

IN THE IOWA DISTRICT COURT FOR LEE COUNTY

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KIMBERLY MOORE,

Plaintiff,

vs.

IOWA FERTILIZER COMPANY LLC,  
GARY BRUNDAGE, RHONDA  
SCHRECK, and BOBBIE HILL,

Defendants.

NO. LALA006617

**AMENDED PETITION and JURY  
DEMAND**

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**COMES NOW** the Plaintiff Kimberly Moore and for her cause of action states the following:

**INTRODUCTION**

1. This is an action under the Iowa Civil Rights Act, challenging Defendants' sexual harassment, sex discrimination, disability discrimination, unequal pay, and retaliation against Plaintiff. Plaintiff also challenges her termination in that it violates the public policy of the State of Iowa.
2. Plaintiff Kimberly Moore is a resident of Lee County, Iowa.
3. Defendant Iowa Fertilizer Company LLC ("IFCo") is a Delaware corporation doing business in Lee County, Iowa.
4. Upon information and belief, Defendant Gary Brundage is a resident of Orange County, Florida.
5. Defendant Rhonda Schreck is a resident of Clark County, Missouri.
6. Defendant Bobbie Hill is a resident of Lee County, Iowa.
7. The acts of which Plaintiff complains occurred in Lee County, Iowa.

### **PROCEDURAL REQUIREMENTS**

8. On approximately November 16, 2016, within 300 days of the acts of which she complains, Plaintiff filed charges of employment discrimination against Defendants with the Iowa Civil Rights Commission.

9. On approximately August 24, 2017, less than 90 days prior to the filing of this Petition, the Iowa Civil Rights Commission issued a right to sue letter with respect to Plaintiff's charges.

### **FACTUAL BACKGROUND**

10. On approximately July 21, 2014, Defendants IFCo and Gary Brundage hired Plaintiff Kimberly Moore as a Warehouse Administrator, working in the Warehouse.

11. Mr. Brundage was the Certified Purchasing Manager and Procurement Superintendent and Kimberly's supervisor.

12. Rhonda Schreck was IFCo's Human Resources Manager.

13. In approximately August 2014, Mr. Brundage transferred Kimberly to the Procurement Department, which was in the Administrative Building, to begin performing the duties of the Buyer position.

14. The Buyer position was a higher paying position than Warehouse Administrator, but Defendants never raised Kimberly's pay to reflect her new position.

15. From August 2014 until February 2015, Kimberly performed Buyer duties alongside a male Buyer, Orlandus Cherry.

16. Mr. Cherry and Kimberly worked in the same establishment.

17. Mr. Cherry and Kimberly performed their duties under similar working conditions.

18. The only time Kimberly performed Warehouse Administrator duties was when the new Warehouse Administrator, Nicole Maille, was absent.

19. Nevertheless, Defendants failed to change Kimberly job title to “Buyer.”
20. Defendants paid Kimberly less than they paid Mr. Cherry.
21. In February 2015, Defendants fired Mr. Cherry for poor work performance.
22. Rather than hiring another Buyer to replace Mr. Cherry, Defendants had Kimberly perform all of Mr. Cherry’s job duties in addition to her own.
23. Defendants still failed to change Kimberly’s job title to reflect her actual duties.
24. Defendants continued to pay Kimberly less than they had paid Mr. Cherry.
25. Kimberly complained to Defendants Rhonda Schreck and Gary Brundage about her job title and unequal pay.
26. Ms. Schreck and Mr. Brundage blamed the inequities on a company-wide hiring freeze.
27. In May and June 2015, Kimberly received frequent emails announcing the promotion of various male employees within IFCo’s Operations Department.
28. Kimberly took the emails to Mr. Brundage and questioned him about the inconsistency between his explanation for the lingering inequities and Defendants’ willingness to promote male employees notwithstanding any alleged “hiring freeze.” Mr. Brundage had no explanation but continued to refuse to promote her or remedy the pay differential.
29. On approximately June 26, 2015, Kimberly emailed Mr. Brundage, complaining that she had been performing the Buyer job for nearly a year, but had still not been promoted or given a raise.
30. Later that day or the next day, Mr. Brundage told Kimberly that she did good work when she was there, but claimed he felt she was unreliable.
31. The only times Kimberly had missed work were due to migraines or to be with her father when he was hospitalized.

32. Mr. Brundage would often become upset with Kimberly when she had to leave work due to a migraine.

33. In approximately October or November 2015, Kimberly again complained to Mr. Brundage that she had been performing the duties of a Buyer, but Defendants had not given her the title or pay increase. Kimberly also objected to a report she had heard that Mr. Brundage was planning to promote a man without purchasing experience to the Buyer position.

34. In response to her protected activity, Mr. Brundage accused Kimberly of being unprofessional and insubordinate.

35. Because Mr. Brundage refused to take her complaint seriously, Kimberly communicated her complaints to his supervisor, Site Director Darrell Allmen. She also provided Mr. Allmen with a list of her accomplishments as a Buyer.

