

**NOTICE OF CIRCUMSTANCES GIVING RISE TO CLAIM
AND CLAIM PURSUANT TO WIS. STAT. § 893.80**

BY PERSONAL SERVICE

TO: Scott McDonell
Clerk, Dane County
210 Martin Luther King Jr. Boulevard, Room 106A
Madison, WI 53703

and

Patrick Miles
Chair, Dane County Board of Supervisors
210 Martin Luther King Jr. Boulevard, Room 362
Madison, WI 53703

CLAIMANT: Maribeth Mohr
1729 Capital Avenue
Madison WI 53705

PLEASE TAKE NOTICE that Maribeth Mohr, by her attorneys, Hawks Quindel, S.C., states that the following circumstances give rise to a claim:

1. Maribeth Mohr is a registered dietician who has worked at Badger Prairie Health Care Center (“BPHCC”) for more than 23 years.
2. Ms. Mohr is a member of AFSCME Dane County Employee Association 895, an affiliate of AFSCME Council 32 (“AFSCME”).
3. On September 22, 2022, the Health and Human Needs Committee of the Dane County Board of Supervisors held a meeting to consider and vote on, among other items, 2022 RES-150: Awarding Temporary Nursing Services Contract and Creating New Expenditure Line DCDHS – BPHCC (“Resolution 150”).
4. Resolution 150 sought to allocate \$330,000.00 to BPHCC to hire four temporary nurses for 13-week terms through an outside staffing agency.
5. AFSCME opposed Resolution 150 and asked its members to attend the meeting and speak in opposition to the resolution.
6. Although many BPHCC nurses oppose Resolution 150, none spoke in opposition to the resolution for fear of retaliation from BPHCC.

7. Despite having similar fears, Ms. Mohr spoke in opposition to the resolution at the Health and Human Needs Committee's September 22, 2022, meeting.

8. During her testimony, Ms. Mohr informed the Health and Human Needs Committee of BPHCC employees' fears of retaliation:

Today I am speaking to you on behalf of my peers at Badger Prairie. They have all declined the invitation to speak, saying that they are afraid of reprisals. I was very surprised because I was unaware that these nurses have very real fears.

I also want to make the Committee aware that I, too, harbor a fear of potential negative repercussions for speaking with you tonight because this is a very emotionally charged situation.

9. In response to Ms. Mohr's testimony, Health and Human Needs Committee Chair Heidi Wegleitner stated:

Thank you. I know it takes a lot of courage to share with us tonight, and I just want to say that I regret that any worker or county employee would feel afraid to come before this committee, but I'm not dismissing that fear. But I do appreciate you speaking to us, and thank you again.

10. On October 6, 2022, the Health and Human Needs Committee held another meeting to consider and vote on Resolution 150.

11. Ms. Mohr again spoke in opposition to the resolution at that meeting.

12. The next day, Ms. Mohr's fears of retaliation became a reality.

13. By letter dated October 7, 2022, Dane County Risk Manager Dan Lowndes ordered Ms. Mohr to attend a pre-disciplinary hearing with Mr. Lowndes and BPHCC Administrator Bill Brotzman on October 13, 2022.

14. At no time prior to that date had Mr. Lowndes informed Ms. Mohr of any deficiencies in her performance and at no time during her over 22-year County tenure prior to that date had she ever been summoned to such a meeting.

15. Mr. Lowndes notified Ms. Mohr that she would have the opportunity to provide “additional information and/or documentation related to the concerns listed below.”

16. Mr. Lowndes listed only one concern in the letter: “Please provide any and all documentation/proof that you were at BPHCC, working, on August 19, 2022.

17. As Ms. Mohr later learned, Mr. Lowndes and Mr. Brotzman were accusing her of having “no-called/no-showed,” seven weeks earlier on August 19, 2022.

18. Ms. Lowndes cited four potential work rule violations related to the accusation:

Dane County Civil Service Work Rules:

Section I

D. Falsifying records or giving false information to other governmental agencies or to employees responsible for record keeping.

E. Failure to provide accurate and complete information whenever such information is required by an authorized person.

Section II

A. Failure to report promptly at the starting time of a shift or leaving before the scheduled quitting time of a shift without the specific approval of the supervisor.

