



MORTENSON V ALLSTATE
(ALL-IN-ONE)

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DISCRIMINATION LAWSUITS FILED AGAINST
ALLSTATE INSURANCE COMPANY

SOVEREIGN: US | Federal

CIRCUIT: 9th Circuit

DISTRICT: USAZAD



0101-01

Mortenson v Allstate

2:19-cv-01261

CAPTION: *Mortenson v Allstate, 2:19-cv-01261 (USAZAD 2019)*

DISTRICT: USAZAD

CASE NO: 2:19-cv-01261

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Andrea Mortenson,

Plaintiff,

vs.

American Heritage Life Insurance
Company, d/b/a Allstate Benefits, a
Florida corporation; The Allstate
Corporation, a Delaware corporation,

Defendants.

Case No.:

COMPLAINT

(Jury Trial Demanded)

Plaintiff Andrea Mortenson (“Mortenson”), for her complaint against Defendants American Heritage Life Insurance Company, d/b/a Allstate Benefits, and The Allstate Corporation (collectively, “Allstate” or “Defendants”), alleges as follows:

NATURE OF THE CASE

1. This action is brought to remedy discrimination on the basis of sex in the compensation, terms, conditions and privileges of employment and retaliation in violation of the Federal Equal Pay Act (“EPA”), 29 U.S.C. § 206(d), and the Arizona Equal Pay Act, A.R.S. § 23-341.

2. Mortenson also brings a claim of retaliation in violation of 29 U.S.C. § 215(a)(3).

3. This action also is brought to recover damages from Defendants’ breach of

1 contract and breach of the implied covenant of good faith and fair dealing.

2 **JURISDICTION AND VENUE**

3 4. This Court has jurisdiction over the subject matter and the parties hereto
4 pursuant to 28 U.S.C. § 1331.

5 5. This Court has supplemental jurisdiction over Mortenson’s state law claims
6 because such claims are so related to Mortenson’s federal claim that they form part of the
7 same case or controversy pursuant to 28 U.S.C. § 1367.

8 6. Injunctive and declaratory relief, damages and other appropriate legal and
9 equitable relief are sought pursuant to 29 U.S.C. § 216(b).

10 7. Venue in this Court is proper because the unlawful acts complained of herein
11 occurred within Maricopa County, Arizona.

12 **PARTIES**

13 8. Mortenson is a female individual, who resides in Maricopa County, Arizona.

14 9. Upon information and belief, Defendant American Heritage Life Insurance
15 Company, d/b/a Allstate Benefits, is a Florida corporation and a subsidiary of The Allstate
16 Corporation, with an address of 1776 American Heritage Life Drive, Jacksonville, Florida
17 32224.

18 10. Upon information and belief, Defendant The Allstate Corporation is a
19 Delaware corporation with its principal place of business in Northfield Township, Illinois.

20 11. Defendants are “employers” pursuant to Title VII.

21 **FACTS**

22 12. Mortenson is currently employed by Allstate. She was hired on September 19,
23 2016 as a sales consultant for the state of Arizona selling Allstate voluntary benefit plans.

1 13. Mortenson has worked in the employee and voluntary benefits industry since
2 1988. During this time, she became knowledgeable in the industry by selling products such
3 as medical, self-funding, dental, vision, life, disability, accident plans, critical illness plans,
4 cancer plans, and hospitalization plans. She also developed many long-term business
5 relationships with Arizona insurance brokers and agencies, which are Defendants' clientele.
6

7 14. In November 2013, prior to being hired at Allstate, Mortenson founded
8 EasyEnroll, LLC, an Arizona limited liability company ("EasyEnroll"), which provides
9 agencies with affordable practical electronic enrollment solutions and builds services for
10 these platforms.
11

12 15. When Allstate hired Mortenson, Allstate agreed (through Mortenson's former
13 managers, Mark Boyes and Rick Sutherland, acting upon the approval of Clark Watkins and
14 Walter Jones) that Mortenson could retain her ownership interest in EasyEnroll.
15

