

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KEITH LILLY

Plaintiff(s),

-against-

THE STATE OF NEW YORK and EDWARD GIBBS

Defendant(s).

Index No. [redacted]

Summons

Date Index No. Purchased: [redacted]

To the above named Defendant(s)

THE STATE OF NEW YORK
c/o The Office of The Attorney General
28 Liberty St, New York, NY 10005

EDWARD GIBBS
55 East 115th St. New York, NY 10029

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR Section 503(a) where a substantial part of the relevant events occurred and where Gibbs resides and the State of NY maintains offices

Dated: New York, New York

June 18, 2024

BANTLE & LEVY LLP

by *H. David Krauss*

H. David Krauss

Attorneys for Plaintiff

Keith Lilly

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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KEITH LILLY,

Plaintiff,

- against -

THE STATE OF NEW YORK and EDWARD GIBBS,

Defendants.

Index No.

**COMPLAINT
AND JURY DEMAND**

-----X

Plaintiff Keith Lilly, by his attorneys, Bantle & Levy LLP, as and for his Complaint against Defendants the State of New York and Edward Gibbs (in his individual capacity), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Keith Lilly (“Lilly”) has dedicated his life to bettering the lives of the members of his beloved East Harlem community. A protégé of Bill Perkins (for whom he spent decades working in the New York City Council and New York State Senate), Lilly’s primary focus was addressing the needs of his community members – including through his nearly 25-year tenure as the elected District Leader of the 68th Assembly District (which encompasses East Harlem).

2. Due to his extensive ties to the community and decades-long career in New York City politics, in or about July 2022, Lilly was recruited to serve as Senior Advisor to Edward Gibbs (“Gibbs”), the then-recently elected member of the New York State Assembly (the “Assembly”) for the 68th Assembly District.

3. Lilly's excelled in the performance of his duties as Senior Advisor to Gibbs, including by strengthening relations between Gibbs and the local community and by organizing events that drew attention to the 68th Assembly District – such as one that brought the State's highest-ranking elected officials to East Harlem.

4. As he freely disclosed to Gibbs and other members of Gibbs' staff, Lilly suffers from diabetes. Unfortunately, beginning with the development of a hole in his left foot in early Summer 2023, Lilly's diabetes precipitated a health crisis that, on or about July 20, 2023, necessitated his hospitalization and, ultimately, the amputation of his left leg. A dedicated employee, Lilly kept Gibbs (and members of Gibbs' staff) abreast of his health situation at all times.

5. Less than a week after Lilly's hospitalization, *and the day before certain of Lilly's left toes were scheduled to be surgically removed*, Gibbs – without any explanation whatsoever – abruptly terminated Lilly's employment. Shortly thereafter, Lilly's left leg was amputated up to the knee.

6. Notably, as of the effective date of his termination, Lilly was mere days away from reaching his one-year anniversary with the Assembly and attaining eligibility for a protected leave of absence under the Family and Medical Leave Act.

7. Lilly brings this action to remedy the discrimination he was subject to on the basis of his disability in violation of the New York State Human Rights Law, N.Y. Exec. L. § 296 *et seq.* (the "NYSHRL"), and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107 *et seq.* (the "NYCHRL"), and to redress the deprivation of the rights secured him under the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601 *et seq.* (the "FMLA").

8. Lilly seeks declaratory relief and monetary damages.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over Defendants pursuant to CPLR 301 *et seq.* because Defendants are domiciled and regularly transact business in the State of New York and because the wrongful conduct alleged in this Complaint occurred in the State of New York.

10. Venue is properly lodged in this County pursuant to CPLR 503(a) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in New York County, in which Lilly and Gibbs reside and the State of New York maintains offices.

PARTIES

11. Plaintiff Keith Lilly is a citizen of the State of New York and currently resides in New York County.

12. The Assembly is part of the legislature of Defendant State of New York (the “State”).

13. At all times relevant herein, the State was Lilly’s “employer” within the meaning of the NYSHRL, N.Y. Exec. L. § 292(5), the NYCHRL, N.Y.C. Admin. Code § 8-102, and the FMLA, 29 U.S.C. § 2611(4)(a)(iii).

