

1 James Weiler, AZ Bar No. 034371  
2 Michael Zoldan; AZ Bar No. 028128  
3 **ZOLDAN LAW GROUP, PLLC**  
4 14500 N. Northsight Blvd., Suite 133  
5 Scottsdale, AZ 85260  
6 Tel & Fax: 480.442.3410  
7 JWeiler@zoldangroup.com  
8 MZoldan@zoldangroup.com

9 Attorneys for Plaintiff  
10 Cristina Miller

11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF ARIZONA**

13 **Cristina Miller**, an Arizona resident,  
14  
15 Plaintiff,

16 v.

17 **Arizona Public Service Company**, an  
18 Arizona Corporation,  
19  
20 Defendant.

21 **Case No.**

22 **COMPLAINT**

23 **(Jury Trial Requested)**

24 Plaintiff Cristina Miller (“**Plaintiff**”), for her Complaint against Defendant Arizona  
25 Public Service Company (“**Defendant**”) hereby alleges as follows:

26 **PARTIES**

27 1. Plaintiff is, and at all times relevant hereto was, a resident of Maricopa  
28 County, Arizona.

1. Upon information and belief, Defendant Arizona Public Service Company is  
an Arizona Corporation, which is registered to conduct business and is currently doing  
business in the State of Arizona.

**ZOLDAN LAW GROUP, PLLC**  
14500 N. Northsight Blvd., Suite 133, Scottsdale, Arizona 85260  
Tel & Fax: 480.442.3410 – mzoldan@zoldangroup.com

**JURISDICTION AND VENUE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. All acts complained herein occurred in Maricopa County, Arizona, and this Court has jurisdiction over the parties and subject matter set forth in this Complaint pursuant to the Americans with Disabilities Act and the ADA Amendments Act (collectively referred to as “ADA”), 42 U.S.C. §§12101, *et seq.*, the Family and Medical Leave Act, 29 U.S.C.A. §§ 2601, *et. seq.* (“FMLA”), and Title VII of the Civil Rights Act of 1964 42 U.S.C. §§2000e *et seq.* (“TITLE VII”).

4. This Court has federal question subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331 in that the claims set forth in this Complaint arise under federal law.

5. Plaintiff’s state law claims under the Arizona Civil Rights Act, A.R.S. §41-1461 *et seq.* (“ACRA”) are sufficiently related to her federal claims that it forms the same case or controversy. This Court therefore has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

6. The employment practices alleged to be unlawful were committed within, and had their primary effect in, the jurisdiction of the United States District Court for the District of Arizona.

7. Plaintiff was, at all relevant times, an employee of Defendant within the meaning of the ADA, the FMLA, TITLE VII and the ACRA.

8. At all relevant times, Defendant has continuously been an employer within the meaning of the ADA, the FMLA, TITLE VII and the ACRA.

9. Plaintiff has exhausted all administrative and statutory prerequisites necessary to commence this action, and therefore jurisdiction is proper.

1 10. Personal jurisdiction in this Court is proper.

2 11. Venue in this Court is proper.

3 **FACTUAL ALLEGATIONS**

4 12. At all times relevant, Plaintiff was an employee of Defendant.

5 13. Upon information and belief, Defendant is an Arizona electric utility  
6 Company that is the wholly owned subsidiary of Pinnacle West Capital Corporation.  
7

8 14. Plaintiff was initially hired by Defendant on September 4, 2012.

9 15. At the time of her termination and at all times relevant, Plaintiff held the title  
10 of Real Time Energy Trader.  
11

12 16. At all times relevant, Plaintiff was qualified to perform the essential  
13 functions of her position.  
14

15 17. At all times relevant, Plaintiff performed at or above a satisfactory level.

16 18. Beginning in 2017, Plaintiff and another female co-worker were sexually  
17 harassed by their shift lead.

18 19. Prior to March of 2018, Plaintiff reported this ongoing sexual harassment by  
19 her Shift Lead to her Supervisor.  
20

21 20. In retaliation for reporting sexual harassment, Plaintiff was given a poor  
22 year-end review in March of 2018.

23 21. In further retaliation for reporting sexual harassment, Plaintiff's Supervisor  
24 then placed her on a performance improvement plan ("PIP") and denied a pay raise and a  
25 bonus.  
26

27 22. In June of 2018, Plaintiff was baselessly written up by her Supervisor for an  
28 alleged incident that occurred months prior in further retaliation for reporting sexual

1 harassment.