16 16. As part of that agreement, the parties agreed that: (a) Mortenson would refer
17 to Allstate the business of certain brokers, and not receive commissions on sales involving
18 these brokers; and (b) Mortenson could continue receiving commission from products sold
19 through EasyEnroll, but she could not sell any new commissioned business.
20

21 17. As compensation for Mortenson's employment at Allstate, Mortenson
22 received a flat salary of \$30,000 per year, and a \$5,000 monthly guarantee for the first twelve
23 months of employment (the "Guarantee").
24

25 18. Allstate later extended the Guarantee for an additional ten months. The
26 Guarantee ended in July 2018 and Mortenson received her last Guarantee payment in
27 September 2018.
28

 19. After the Guarantee ended, Allstate paid Mortenson \$30,000 per year plus

1 commissions.

2 20. At the time of hire and as agreed upon between Allstate and Mortenson,
3 Mortenson brought over her book of business to Allstate, which was valued at \$22,500 a
4 year in renewable commissions.

5 21. Mortenson does not receive any commissions from Allstate on this book of
6 business she turned over to Allstate.

7 22. Within one year of joining Allstate, Mortenson increased sales in her region by
8 208% from her predecessor, Matt Sledge.

9 23. Specifically, during Mr. Sledge's tenure, he wrote \$249,000 in sales for 2015
10 and \$162,000 in sales for 2016.

11 24. Mortenson wrote more than \$500,000 in sales in 2017 and more than \$608,000
12 in sales for 2018.

13 25. Mortenson has received multiple awards from Allstate for her achievements.

14 26. For example, in 2017 Mortenson was the #1 Sales Consultant for Life
15 Insurance Sales (EGTL) for Allstate Benefits.

16 27. Currently, Mortenson ranks near the top in sales in her region and near the
17 top within the company for the following 2018 additional benchmarks: Top-Ranking in
18 PinnacleCare Sales, Top-Ranking in New Producer Sales, Top-Ranking in EGTL Sales, and
19 Top-Ranking in UL/TL Sales.

20 28. For 2018, Mortenson exceeded her goal for the number of initial premiums
21 (i.e., new sales), and exceeded her new producer goal (i.e., new brokers).

22 29. In addition to her 2017 and 2018 accomplishments, Mortenson has been
23 assisting the Allstate Technology Department in data formatting from EaseCentral (one of
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1 Allstate's enrollment software partnerships) and assisting her sales colleagues on how to use
2 EaseCentral.

3 30. In or about September 2018, Mortenson was involved in email
4 correspondence with Allstate's operations department regarding issues with enrollment for
5 guaranteed issue disability policies.
6

7 31. When the issue escalated to Mortenson's managers, Mr. Watkins asked
8 Mortenson in a private email, copying Mortenson's managers John Walker and Art Kasabian,
9 whether Mortenson owned an enrollment company.
10

11 32. Mortenson responded to Mr. Watkins' email directly, giving a transparent
12 explanation about what EasyEnroll was, how it worked, how Allstate had given her approval
13 to continue her ownership of EasyEnroll at the time of her hire, and how there was no
14 conflict of interest given that EasyEnroll did not compete with Allstate.
15

16 33. Mortenson never received a response to that email or any other questions from
17 any of her managers on the email thread.

18 34. On or about October 2, 2018, at a regional sales meeting, Mortenson and her
19 colleagues raised complaints about the payment of earned sales incentive compensation,
20 questioning what sales are submitted from the electronic portals and stating that they do not
21 have the ability to verify what policies/sales Allstate receives from these electronic portals.
22 As a result, they cannot confirm that they are paid the correct commissions.
23

24 35. At that meeting, Mortenson identified specific instances where her sales were
25 missing from commission reports, so she was not paid the correct commission amount.
26

27 36. On October 24, 2018, within weeks after raising her concerns about the
28 commissions, Mortenson received an email from HR Comply, the human resource

1 compliance division of Allstate, objecting to Mortenson's ownership of EasyEnroll and
2 stating:

3 If you want to continue to pursue this other insurance related work,
4 you will need to terminate your Allstate position forthwith. ACTION
5 REQUIRED: To follow up, we will need you to confirm to
6 HRComply@allstate.com what your current role and ownership status
with EasyEnroll is [sic] later than October 31, 2018. If you have any
questions or need additional clarity, please contact us at HR Comply.