14. Upon information and belief, Defendant Edward Gibbs resides in New York County.

15. Gibbs has served in the Assembly as an Assemblymember for the 68th Assembly District since 2022.

16. At all times relevant herein, Gibbs is and was a “person” within the meaning of the NYSHRL, N.Y. Exec. L § 292, and the NYCHRL, N.Y.C. Admin. Code § 8-102.

17. At all times relevant herein, Gibbs was Lilly’s “employer” within the meaning of the NYSHRL, N.Y. Exec. L. § 292(5), and the NYCHRL, N.Y.C. Admin. Code § 8-102.

STATEMENT OF FACTS***Lilly Is Recruited to Join the Assembly as Gibbs' Senior Advisor, Where He Enjoys Highly Successful Tenure***

18. Lilly has spent the bulk of his adult life advocating for New Yorkers, particularly members of his East Harlem community.

19. Lilly's career in politics began in 1996, when he joined the staff of the then-recently elected New York City Councilmember Bill Perkins.

20. The following year, at Perkin's urging, Lilly ran for and was elected District Leader of New York's 68th Assembly District – which position he held continuously thereafter for nearly 25 years.

21. Lilly was integral to Perkins' election to the New York State Senate in 2007, and he served on Perkins' staff throughout his ten-year senatorial tenure.

22. During that time, Lilly and Perkins became, respectively, the first District Leader and elected official in New York State to endorse Barack Obama in the 2008 Democratic Party presidential primary.

23. In 2017, Lilly followed his mentor, Perkins, back to the New York City Council, where he served as Perkin's Senior Advisor until Perkins' retirement in 2021.

24. In 2022, Gibbs was elected to the Assembly as the Representative for its 68th Assembly District.

25. Seeking to take advantage of Lilly's extensive ties to and decades-long history representing the 68th Assembly District, Gibbs' representatives recruited him to join his staff as Senior Advisor.

26. Lilly commenced employment with the Assembly as Gibbs' Senior Advisor on or about August 1, 2022.

27. In his role as Senior Advisor, Lilly reported directly to Gibbs, who – in addition to supervisory authority – had the ability to affect the terms and conditions of Lilly’s employment (including the ability to terminate his employment).

28. Based principally from Gibbs’ District Office in East Harlem, Lilly’s primary responsibilities as Senior Advisor included constituent services and liaising with community leaders and organizations.

29. Consistent with his strong prior track record, Lilly excelled in the performance of his duties as Senior Advisor to Gibbs.

30. Among other notable achievements, Lilly organized an event that brought Governor Kathy Hochul and Lieutenant Governor Antonion Delgado to East Harlem, an event featuring a school-supply giveaway for more than 500 East Harlem children, and a holiday event in which free gifts were given to more than 1,000 children from across the community.

Gibbs’ Callously Terminates Lilly On Eve of Major Surgery Following Abrupt Hospitalization

31. Lilly suffers from Type-II diabetes, which he was diagnosed with in adulthood.

32. Lilly, who has sought to raise awareness about diabetes throughout his career in politics, openly and freely disclosed to Gibbs and his co-workers that he has diabetes.

33. In early Summer 2023, Lilly discovered a small hole in his left foot.

34. Lilly initially attempted to self-care for the wound.

35. However, within days of first noticing it, Lilly observed that the hole in his foot had grown larger and that certain of his left toes had become swollen.

36. Consequently, Lilly sought treatment at The Mount Sinai Hospital (the “Hospital”) in or about early July 2023.

37. Lilly was prescribed antibiotics to manage the hole in his foot and promptly

discharged from the Hospital.

38. Subsequently, the hole and swelling in Lilly's foot increased, and he developed problems with his gait and began losing his balance.

39. Lilly kept Gibbs and his fellow staffers abreast of his condition at all times.

40. Notwithstanding his deteriorating condition, Lilly continued capably performing the functions of his job as Senior Advisor.

41. Due to his worsening condition, Lilly was admitted to the Hospital for treatment late in the evening on or about Thursday, July 20, 2023.

42. Within hours of his hospitalization, Lilly's treating physicians discovered that the hole – which they determined related to his underlying condition of diabetes – had grown infected, and they began discussing the need for amputation.

43. The following morning (i.e., Friday, July 21, 2023), Lilly updated Gibbs and Gibbs' Chief of Staff, America Munoz, on his condition – including notifying them that he would be out from work while his medical team formulated a treatment plan.