36. Defendants continued to refuse to give Kimberly the Buyer title or to pay her equally.

37. In approximately 2015, Mr. Brundage began making offensive comments exhibiting his blatant bias against women, including but not limited to the following:

- Saying that women do not belong on the front lines of the military;
- Saying, “Women are built to do the dishes because their feet are so small so they can get closer to the sink;”
- Saying that he should have gotten rid of his wife sooner because she was worthless and did not do the dishes;
- Bragging that the first thing he did when he got divorced was hire a maid, so he finally had clean clothes and a clean house;
- Discussing Donald Trump giving prostitutes syphilis; and
- Referring to a bicycle in the warehouse as “The Pussy Chaser.”

38. Mr. Brundage tried to have Kimberly look at photographs of a naked woman, but she refused.

39. Kimberly complained about Mr. Brundage's sexually offensive and discriminatory comments and conduct to Human Resources Manager Rhonda Schreck and Human Resources Administrator Bobbie Hill numerous times throughout 2015.

40. Ms. Schreck and Ms. Hill never wrote anything down when Kimberly made these reports.

41. Ms. Schreck would attempt to excuse Mr. Brundage's behavior, claiming he was "going through a hard time."

42. On November 30, 2015, Kimberly complained to Ms. Schreck that someone had seen Mr. Brundage on his computer, watching what appeared to be pornography.

43. Kimberly also reported that Mr. Brundage was becoming more and more chauvinistic.

44. Ms. Schreck, Ms. Hill, and Mr. Brundage appeared increasingly frustrated and upset that Kimberly continued to complain about sex discrimination, unequal pay, and sexual harassment.

45. On February 3, 2016, Kimberly injured her back while unloading a semi full of lockers.

46. On February 4, Kimberly called Warehouse Control Specialist/Warehouse Manager David Mellenthin and informed him that she had injured her back while moving the lockers the day before and that she was going to go to the doctor. Mr. Mellenthin told Kimberly that he would "take care of it."

47. Kimberly's doctor restricted her from working until approximately February 15.

48. On approximately February 11, Kimberly suffered a panic attack from the thought of returning to the hostile and discriminatory work environment. She was taken to the hospital by ambulance.

49. On February 16, Kimberly's doctor extended her medical leave until February 23.

50. On February 19, Defendants posted a job opening for a “Senior Buyer” position with the same job duties Kimberly had been performing for nearly two years.

51. Kimberly returned to work on February 23. Mr. Brundage was not at work that day.

52. David Mellenthin had authority as Kimberly’s supervisor when Brundage was absent from work.

53. When Kimberly tried to log into IFCo’s inventory control system, the system indicated she did not have authorization.

54. Kimberly asked Mr. Mellenthin why she could not access the system.

55. Mr. Mellenthin told Kimberly to come into his office and shut the door, and she did.

56. Mr. Mellenthin told Kimberly that he and Mr. Brundage no longer felt she was “on board” with their plans for the department and that she was not a “team player,” so they had to “let [her] go.”

57. Kimberly asked Mr. Mellenthin if he was firing her and he said, “Yes, I’m sorry. If you need a minute, I understand.”

58. Kimberly cleaned out her desk and left. She later emailed Mr. Mellenthin, Ms. Schreck, and Ms. Hill to say she would return her company property by mail.

59. They never emailed her back.

60. On approximately March 1, Kimberly received a letter from IFCo dated February 23, that claimed she abandoned her job when she “left work without notice on February 23, 2016.”

61. After reading the letter, Kimberly immediately emailed Ms. Schreck and Ms. Hill to express her confusion since Mr. Mellenthin had already fired her. Kimberly asked Ms. Schreck and Ms. Hill for clarification, but they never even responded.

62. On March 4, again Kimberly emailed Ms. Schreck and Ms. Hill. Kimberly asked if she could come back to work since she did not quit, but believed Mr. Mellenthin had fired her.

63. Neither Ms. Schreck nor Ms. Hill responded.

64. In discharging Kimberly from employment, David Mellenthin acted in the name of Defendant IFCo.

65. Defendant IFCo authorized David Mellenthin to make decisions regarding the discharge of employees, including Kimberly.

66. Gary Brundage was an employee and agent of Defendant Iowa Fertilizer Company LLC acting at all relevant times within the scope of his employment and agency.

67. Rhonda Schreck was an employee and agent of Defendant Iowa Fertilizer Company LLC acting at all relevant times within the scope of her employment and agency.

68. Bobbie Hill was an employee and agent of Defendant Iowa Fertilizer Company LLC acting at all relevant times within the scope of her employment and agency

69. Darrell Allmen was an employee and agent of Defendant Iowa Fertilizer Company LLC, acting at all relevant times within the scope of his employment and agency.