7 37. Troubled by Allstate's apparent breach of their agreement, Mortenson sought
8 guidance from her managers, specifically Messrs. Watkins and Walker, who directed her to
9 respond to HR Comply.

10 38. Mortenson responded to HR Comply and copied Messrs. Watkins and Walker,
11 describing her ownership of EasyEnroll.

12 39. In her response, Mortenson was transparent about the discussions she had
13 with her managers when she was hired, provided emails from her then-current supervisor,
14 Rick Sutherland, confirming the involved carriers, and reiterated her commitment to Allstate.

15 40. Mortenson followed-up with her supervisors to learn the status of the matter,
16 but received no response, leaving her in constant fear that she may be terminated,
17 notwithstanding the agreement that had been reached when she was hired.

18 41. Around the time of the email from HR Comply, Mortenson reviewed past
19 correspondence from the time of her hire. During that review, she realized that she
20 inadvertently had been sent an email message on September 27, 2016 from Mr. Boyes listing
21 the guarantee amounts for other employees in sales consultant positions.

22 42. The September 27, 2016 email reveals discrepancies in pay between
23 Mortenson's male and female colleagues.

24 43. Mortenson's male counterparts, and specifically her predecessor, each started
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1 at monthly guarantees of \$6,200 and \$7,500.

2 44. In contrast, Mortenson and her female counterparts started at monthly
3 guarantees of \$5,500, \$5,000, and \$3,000.

4 45. In early November 2018, the Allstate Privacy Office notified Mortenson that
5 she uploaded files that may be a violation of Allstate’s policies and standards.
6

7 46. Mortenson responded to the notification, explaining that the uploaded files
8 are those that Allstate’s Technology Department requested Mortenson provide because the
9 Technology Department did not have the necessary connection to obtain the files.
10

11 47. In her response, Mortenson provided records of the request and her
12 communication with Allstate’s Technology Department.

13 48. After submitting her response, Mortenson received a terse email from Mr.
14 Watkins accusing Ms. Mortenson of sending personal health information to an unsecured
15 email. However, the “unsecured email” was the secured URL address for the electronic
16 portal that the Technology Department requested Ms. Mortenson use to download reports
17 from and send to the Technology Department to assist with enrollments.
18

19 49. On November 13, 2018, Mortenson received an email from a representative
20 of Allstate’s Data Loss Prevention, stating that the alleged privacy incident “would not
21 require additional review,” and instructing Mortenson to advise her “senior leadership”
22 (which Mortenson did).
23

24 50. During this same week, Mortenson received emails from her manager about
25 being behind on her sales goal for the year; however, he did not consider that the last two
26 months of the year are the busiest and that the majority, if not all, of her colleagues were also
27 behind on their sales goals for the year as well.
28

1 51. Mortenson continued to feel uneasy about whether her sales have been
2 properly computed since discovering that Allstate has not been properly crediting her with
3 certain sales.

4 52. In December 2018, Mortenson failed to attend an open enrollment fair that
5 she confirmed she would attend.

6 53. Mortenson had agreed to attend the open enrollment fair prior to being told
7 she was being terminated for owning EasyEnroll, and prior to being told that the Western
8 Region Enrollment Department would not be sending an enroller to the same fair because
9 the last two years were not fruitful.

10 54. Allstate’s legal counsel called Mortenson’s failure to attend a “serious
11 performance issue,” and claimed that Allstate lost out on about fifty life applicants, who
12 enrolled with a competitor.

13 55. However, it is Allstate’s well-established policy that only “enrollers,” not sales
14 consultants, can enroll members.

15 56. It is apparent that the fabricated “performance” issue is an attempt to justify
16 terminating Mortenson.