44. Accompanied by Andrea Giddy (a staffer), Gibbs visited Lilly at the Hospital during the next workday (i.e., on or about Monday, July 24, 2023).

45. During that visit, Lilly advised Gibbs that he was scheduled to have toes on his left foot amputated that Thursday (i.e., on or about July 27, 2023) and that, if his doctors determined that additional infected tissue remained post-surgery, further amputation would be required.

46. Consequently, Lilly informed Gibbs that "I'll probably be here [i.e., the Hospital] for a while."

47. Despite knowing that Lilly was suffering from a disability that would almost

certainly require accommodations, at no point prior to, during, or subsequent to that visit did Gibbs, anyone on Gibbs' staff, or any Assembly personnel member ask Lilly when he would be fit to resume performance of his duties or inquire into what kind(s) of accommodations he might require moving forward.

48. More generally, Gibbs, Gibbs' staff, and the Assembly failed to provide Lilly with any information concerning the State's applicable policies for disabled employees and failed to put him in contact with (or provide contact information for) the Assembly's Human Resources Director or its Designee for Reasonable Accommodations.

49. Approximately two days after visiting Lilly at the Hospital (i.e., on or about Wednesday, July 26, 2023 – the day prior to the scheduled amputation of Lilly's toes), Gibbs called Lilly and abruptly terminated his employment effective July 28, 2023.

50. Gibbs provided Lilly with no explanation for his decision to terminate his employment, which he did not attempt to justify.

51. At the time of his termination, Lilly had received no negative performance feedback of any kind, had not received any performance warnings, and had not been subjected to any form of employee discipline (performance-related or otherwise).

52. The day after receiving notice of his termination, toes on Lilly's left foot were surgically removed.

53. Thereafter, Lilly's treating physicians discovered that infected tissue remained following that procedure.

54. Accordingly, on August 10, 2023, Lilly's left leg was amputated up to the knee.

55. Upon information and belief, Gibbs subsequently hired someone to replace Lilly and perform many of his responsibilities and functions.

56. Gibbs' perception of Lilly suddenly changed upon Lilly's hospitalization, which caused him to view Lilly as damaged goods and callously terminate him in the midst of the health crisis he was experiencing.

57. Defendants failed to reasonably accommodate Lilly's disability, including by failing to engage in an interactive process with him to determine effective accommodations for his disability.

58. Gibbs failed to engage in a "cooperative dialogue" with Lilly as required under the NYCHRL.

59. Lilly's disability, including his clear need for reasonable accommodations thereof, was a motivating factor in Defendants' decision to terminate his employment.

60. Defendants did not have a legitimate business justification for terminating Lilly's employment.

61. August 1, 2023 – a mere two business days following the effective date of Lilly's termination – would have marked his one-year anniversary with the Assembly and rendered him eligible for a protected leave of absence under the FMLA.

62. Given the severity of his health issues, it was immediately apparent from the commencement of his hospitalization that his recovery might require a prolonged medical leave of absence.

63. Rather than permit him that opportunity, the State (acting through Gibbs) terminated Lilly two business days before he was to become eligible for leave under the FMLA.

64. The State and Gibbs terminated Lilly's employment for purposes of interfering with his protected rights under the FMLA.

65. The discriminatory actions of Defendants described above were undertaken willfully, intentionally, maliciously, and with reckless indifference to Lilly’s protected rights.

66. As a result of Defendants’ discriminatory conduct, including its decision to terminate Lilly’s employment, Lilly suffered a loss of income, professional stature, and other perquisites of employment.

67. As a result of Defendants’ discriminatory conduct, Lilly has sustained significant mental and emotional harm and distress.

FIRST CAUSE OF ACTION

Disability Discrimination in Violation of the NYSHRL Against the State

68. Lilly repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

69. As a result of the foregoing, the State discriminated against Lilly on account of his disability in violation of the NYSHRL, N.Y. Exec. L. §296(1), including by terminating Lilly’s employment on account of his disability and failing to accommodate his disability.

70. As a result of the State’s discriminatory and adverse acts, Lilly has suffered damage, including without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

SECOND CAUSE OF ACTION

Disability Discrimination in Violation of the NYSHRL Against Gibbs

71. Lilly repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

72. As a result of the foregoing, Gibbs discriminated against Lilly on account of his disability in violation of the NYSHRL, N.Y. Exec. L. §296(1), including by terminating Lilly’s employment on account of his disability and failing to accommodate his disability.

