

CARDEN LIVESAY

LTD

ATTORNEYS AT LAW

Joshua W. Carden, SBN 021698
419 East Juanita Avenue, Suite 103
Mesa, AZ 85204

joshua@cardenlivesay.com

T. (480) 345-9500

F. (480) 345-6559

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gregory J. Gannon,

Plaintiff,

v.

Sedona Fire District, an Arizona special taxing
district,

Defendant.

**ORIGINAL COMPLAINT
(JURY TRIAL REQUESTED)**

Plaintiff Gregory J. Gannon, by and through the undersigned counsel, hereby seek relief under the Americans with Disabilities Act as follows:

PARTIES

1. Plaintiff Gregory J. Gannon was at all relevant times herein a resident of Yavapai County, Arizona, and an “employee” of Sedona Fire District within the meaning and purposes of all relevant statutes at all times material to this action.

2. Defendant Sedona Fire District (SFD) is an Arizona special taxing district constituted under A.R.S. §§ 48-802, *et seq.*, a jural entity, at all relevant times conducting its business in Yavapai and Coconino Counties, Arizona.

3. SFD was an “employer” of Plaintiff within the meaning and purposes of all relevant statutes at all times material to this action.

4. Upon information and belief, Defendant employs 101 or more people.

5. At all times pertinent to this Complaint, Defendant’s managerial employees were



1 acting within the course and scope of their employment with Defendant; and as a result thereof,
2 Defendant are responsible and liability is imputed for the acts and omissions of their managerial
3 employees, as alleged herein, under the principles of *respondeat superior*, agency, and/or other
4 applicable law.

5 6. All acts alleged in this Complaint occurred in Yavapai and Coconino Counties,
6 Arizona.

7 JURISDICTION AND VENUE

8 7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331. Pendent
9 jurisdiction over the related state law claims is invokes pursuant to 28 U.S.C. § 1367.

10 8. The unlawful employment practices described herein were committed within the
11 State of Arizona, on Defendant' premises located in Yavapai and Coconino Counties, State of
12 Arizona.

13 9. Accordingly, venue in this Court is proper pursuant to 28 U.S.C. § 1391(b).

14 ALLEGATIONS COMMON TO ALL CLAIMS

15 10. SFD employed Mr. Gannon as a Firefighter/EMT beginning on or about January 5,
16 2016.

17 11. His performance was always satisfactory.

18 12. On or about April 9, 2017, Mr. Gannon suffered an injury to his knee that developed
19 into a disability.

20 13. He applied for and received FMLA leave for the 12 weeks to which he was entitled.

21 14. Mr. Gannon makes no claim herein under the FMLA.

22 15. On or about June 15, 2017, Mr. Gannon provided SFD with a return to work letter
23 from his orthopedic doctor that stated he could return to work by July 5, 2017 with no restrictions
24 but could wear a brace if needed.

25 16. SFD refused to permit Mr. Gannon to return to work at that time.

26 17. Upon information and belief, SFD was imposing a "100% healed" requirement upon
27 Mr. Gannon.

28 18. On July 3, 2017, the Monday after Mr. Gannon's FMLA leave expired, he met with



1 SFD's designated physician for a "return to duty" appointment as required by SFD.

2 19. During that appointment, the doctor asked if Mr. Gannon "felt 100%" with respect
3 to the physical standards applicable to firefighters.

4 20. Mr. Gannon confirmed that he met the standards, exceeded them, and likely
5 exceeded the physical ability of some of his co-workers.

6 21. In fact, Mr. Gannon, shortly before his return to work letter in June 2017, had been
7 given a series of physical tests by his physical therapist (highly experienced in treating firefighters)
8 demonstrating that he had the necessary strength, flexibility, ability, and stamina to return to work.

9 22. The SFD doctor gave a visual examination of Mr. Gannon's knee but did not
10 perform any performance or fitness tests of any kind.

11 23. The doctor then stated he wanted to speak with Mr. Gannon's orthopedic doctor.

12 24. On July 6, 2017, the SFD doctor called Mr. Gannon to say that he could not clear
13 Mr. Gannon to work because the orthopedic doctor could not guarantee with 100% certainty that
14 there was "no chance of reinjury."