Section IV

J. Failure to exercise good judgment.

19. At the October 13, 2022, pre-disciplinary meeting, Ms. Mohr explained that she worked from BPHCC and from home on August 19, 2022, pursuant to a flexible work schedule approved by her past and current supervisors that spanned her entire tenure with BPHCC. Neither Mr. Lowndes nor Mr. Brotzman, either in that meeting or at any time thereafter, explained how they could have been unaware of that fact – including why they would not have consulted her supervisors – before summoning her to the meeting.

20. In responding at the meeting to Mr. Lowndes and Mr. Brotzman's accusation that she failed to swipe in and out of the building with her prox card, Ms. Mohr explained that she rode her bike to work and entered the building through the loading dock that day, as she had done on previous occasions.

21. When Ms. Mohr asked if there were video recordings of the building's entrances from August 19, 2022, Ms. Lowndes and Mr. Brotzman stated that video recordings are deleted after 30 days and that they had not saved any recordings for August 19, 2022.

22. Ms. Mohr told Mr. Lowndes and Mr. Brotzman that she felt that they were retaliating against her for speaking in opposition to Resolution 150 at the Health and Human Needs Committee's September 22, 2022, and October 6, 2022, meetings.

23. Following the pre-disciplinary meeting, BPHCC issued Ms. Mohr the attached coaching note, which was signed by William Brotzman, BPHCC's Administrator, on October 28, 2022.

24. The coaching note deviated from the purpose of the pre-disciplinary hearing, addressing topics far outside the scope of the notice of pre-disciplinary meeting.

25. Even though the notice of pre-disciplinary meeting cited Ms. Mohr's work attendance on August 19, 2022, as the only alleged concern, the coaching note reprimanded Ms. Mohr for what it claimed were "other troubling patterns in your work performance and failure to adhere to your work schedule were identified," such as:

- a. "You chose to alter your work schedule on August 31, leaving the building for the day without seeking approval from your Supervisor."
- b. "A review of your entry/exit records reveal that you consistently do not adhere to these work times, especially with regard to starting your shift at the required time, resulting in countless tardy occurrences."
- c. "It was discovered that for the past few months, you have not followed the required policy of completing the Wello Health Check-In screening process upon coming to work."
- d. "Last year, the D.O.N. discovered that you were working on a Sunday afternoon, to which you replied that you have a lot of work to do. This did not make sense as you have among the lowest caseloads in the State. Later that day, she discovered that you were actually in the facility

using County equipment (copy machine) to make copies of your income tax returns.”

26. Indeed, the coaching note failed to even address the sole stated purpose for the October 13, 2022 meeting, namely Ms. Mohr’s work attendance on August 19, 2022.

27. Moreover, BPHCC did not produce any evidence to substantiate the allegations of “countless tardy occurrences.”

28. Ms. Mohr objected to the coaching note and filed a written response with Employee Relations.

29. However, BPHCC treats the coaching note as non-grievable and thus the coaching note is still in Ms. Mohr’s personnel file.

30. Ms. Mohr never received a coaching note or formal disciplinary action until she spoke in opposition to Resolution 150 at the Health and Human Needs Committee’s September 22, 2022, and October 6, 2022, meetings.

31. The timing of the pre-disciplinary hearing, investigation, and coaching note demonstrates that BPHCC retaliated against Ms. Mohr.

32. Mr. Lowndes and Mr. Brotzman ordered Ms. Mohr to attend a pre-disciplinary meeting 15 days after she first testified before the Health and Human Needs Committee and one day after she testified for the second time.

33. Mr. Lowndes and Mr. Brotzman’s investigation and coaching note also demonstrate that BPHCC retaliated against Ms. Mohr.

34. Ms. Mohr’s work attendance on August 19, 2022, was merely pretext for Mr. Lowndes and Mr. Brotzman to conduct a sprawling investigation against Ms. Mohr in retaliation for her testimony before the Health and Human Needs Committee.

35. Mr. Lowndes and Mr. Brotzman would have (1) preserved video evidence from August 19, 2022, and (2) addressed Ms. Mohr’s work attendance on August 19, 2022, in the coach note, if Ms. Mohr’s attendance that day was the true reason for pre-disciplinary hearing.