2 23. In August of 2018, Plaintiff was written up again for a violation of  
3 Defendant's policies that was actually committed by a co-worker. At the time of the write-  
4 up her Supervisor stated that everyone on the team would be getting a write up for the  
5 incident. Upon information and belief, Plaintiff was the only person written up at that time.  
6

7 24. Upon information and belief, the August 2018 write-up was in retaliation for  
8 reporting sexual harassment.  
9

10 25. Upon information and belief, in August of 2018, Plaintiff's Shift Lead,  
11 Plaintiff's Supervisor and 3 additional male employees were all investigated and ultimately  
12 terminated for engaging in sexual harassment and retaliating against another female  
13 employee.  
14

15 26. In October of 2018, Plaintiff discussed with her Director the poor  
16 performance reviews and the PIP that her now fired Supervisor had given her in retaliation  
17 for reporting sexual harassment. The Director claimed that there was nothing that he could  
18 do to correct the retaliatory negative reviews or take her off of the PIP since it was already  
19 in place.  
20

21 27. On November 30, 2018, Plaintiff was informed by two of her Supervisors  
22 that they intended to keep her PIP in place. Plaintiff's Supervisors stated that in order to  
23 be taken off of the PIP she would need to memorize numerous policies and procedures.  
24

25 28. Following this meeting, Plaintiff met with Defendant's nurse in their health  
26 and services department to discuss her disability and request a reasonable accommodation.  
27

28 29. Plaintiff informed the nurse that her cancer had returned and that the cancer  
and her medications to treat the cancer impacted her memory.

1           30. Plaintiff requested a reasonable accommodation of being able to use memory  
2 aides to perform the essential functions of her job.

3           31. Plaintiff had been using memory aides for a couple of months prior to this  
4 conversation prior to the return of her cancer and had received good performance reviews  
5 during that time.

6           32. After speaking with the nurse, Plaintiff informed her Supervisors and  
7 Director that she had filled out ADA paperwork requesting a reasonable accommodation.  
8

9           33. At this same time, on or around November 30, 2018, Plaintiff also informed  
10 her Supervisors and Director that she had filled out FMLA paperwork that would be used  
11 for further cancer treatment.  
12

13           34. On or about December 5, 2018, Plaintiff's treating physician ordered  
14 Plaintiff to take a leave to receive cancer treatment.  
15

16           35. On or about December 5, 2018, Plaintiff informed her Supervisor and  
17 Defendant's nurse of her Doctor's orders.  
18

19           36. On or about December 7, 2018, Plaintiff was called by her Supervisor to  
20 come in for a meeting with her Supervisors.

21           37. On or about December 7, 2018, Plaintiff was terminated during a meeting  
22 with her Supervisors.

23           38. During this meeting, Plaintiff's Supervisors stated "considering the personal  
24 conditions you are going through" we are parting ways.  
25

26           39. Plaintiff was then escorted out of the building by security.

27           40. Upon information and belief, Plaintiff was terminated because of her  
28 disability.

1 41. Upon information and belief, Plaintiff was terminated for exercising her  
2 rights under the ADA and the FMLA.

3 42. At all times relevant, Plaintiff had a disability that substantially limited a  
4 major life activity.  
5

6 43. At all relevant times, Plaintiff was capable of performing the essential  
7 functions of her position with or without a reasonable accommodation.  
8

9 44. At all relevant times, Plaintiff satisfactorily performed the essential functions  
10 of her position.

11 45. Despite her diligent efforts, Plaintiff has been unable to secure comparable  
12 employment since her employment was unlawfully severed by Defendant.

13 46. As a result, Plaintiff was damaged in an amount to be proven at trial.

14 47. On March 7, 2019, Plaintiff filed an EEOC charge of discrimination.

15 48. On April 2, 2019, Plaintiff received Notice of the Right Sue.  
16

17 **COUNT I**  
18 **DISCRIMINATION IN VIOLATION OF THE ADA**

19 49. Plaintiff reasserts and realleges each and every paragraph, *supra*, as if  
20 restated herein.

21 50. The ADA prohibits discrimination against a qualified individual with a  
22 disability in regard to terms, conditions and privileges of employment. 42 U.S.C. §  
23 12112(a).  
24

25 51. Plaintiff has an impairment that substantially limits a major life activity.

26 52. Plaintiff suffers from a disability which is a disability as defined by the ADA.

27 53. Defendant is an employer under the ADA.

28 54. Defendant knew of Plaintiff's disability.

1 55. Plaintiff is qualified to perform the essential functions of her position with or  
2 without a reasonable accommodation.