15 25. Mr. Gannon requested of the SFD doctor that he permitted to perform physical tests
16 to show that he met the standards (since SFD had not requested this), and the doctor said he
17 would look at those tests but that he did not know what standards to even test.

18 26. However, shortly thereafter on July 6, 2017, SFD adopted the doctor's position as
19 its own and, through HR, terminated Mr. Gannon immediately over the phone on July 6, 2017.

20 27. Mr. Gannon appealed his termination and repeatedly requested that he be allowed
21 to return to work and/or be medically tested to demonstrate his ability to meet or exceed the
22 relevant standards.

23 28. SFD refused.

24 29. Plaintiff filed a charge of discrimination with the EEOC on or about January 8, 2018.
25 A true and correct copy of that document is attached as Exhibit A.

26 30. On September 24, 2021, the EEOC issued Mr. Gannon his notice of suit rights. A
27 true and correct copy of that document is attached as Exhibit B.

28 31. All conditions precedent to the filing of this lawsuit have occurred or been satisfied.



FIRST CAUSE OF ACTION - ADA DISCRIMINATION

32. By reference hereto, Plaintiff hereby incorporates the preceding paragraphs.

33. Plaintiff had a disability that caused a substantial limitation to the performance of major life activities, a track record of impairment, and/or the perception by Defendant that he experienced substantial limitations of major life activities.

34. Defendant was aware of the disability.

35. Defendant imposed unlawful requirements, such as a 100% healed standard and a “guaranteed chance of no reinjury” standard, in making employment decisions about Plaintiff.

36. Defendant refused to return Plaintiff to work even though he had been cleared by his doctor to do so, and forced Plaintiff to see their own physician without a reasonable basis.

37. Defendant refused to evaluate Plaintiff under the relevant physical standards applicable to firefighters.

38. By these actions, Defendant has engaged in direct discrimination against Plaintiff, as well as treating him disparately from other non-disabled workers in violation of the Americans with Disabilities Act, 42 U.S.C. § 12112.

39. Additionally, Defendant failed to reasonably accommodate Plaintiff by refusing to allow him to wear a brace and/or undergo physical tests demonstrating his ability to return to work, even if that accommodation required minimal additional leave to complete beyond the 12 weeks of FMLA leave; or even to hold the required interactive dialogue on those topics.

40. As a direct and proximate result of Defendant’s conduct, Plaintiff has sustained damages in the form of lost wages and value of benefits. Plaintiff continue to lose the value of such wages and benefits into the future.

41. As a direct and proximate result of Defendant’s conduct, Plaintiff has also suffered damages in the form of loss of enjoyment of life, mental, physical, and emotional pain and suffering experienced and that with reasonable probability will be experienced in the future, for which he should be compensated.

JURY TRIAL DEMANDED

42. Plaintiff demands a trial by jury.



PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court enter judgment as follows:

- A. Declaring that the acts and practices complained of herein are in violation of federal law;
- B. Directing Defendant to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect Plaintiff's employment or employment opportunities;
- C. Directing Defendant to place Plaintiff in the position he would have occupied but for Defendant' unlawful actions, and make him whole for all earnings he would have received, including, but not limited to, back pay, front pay, pension, and other lost benefits;
- D. Awarding Plaintiff compensatory damages in an amount to be determined by the jury;
- E. Awarding Plaintiff pre- and post-judgment interest, the costs of this action, and reasonable attorneys' fees as provided by the statutes providing the causes of action cited herein; and
- F. Granting such other and further relief, including equitable relief authorized by the cited statutes, as this Court deems necessary and proper.

Respectfully submitted on this 8th day of November, 2021,

CARDEN LIVESAY, LTD.