36. In the end, it is clear that BPHCC, acting through Mr. Lowndes and Mr. Brotzman, retaliated against Ms. Mohr for speaking in opposition to Resolution 150 at the Health and Human Needs Committee’s September 22, 2022, and October 6, 2022, meetings.

37. Ms. Mohr has experienced mental anguish and has incurred attorney's fees as a result of BPHCC's retaliation. She intends to pursue a federal court lawsuit against the County under the First Amendment to the United States Constitution if the County does not rectify the BPHCC's violations of her rights, as described herein.

WHEREFORE, Maribeth Mohr seeks damages in the amount of \$25,000 plus attorneys' fees and costs. Ms. Mohr also seeks the expungement of the coaching note and any related documentation from her personnel file.

Dated this 5th day of January, 2023.

HAWKS QUINDEL, S.C.
Attorneys for Claimant Maribeth Mohr

Electronically signed by Aaron N. Halstead

Aaron N. Halstead
WI State Bar No. 1001507
Email: ahalstead@hq-law.com
Connor J. Clegg
WI State Bar No. 1118534
Email: cclegg@hq-law.com
409 E. Main Street
Madison, WI 53703
Telephone: (608) 257-0040
Facsimile: (608) 256-0236



COACHING NOTE

(Performance Reasons – Non-disciplinary)

NAME OF EMPLOYEE: Maribeth Mohr

EMPLOYEE WAS COACHED FOR:

On 10/13/22, a pre-disciplinary meeting was held as a result of you altering your work schedule without receiving authorization from your Supervisor. As a result of this investigation, other troubling patterns in your work performance and failure to adhere to your work schedule were identified, which will be addressed in this Coaching Note.

Your job is not a remote position and any deviations from your scheduled work times of 8:00 a.m.-4:00 p.m. must be approved in advance. You chose to alter your work schedule on August 31, leaving the building for the day without seeking approval from your Supervisor. A review of your entry/exit records reveal that you consistently do not adhere to these work times, especially with regard to starting your shift at the required time, resulting in countless tardy occurrences. Going forward, it is expected that you will utilize your prox card upon entering and exiting the building.

It was discovered that for the past few months, you have not followed the required policy of completing the Wello Health Check-In screening process upon coming to work. This process is in place to minimize the risk of an employee coming to work with an infectious disease, including Covid-19. By failing to complete this necessary protocol, you have disregarded the safety of the residents and your co-workers. You are expected to comply with this policy immediately going forward.

Last year, the D.O.N. discovered that you were working on a Sunday afternoon, to which you replied that you have a lot of work to do. This did not make sense as you have among the lowest caseloads in the State. Later that day, she discovered that you were actually in the facility using County equipment (copy machine) to make copies of your income tax returns. You received an oral counseling for this infraction. Additionally, the D.O.N., as well as myself, met with you to inform you that your scheduled job is Monday through Friday, 8:00 a.m.-4:00 p.m., and any deviations to this schedule need to be approved in advance by your Supervisor. You are not to work over 40 hours in a week, nor is it necessary with your resident caseload.

If you have any questions regarding the aforementioned list of work violations, feel free to see your Supervisor. Should you continue to choose not to follow these work rules, you could be subject to further progressive discipline, including and up to termination of employment.

10/28/22

Date

Supervisor Signature

To the Employee:

1. A copy of this note will be placed in your personnel file.
2. You have the right to review or authorize a representative of the employee group's representative to review your personnel file and to respond to items contained therein as provided by Wisconsin Statute 103.13.
3. Your signature below reflects only that you have received a copy of this document.

4. Coaching notes shall become invalid after one (1) year and will be removed after one year of the issue date.
5. Badger Prairie Coaching notes can only be written, signed, delivered, and discussed by management level supervisors.
6. Coaching notes are not grievable.

11/8/2022

Date

Maubeth Moler - Signature only confirms receipt
Employee Signature *Please see my detailed written response contesting these allegations.*

Cc: Employee group's representative, if any, within twenty-four hours of being issued to employee