3 56. Defendant discriminated and retaliated against Plaintiff by terminating her  
4 due to her disabilities and requesting a reasonable accommodation.

5 57. Defendant treated Plaintiff disparately as compared to other similar situated  
6 non-disabled employees because of her disability.

7 58. Plaintiff's disability was at the very least a motivating factor in Defendant's  
8 discriminatory conduct.

9 59. As a direct, intentional, and willful consequence of such illegal conduct,  
10 Plaintiff suffered adverse employment actions including, *inter alia*, termination of  
11 employment.

12 60. As a result, Plaintiff was harmed in an amount to be proven at trial.

13 **COUNT II**  
14 **RETALIATION IN VIOLATION OF THE ADA**

15 61. Plaintiff reasserts and realleges each and every paragraph, *supra*, as if  
16 restated herein.

17 62. The ADA prohibits discrimination against any individual because such  
18 individual engaged in protected activity under the ADA. *See* 42 U.S.C. § 12203(a).

19 63. Plaintiff engaged in protected activity by requesting reasonable  
20 accommodations and taking medical leave to treat for her condition.

21 64. Defendant retaliated against Plaintiff by terminating her due to her disability.

22 65. Plaintiff's disability was at the very least a motivating factor in Defendant's  
23 retaliatory conduct.

24 66. As a direct, intentional, and willful consequence of such illegal conduct,  
25  
26  
27  
28

1 Plaintiff suffered adverse employment actions including, *inter alia*, termination of  
2 employment.

3  
4 67. As a result, Plaintiff was harmed in an amount to be proven at trial.

5 **COUNT III**  
6 **INTERFERENCE IN VIOLATION OF THE FAMILY MEDICAL LEAVE ACT**

7 68. Plaintiff reasserts and realleges each and every allegation in this complaint as  
8 if fully set forth herein.

9 69. It is unlawful for an employer to interfere with, restrain, or deny the exercise  
10 of any right under the FMLA 29 U.S.C. § 2615.

11 70. Defendant employs more than 50 employees, is an employer for purposes of  
12 the FMLA and is subject to FMLA requirements.

13 71. Plaintiff was an “eligible employee” entitled to take leave pursuant to the  
14 FMLA.  
15

16 72. Plaintiff has a “serious health condition” as defined by the FMLA.

17 73. Plaintiff provided sufficient notice of her need to take leave under the FMLA.

18 74. Defendant interfered with Plaintiff’s medical leave by terminating her  
19 employment.  
20

21 75. As a direct, intentional, and willful consequence of such illegal conduct,  
22 Plaintiff suffered adverse employment actions including, *inter alia*, termination of her  
23 employment.  
24

25 76. Plaintiff is entitled to recover damages against Defendant in an amount to be  
26 proven at trial.  
27  
28

1 **COUNT IV**  
2 **RETALIATION IN VIOLATION OF THE FMLA**

3 77. Plaintiff reasserts and realleges each and every allegation in this complaint  
4 as if fully set forth herein.

5 78. Defendant employs more than 50 employees and as such, are an employer  
6 for purposes of the FMLA, subject to FMLA requirements.  
7

8 79. Plaintiff was an “eligible employee” and entitled to take leave pursuant to  
9 the FMLA.

10 80. Plaintiff has a “serious health condition” as defined by the FMLA and was  
11 incapacitated as a result of that condition.  
12

13 81. Plaintiff exercised her rights under the FMLA.

14 82. Defendant discriminated and retaliated against Plaintiff by, *inter alia*,  
15 terminating her due to her taking leave pursuant to the FMLA.  
16

17 83. As a direct, intentional, and willful consequence of such illegal conduct,  
18 Plaintiff suffered adverse employment actions including, *inter alia*, termination of  
19 employment.  
20

21 84. Plaintiff is entitled to recover damages against Defendant in an amount to be  
22 proven at trial.

23 **COUNT V**  
24 **DISABILITY DISCRIMINATION IN VIOLATION OF THE ACRA**

25 85. Plaintiff reasserts and realleges each and every paragraph, *supra*, as if  
26 restated herein.

27 86. The Arizona Civil Rights Act, A.R.S. §41-1463(B)(1)(2), prohibits  
28 employers from unlawfully discriminating against an employee on the basis of his or her

1 disability.

2 87. Plaintiff was a disabled person within the meaning of the ACRA.

3 88. Plaintiff has an impairment that substantially limits one or more major life  
4 activities.

5 89. Defendant was an employer within the meaning of the ACRA.

