMLA protected leave.

38. On information and belief, although the leave qualified as FMLA protected leave, Defendants did not designate the leave as FMLA leave.

39. Ms. Kislek took FMLA qualifying leave on or about March 29, 2016 through and including April 2016.

40. Ms. Kislek had a continuing need for FMLA leave and Defendants were aware of this need.

41. Ms. Kislek attended a medical appointment related to her serious medical condition.

42. Defendants terminated<sup>1</sup> Ms. Kislek two days later, on July 1, 2016. The reason given for termination is they no longer needed her services.

43. Ms. Kislek had a continuing need for FMLA leave to attend further follow up medical appointments.

**COUNT I**  
**INTERFERENCE WITH FMLA RIGHTS**

44. Plaintiff re-alleges paragraphs 1 through 43 of the Complaint, as if fully set forth herein.

45. At all times relevant hereto, Defendants interfered with Plaintiff's right to take leave from work under the FMLA.

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<sup>1</sup> Plaintiff's termination constitutes discrimination based on his qualifying disability, or the Defendants' perception of him as being disabled, and retaliation for asking for leave as a reasonable accommodation. Plaintiff filed a charge of discrimination and retaliation with the EEOC. However, his charge is still pending with the EEOC. Plaintiff plans to amend his complaint to include these claims when the EEOC has completed its investigation of same.

46. At all times relevant hereto, Defendants interfered with Plaintiff's right to be reinstated to her or an equivalent position.

47. At all times relevant hereto, Defendants' interference with Plaintiff's right to take leave from work violated the FMLA.

48. At all times relevant hereto, Defendants' interference with Plaintiff's right to reinstatement violated the FMLA.

49. Plaintiff suffered from a disability that also qualifies as a "serious health condition" within the meaning of the FMLA.

50. Plaintiff's condition is "chronic" within the meaning of the FMLA.

51. Plaintiff was entitled to FMLA protected leave.

52. Defendants are subject to the requirements of the FMLA.

53. Plaintiff provided adequate notice of her serious health condition to Defendants.

54. Defendants were aware of Plaintiff's serious health condition and her need for FMLA protected leave.

55. Defendants failed to provide Plaintiff adequate notice of her rights under the FMLA.

56. Plaintiff requested leave related to her serious health condition.

57. Upon learning of Plaintiff's need for leave that did qualify or could potentially qualify under the FMLA, Defendants failed to provide Plaintiff with notice of her rights under the FMLA or that her leave qualified as FMLA protected leave.

58. Plaintiff had not exhausted her entitlement to FMLA leave at the time.

59. Plaintiff disclosed to Defendants her need for ongoing treatment, which would continue after her return from the leave requested.

60. Defendants failed to provide Plaintiff with its policies and procedures for applying for FMLA leave on a continued or intermittent basis.

61. Defendants denied or failed to designate Plaintiff's leave request as FMLA protected leave.

62. Defendants terminated Plaintiff for having too many doctor appointments for her serious health condition.

63. By terminating Plaintiff, Defendants interfered with Plaintiff's right to reinstatement and to future FMLA benefits.

64. Plaintiff was denied benefits to which she was entitled under the FMLA.

65. As a result of Defendants' intentional, willful and unlawful acts by interfering with Plaintiff's rights pursuant to the FMLA, Plaintiff has suffered damages and incurred reasonable attorneys' fees and costs.

66. Plaintiff is entitled to liquidated damages because Defendants cannot show that its violation of the FMLA was in good faith.

67. Defendants' violation of the FMLA was willful, as its managers engaged in the above-described actions while knowing that same were impermissible under the FMLA.

68. Plaintiff demands a trial by jury.

WHEREFORE Plaintiff, DONNA KISLEK, demands judgment against Defendants for compensatory damages in whatever amount she is found to be entitled; liquidated damages in whatever amount she is found to be entitled, an award of interest, costs and reasonable attorney fees and expert witness fees, other monetary damages, equitable relief, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

**COUNT II**  
**RETALIATION**

69. Plaintiff re-alleges paragraphs 1 through 43 of the Complaint, as if fully set forth



herein.

70. At all times relevant hereto, Defendants retaliated against Plaintiff, at least in part because Plaintiff exercised her right or attempted to exercise her right to take leave from work that was protected under the FMLA.

71. With actual knowledge of Plaintiffs return from leave, need for future leave, disability and chronic serious health condition, Defendants terminated Plaintiff's employment.

72. At all times relevant hereto, Defendants retaliated against Plaintiff in violation of the FMLA.

73. As a result of Defendants' intentional, willful and unlawful acts of retaliating against Plaintiff for exercising her rights pursuant to the FMLA, Plaintiff has suffered damages and incurred reasonable attorneys' fees and costs.

74. Because Defendants cannot prove that their violation of the FMLA was in good faith, Plaintiff is entitled to liquidated damages.

75. Defendants' violation of the FMLA was willful, as its managers engaged in the above-described actions while knowing that same were impermissible under the FMLA.

WHEREFORE Plaintiff, DONNA KISLEK, demands judgment against Defendants for compensatory damages in whatever amount she is found to be entitled; liquidated damages in whatever amount she is found to be entitled, an award of interest, costs and reasonable attorney fees and expert witness fees, other monetary damages, equitable relief, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

Dated this 21<sup>st</sup> day of June 2018.

Respectfully submitted,

**MORGAN & MORGAN, P.A.**  
600 N. Pine Island Road, Suite 400  
Plantation, FL 33324  
Tel: 954-318-0268  
Fax: 954-327-3016

*s/Paul M. Botros*

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*Trial Counsel for Plaintiff*

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

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

**I. (a) PLAINTIFFS**

DONNA KISLEK, on behalf of herself and all others similarly situated individuals,

(b) County of Residence of First Listed Plaintiff Volusia  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Morgan & Morgan, P.A.  
600 N. Pine Island Rd., Suite 400, Plantation, FL 33324  
(954) 327-2318

**DEFENDANTS**

QUALITY ENCLOSURES, INC., a Florida for Profit Corporation, and QUALITY ENCLOSURES TEMPERING, INC., a Florida for Profit Corporation,

County of Residence of First Listed Defendant Sarasota  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)**

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT (Place an "X" in One Box Only)**

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 FIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN (Place an "X" in One Box Only)**

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. Section 2601(a) Violation of FMLA

Brief description of cause:

Violation of FMLA

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/21/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Against Quality Enclosures Over Alleged FMLA Violations](#)

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