73. As a result of Gibbs’ discriminatory and adverse acts, Lilly has suffered damage, including without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

THIRD CAUSE OF ACTION

***Aiding, Abetting, Inciting, Compelling, and Coercing
Disability Discrimination in Violation of the NYSHRL Against Gibbs***

74. Lilly repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

75. As a result of the foregoing, Gibbs aided, abetted, incited, compelled, and coerced discrimination against Lilly on the basis of his disability in violation of the NYSHRL, N.Y. Exec. L. §296(6).

76. As a result of Gibbs’ unlawful acts, Lilly suffered damage, including without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

FOURTH CAUSE OF ACTION

Disability Discrimination in Violation of the NYCHRL Against Gibbs

77. Lilly repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

78. As a result of the foregoing, Gibbs discriminated against Lilly on account of his disability in violation of the NYCHRL, N.Y.C. Admin. Code § 8-107(1), including by

terminating Lilly's employment on account of his disability and failing to accommodate his disability.

79. As a result of Gibbs' discriminatory and adverse acts, Lilly has suffered damage, including without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

FIFTH CAUSE OF ACTION

***Aiding, Abetting, Inciting, Compelling, and Coercing
Disability Discrimination in Violation of the NYCHRL Against Gibbs***

80. Lilly repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

81. As a result of the foregoing, Gibbs aided, abetted, incited, compelled, and coerced discrimination against Lilly on the basis of his disability in violation of the NYCHRL, N.Y.C. Admin. Code § 8-107(6).

82. As a result of Gibb's unlawful acts, Lilly suffered damage, including without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

SIXTH CAUSE OF ACTION

Failure to Engage in a Cooperative Dialogue in Violation of the NYCHRL Against Gibbs

83. Lilly repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

84. As a result of the foregoing, Gibbs failed to engage in a cooperative dialogue with Lilly regarding his disability and/or potential reasonable accommodations thereof in violation of the NYCHRL, N.Y.C. Admin. Code § 8-107(28).

85. As a result of Gibbs' unlawful acts, Lilly suffered damage, including without limitation, deprivation of income and benefits, loss of employment opportunities, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

SEVENTH CAUSE OF ACTION

Violation of the FMLA Against the State and Gibbs

86. Lilly repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

87. Defendants terminated Lilly's employment so as to interfere with, restrain, or deny Lilly the exercise of or the attempt to exercise his federally protected rights in violation of the FMLA, 29 U.S.C. § 2615(a)(1).

88. The actions and omissions of Defendants as set forth above, including their termination of Lilly so as to interfere with, restrain, or deny Lilly the exercise of or the attempt to exercise a protected medical leave of absence, are prohibited by the FMLA, 29 U.S.C. § 2615(a)(1).

89. Defendants unlawfully terminated Lilly with malice and reckless indifference to his federally protected rights.

90. As a result of Defendants' actions against him, Lilly has suffered damages, including without limitation, deprivation of income and employment-related benefits.

JURY DEMAND

91. Lilly hereby demands trial by jury.

WHEREFORE, Plaintiff respectfully requests that the Court grant judgment for Plaintiff and that it order and award Plaintiff the following relief against Defendants:

- (1) A declaratory judgment that the acts, policies, practices, and procedures complained of herein violated Plaintiff's rights as secured by the NYSHRL, the NYCHRL, and the FMLA;
- (2) Reinstatement to the highest position to which Plaintiff was and would be entitled and/or front pay;
- (3) Actual damages in the form of:
 - a. Back-pay with interest based on Plaintiff's appropriate compensation had he not been wrongfully terminated; and
 - b. Reimbursement for lost 401K contributions, social security, experience, training opportunities, and other benefits; in an amount to be proved at trial;
- (4) Compensatory damages for emotional pain and suffering, inconvenience, mental anguish, humiliation, and loss of reputation in an amount to be proved at trial but believed to exceed \$500,000;
- (5) Statutory attorneys' fees, costs and disbursements;
- (6) Punitive damages in an amount to be determined;
- (7) Interest; and
- (8) Such other and further relief as is deemed just and proper.

Dated: June 18, 2024
New York, New York

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