17 57. On December 12, 2018, HR Comply emailed Mortenson and asked whether
18 she had discussed with her boss, John Walker, whether she would be separating.

19 58. Mr. Walker has had limited discussions with Mortenson regarding the emails
20 with HR Comply. Those discussions did not address separation.

21 59. To date, Allstate and Mortenson have yet to reach a resolution regarding
22 Mortenson’s termination. The lack of any resolution has caused substantial anxiety and
23 worry for Mortenson.
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1 60. Upon information and belief, Allstate intends to replace Mortenson with a
2 younger man, who had been employed in Tucson, Arizona with no previous insurance
3 experience.

4 61. Upon information and belief, Allstate has been intentionally delaying the
5 processing of Mortenson's sales, thereby delaying payment of Mortenson's commissions, in
6 an attempt to avoid payment of commission on products that Mortenson has sold.

7 62. In addition to three other matters regarding clients Protex, AME Electrical,
8 and Terros, Allstate Technology acknowledges that it delayed submitting an electronic
9 enrollment for a sale by Mortenson that she completed on or about November 28, 2018.

10 63. Moreover, Allstate did not include all of Mortenson's sales for a UL/Term
11 insurance sales contest in December 2018, thereby depriving Mortenson of a bonus as well
12 as potentially depriving Mortenson of her commission on those sales.

13 64. Mortenson remains in a constant state of worry because she fears that Allstate
14 will continue to misprocess her business and deprive her of her wages.

15 65. Allstate's actions have created an environment of hostility, making it
16 impossible for Mortenson to effectively perform her role.

17 66. Pursuant to A.R.S. § 23-1502, Mortenson provided Allstate with written notice
18 that such working conditions exist at Allstate that she believes are objectively so difficult or
19 unpleasant that she feels compelled to resign or intends to resign.

20 67. As a result of Allstate's sex-based wage practices, Mortenson has lost wages
21 because she is a woman.

22 68. As a result of Allstate's retaliation towards Mortenson causing delay of
23 payment of commissions to Mortenson and threatening discipline, Mortenson has lost an
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1 unknown amount of wages and commission.

2 69. Additionally, as a result of the foregoing, Mortenson has suffered significant
3 emotional duress. Her feelings of being targeted and victimized by Allstate have left her
4 depressed, anxious, angry, and humiliated. She continues to feel emotionally distraught in
5 her position with Allstate.
6

7 **CLAIMS FOR RELIEF**

8 **COUNT ONE**
9 **(Sex-Based Pay Discrimination in Violation of the Equal Pay Act)**

10 70. Mortenson hereby re-alleges and incorporates the preceding paragraphs of this
11 complaint.

12 71. Defendants have employed Mortenson and male employees in jobs as sales
13 consultants requiring equal skill, effort, and responsibility.

14 72. Mortenson and male employees performed their jobs under similar working
15 conditions.
16

17 73. Mortenson was paid a lower Guarantee than her male predecessor and
18 similarly situated male colleagues performing substantially similar work.

19 74. The differential in pay between male and female employees was not due to a
20 bona fide seniority system, a bona fide merit system, or a bona fide system that measures
21 employee earnings by quantity or quality of work, nor was the difference in pay a result of a
22 factor other than sex.
23

24 75. Defendants willfully caused, contributed to, or caused the continuation of
25 wage rate discrimination based on sex, in violation of the Equal Pay Act.

26 76. As a direct, legal and proximate result of the discrimination, Mortenson has
27 sustained, and will continue to sustain, economic damages to be proven at trial.
28

1
2 **COUNT THREE**
3 **(Sex-Based Pay Discrimination in Violation of the Arizona Equal Pay Act – A.R.S. §**
4 **23-341)**

5 86. Mortenson hereby re-alleges and incorporates the preceding paragraphs of this
6 complaint.

7 87. Defendants have employed Mortenson and male employees in jobs as sales
8 consultants requiring equal skill, effort, and responsibility.

9 88. Mortenson and male employees performed their jobs under similar working
10 conditions.