6 90. Defendant knew of Plaintiff's disability or regarded her as having such a  
7 disability.

8 91. Plaintiff was objectively qualified to perform the essential functions of the  
9 job with or without a reasonable accommodation.

10 92. Defendant discriminated and retaliated against Plaintiff by terminating her  
11 due to her disability.

12 93. Plaintiff's disability was at the very least a motivating factor in Defendant's  
13 discriminatory conduct.

14 94. As a result, Plaintiff was harmed in an amount to be proven at trial.

15 **COUNT VI**  
16 **RETALIATION IN VIOLATION OF THE ACRA**

17 95. Plaintiff reasserts and realleges each and every paragraph, *supra*, as if  
18 restated herein.

19 96. The Arizona Civil Rights Act, A.R.S. §41-1464(A) prohibits retaliation  
20 against an employee who opposes a practice forbidden by the ACRA.

21 97. Plaintiff engaged in protected conduct when she requested reported sexual  
22 harassment and when she requested a reasonable accommodation and medical leave.

23 98. Because she engaged in protected activity, Plaintiff was subjected to adverse  
24 employment actions including, *inter alia*, withholding of a pay raise, bonuses, placed on  
25  
26  
27  
28

1 performance improvement plans, given poor performance reviews and termination.

2 99. As a result, Plaintiff was harmed in an amount to be proven at trial.

3  
4 **COUNT VII**  
**RETALIATION IN VIOLATION OF TITLE VII**

5 100. Plaintiff incorporates by reference all of the above allegations as though fully  
6 set forth herein.

7  
8 101. It shall be an unlawful employment practice for an employer to discriminate  
9 against any of its employees . . . because she has opposed any practice made an unlawful  
10 employment practice by this subchapter, or because she has made a charge, testified,  
11 assisted, or participated in any manner in an investigation, proceeding, or hearing under  
12 this subchapter. 42. U.S.C.A. § 2000e-3.

13  
14 102. Defendant is an employer for purposes of Title VII.

15 103. Plaintiff is an employee for purposes of Title VII.

16  
17 104. Plaintiff engaged in protected activity when she complained to Defendant  
18 regarding the sexual harassment and discriminatory practices of Defendant in violation of  
19 Title VII.

20 105. In retaliation for reporting Defendant's discriminatory practices in violation  
21 of Title VII, Plaintiff was subjected to adverse employment actions including termination.

22  
23 106. As a result, Plaintiff has been damaged in an amount to be proven at trial

24 **CONCLUSION AND PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff prays that this Court order such relief as is necessary to  
26 make her whole, including, without limitation:

27  
28 A. Declaring the acts and practices complained of herein are in violation of the  
ADA, FMLA, TITLE VII and the ACRA;

ZOLDAN LAW GROUP, PLLC  
14500 N. Northsight Blvd, Suite 133 Scottsdale, Arizona 85260  
Tel & Fax: 480.442.3410 – mzoldan@zoldangroup.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- B. An award of damages for all counts in an amount to be proven at trial;
- C. An award of compensatory and punitive damages in an amount to be proven at trial;
- D. An award of back pay and front pay (deferring to Title VII remedial structure allowing award of back pay and other equitable relief (*see* 42 U.S.C. § 2000e-5(g)(1));
- E. Pre- and post-judgment interest;
- F. Reasonable attorneys’ fees, costs and other expenses; and
- G. Any other remedies or judgments deemed just and equitable by this Court.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED on May 22, 2019.

**ZOLDAN LAW GROUP, PLLC**

By: /s/ James Weiler  
14500 N. Northsight Blvd., Suite 133  
Scottsdale, AZ 85260  
Attorneys for Plaintiff Cristina Miller

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s): Cristina Miller**

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

**Defendant(s): Arizona Public Service Company**

County of Residence: Maricopa

Defendant's Atty(s):

**II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)**

**III. Citizenship of Principal Parties (Diversity Cases Only)**

Plaintiff: - N/A  
Defendant: - N/A

**IV. Origin : 1. Original Proceeding**

**V. Nature of Suit: 445 Amer. w/Disabilities - Employment**

**VI. Cause of Action: 42 U.S.C. §§ 12101; 29 U.S.C.A. §§ 2601; 42 U.S.C. §§ 2000e; A.R.S. § 41-1461**

**VII. Requested in Complaint**

Class Action: **No**  
Dollar Demand:  
Jury Demand: **Yes**

**VIII. This case is not related to another case.**

**Signature: James Weiler**

**Date: 5/22/19**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014