70. David Mellenthin was an employee and agent of Defendant Iowa Fertilizer Company LLC, acting at all relevant times within the scope of his employment and agency.

**COUNT I**  
**SEXUAL HARASSMENT, SEX DISCRIMINATION, UNEQUAL PAY &**  
**RETALIATION IN VIOLATION OF THE IOWA CIVIL RIGHTS ACT**

71. Plaintiff realleges paragraphs 1 through 70 as if fully set forth herein.

72. Defendants harassed and discriminated against Plaintiff.

73. Plaintiff's sex was a motivating factor in the harassment and discrimination.

74. Defendant paid Plaintiff less than it paid male employees for work that required equal skill, effort, and responsibility.

75. The pay differential was willful.

76. Plaintiff complained to Defendants about the harassment, discrimination, and unequal pay, and otherwise opposed practices made unlawful by the Iowa Civil Right Act.

77. Defendants retaliated against Plaintiff.

78. Plaintiff's protected activity was a motivating factor in the retaliation.

79. As a result of Defendants' acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages including, but not limited to, mental and emotional distress, fear, anguish, stress, humiliation, intimidation, embarrassment, lost enjoyment of life, back pay, front pay, and employment benefits.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount that will fully and fairly compensate her for her injuries and damages, for treble damages, for prejudgment and postjudgment interest, for attorney fees and expenses, for the costs of this action, for appropriate equitable and injunctive relief, and for such other relief as may be just in the circumstances and consistent with the purposes of the Iowa Civil Rights Act.

**COUNT II  
DISABILITY DISCRIMINATION AND RETALIATION IN VIOLATION OF THE  
IOWA CIVIL RIGHTS ACT**

80. Plaintiff realleges paragraphs 1 through 79 as if fully set forth herein.

81. Plaintiff was disabled within the meaning of the Iowa Civil Rights Act.

82. Plaintiff's migraines and anxiety substantially limited her ability to think, concentrate, sleep, and care for herself.

83. Plaintiff's migraines and anxiety substantially affected the normal functioning of her brain.

84. Plaintiff was able to perform the essential functions of her job with or without reasonable accommodation.

85. Plaintiff requested reasonable accommodations her disabilities.



86. Defendants failed to accommodate Plaintiff's disabilities in violation of the Iowa Civil Rights Act.

87. Defendants failed to engage with Plaintiff in good faith in the interactive process to explore ways to accommodate her disability in violation of the Iowa Civil Rights Act.

88. Defendants discriminated against Plaintiff in violation of the Iowa Civil Rights Act.

89. Plaintiff's disability was a motivating factor in Defendants' discrimination.

90. Defendants retaliated against Plaintiff.

91. Plaintiff's protected activity was a motivating factor in Defendants' actions.

92. As a result of Defendants' acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages, including but not limited to mental and emotional distress, fear, anguish, humiliation, intimidation, embarrassment, lost enjoyment of life, medical expenses, lost wages, benefits, future earnings, and other emoluments of employment.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount which will fully and fairly compensate her for her injuries and damages, for prejudgment and postjudgment interest, for attorney's fees and expenses, for the costs of this action, for appropriate equitable and injunctive relief, and for such other relief as may be just in the circumstances and consistent with the purpose of the Iowa Civil Rights Act.

**COUNT III  
RETALIATORY DISCHARGE IN VIOLATION OF PUBLIC POLICY**

93. Plaintiff repleads paragraphs 1 through 92 as if fully set forth herein.

94. In order to be eligible to receive workers' compensation benefits, Iowa Code section 85.23 requires employees to report work-related injuries within 90 days.

95. IFCo's policies also required employees to report work related injuries to a supervisor.

96. It is the public policy of the State of Iowa, pursuant to Iowa Code Chapter 85, that employers may not legally fire employees for suffering or reporting a workplace injury.

97. Defendants' actions in firing Plaintiff for suffering and reporting a workplace injury violated the public policy of the State of Iowa.

98. If allowed to go unremedied, Plaintiff's termination would frustrate the well-recognized and defined public policy of the State of Iowa because it would have a chilling effect on employees' willingness to exercise their rights and discourage people from reporting workplace injuries and seeking workers' compensation benefits.

99. Plaintiff's suffering a workplace injury and/or reporting such injury was a determining factor in Defendants' decision to fire her.

100. As a result of Defendants' acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages as set forth above.

101. Defendants acted with willful and wanton disregard for Plaintiff's rights and safety.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount which will fully and fairly compensate her for her injuries and damages, for punitive damages against Defendants in amounts sufficient to punish them and to deter them and others from similar conduct in the future, for prejudgment and postjudgment interest, for the costs of this action, and for such other relief as may be just in the circumstances and consistent with the public policy of the State of Iowa.

### **JURY DEMAND**

COMES NOW the Plaintiff and hereby requests a trial by jury.

/s/ Whitney Judkins

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