By: s/Joshua W. Carden
Joshua W. Carden
Attorneys for Plaintiff



**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): Gregory J. Gannon

Defendant(s): Sedona Fire District

County of Residence: Yavapai

County of Residence: Yavapai

County Where Claim For Relief Arose: Yavapai

Plaintiff's Atty(s):

Defendant's Atty(s):

**Joshua W Carden (Gregory J. Gannon)
Carden Livesay, Ltd.
419 E Juanita Ave, Ste. 103
Mesa, Arizona 85204
4803459500**

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 USC 121112 - ADA disability discrimination

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/Joshua W. Carden

Date: 11/08/2021

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

EXHIBIT A

REC'D EEOC
 JAN 08 2018
 PKDO

EEOC Form 5 (11/09)

<p>CHARGE OF DISCRIMINATION</p> <p><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Statement and other information before completing this form.</small></p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC</p> <p style="text-align: right;">540-2017-03146</p>
<p>Arizona Attorney General's Office, Civil Rights Division and EEOC</p> <p><small>State or local Agency, if any</small></p>	

Name (indicate Mr., Ms., Mrs.) Mr. Gregory Gannon	Home Phone (Incl. Area Code) 928-273-2285	Date of Birth
---	---	---------------

Street Address City, State and ZIP Code
4941 N Viewpoint Dr., Apt 1, Prescott, AZ 86314

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name SEDONA FIRE DISTRICT	No. Employees, Members 20 or More	Phone No. (Include Area Code)
-------------------------------------	---	-------------------------------

Street Address City, State and ZIP Code
2860 Southwest Dr., Sedona, AZ 86336

<p>DISCRIMINATION BASED ON (Check appropriate box(es).)</p> <p><input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN</p> <p><input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION</p> <p><input type="checkbox"/> OTHER (Specify)</p>	<p>DATE(S) DISCRIMINATION TOOK PLACE</p> <p>Earliest Latest</p> <p style="text-align: right;">07-06-2017</p> <p><input type="checkbox"/> CONTINUING ACTION</p>
---	---

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I was hired by the above-named Respondent on or about January 5, 2016 as a Firefighter/EMT. Upon information and belief, I performed my duties to a satisfactory level.

On or about April 9, 2017, I was injured and the injury later developed into what is now a disability. I immediately informed Angel Morales (Captain) and Betty Johnson (HR) of my condition. On or about April 11, 2017, I was placed on approved medical time away from my position Family Medical Leave Act (FMLA) for a twelve-week period. During that period, I satisfied all of the Respondent's request for additional information. Upon information and belief, on or about June 5, 2017, I was released back to work with "No-Restrictions: May wear a brace" by my own personal orthopedic physician. On or about July 3, 2017, I met with Dr. Wesley (Respondent Physician), for a return to duty appointment. During that appointment, Dr. Wesley asked if I felt 100% in regard to the standard requirements in NFPA 1582 9.10.10.1. Immediately afterwards, Dr. Wesley examined me and then stated that he wanted to discuss the matter with my personal orthopedic physician.


On or about July 6, 2017, I received a phone call from Dr. Wesley (Respondent Physician). Dr. Wesley then told me that he could not clear me for return because my person physician could not express with 100% certainty that there was "no chance of re-injury". Dr. Wesley continued by stating that he was not sure that I was ready and able to perform the essential functions of my position. Upon information and belief, Dr. Wesley reached this decision without performing the proper steps or measuring my condition against the required standards. As a result of Dr. Wesley's failure to follow an established and documented procedure, my employment with the Respondent was terminated effective July 6, 2017.

I believe that I have been discriminated against because of my disability in violation of the Americans with Disabilities Act of 1990 as amended.

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

January 8, 2018



 Date Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

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

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
 (month, day, year)

EXHIBIT B

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Gregory J. Gannon**
3419 S Pine Tree Ln
Prescott, AZ 86303

From: **Phoenix District Office**
3300 North Central Ave
Suite 690
Phoenix, AZ 85012

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

EEOC Charge No.

EEOC Representative

Telephone No.

540-2017-03146

Marisol Bingochea,
Supervisory Investigator

(602) 661-0024

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: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of 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)

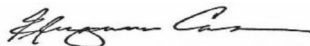
- NOTICE OF SUIT RIGHTS -

(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



9/24/2021

Enclosures(s)

Elizabeth Cadle,
District Director

(Date Issued)

cc:

Betty Johnson
Human Resources
SEDONA FIRE DISTRICT
2860 Southwest Dr
Sedona, AZ 86336

Joshua W. Carden, Esq.
JOSHUA CARDEN LAW FIRM, P.C.
419 E Juanita Ave., Suite. 103
Mesa, AZ 85204