11 89. Mortenson was paid a lower guarantee than her male predecessor and similarly
12 situated male colleagues performing substantially similar work.

13 90. The differential in pay between male and female employees was not due to a
14 bona fide seniority system, a bona fide merit system, or a bona fide system that measures
15 employee earnings by quantity or quality of work, nor was the difference in pay a result of a
16 factor other than sex.

17 91. Defendants caused, contributed to, or caused the continuation of wage rate
18 discrimination based on sex, in violation of the A.R.S. § 23-341.

19 92. As a direct, legal and proximate result of the discrimination, Mortenson has
20 sustained, and will continue to sustain, economic damages to be proven at trial.

21 93. As a result of Defendants' actions, Mortenson has suffered emotional distress,
22 resulting in damages in an amount to be proven at trial.

23 94. Mortenson further seeks compensatory and punitive damages and all other
24 injunctive, declaratory, and monetary relief available for equal pay violations at trial, including
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1 liquidated damages for all willful violations, prejudgment interest, attorneys' fees and costs,
2 and other compensation pursuant to A.R.S. § 23-341.

3 **COUNT FOUR**
4 **(Violation of Arizona Wage Act – A.R.S. § 23-350 *et seq.*)**

5 95. Mortenson hereby re-alleges and incorporates the preceding paragraphs of this
6 complaint.

7 96. During Mortenson's employment, Defendants failed to pay commissions and
8 wages to Mortenson which were earned and due to her.

9 97. Defendants, without a good faith dispute, failed to pay commissions and
10 wages as required by A.R.S. § 23-353.

11 98. As a direct, proximate and legal result of Defendants' failure to pay
12 commissions and wages, Mortenson has incurred damages.

13 99. Defendants' failure to pay the monies owed was done without a good faith
14 dispute as to Mortenson's entitlement to said monies and Mortenson is entitled to treble
15 damages pursuant to A.R.S. § 23-350 *et seq.* in an amount to be proven at trial.

16 100. This matter arises out of an express or implied contract and Mortenson is
17 entitled to an award of reasonable attorneys' fees pursuant to A.R.S. § 12-341.01.

18 **COUNT FIVE**
19 **(Breach of Contract)**

20 101. Mortenson hereby re-alleges and incorporates the preceding paragraphs of this
21 complaint.

22 102. As agreed, Mortenson joined Defendants subject to Mortenson's right to
23 maintain ownership of EasyEnroll and upon Mortenson referring the business of certain
24 brokers to Defendants. Mortenson complied with her end of the bargain.

25 103. Defendants have unilaterally changed the agreed-upon terms of Mortenson's
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1 hire and advised Mortenson that she must divest her ownership of EasyEnroll or face
2 termination.

3 104. As a direct, proximate and legal cause of Defendants' breach of contract,
4 Mortenson has suffered both direct and consequential damages in an amount to be
5 determined at trial.

6
7 105. This matter arises out of an express or implied contract and Mortenson is
8 entitled to an award of reasonable attorneys' fees pursuant to A.R.S. § 12-341.01.

9
10 **COUNT SIX**
(Breach of Implied Covenant of Good Faith and Fair Dealing)

11 106. Mortenson hereby re-alleges and incorporates the preceding paragraphs of this
12 complaint.

13 107. The employment relationship between Mortenson and Defendants has been
14 and remains contractual in nature and subject to the implied covenant of good faith and fair
15 dealing.

16
17 108. Defendants have breached the implied covenant of good faith and fair dealing
18 by the acts and omissions as alleged herein that have injured and continue to injure the right
19 of Mortenson to receive the benefits of her employment.

20
21 109. As a direct, proximate and legal cause of Defendants' breach of the implied
22 covenant of good faith and fair dealing, Mortenson has suffered direct and consequential
23 damages in an amount to be determined at trial.

24 110. This matter arises out of an express or implied contract and Mortenson is
25 entitled to an award of reasonable attorneys' fees pursuant to A.R.S. § 12-341.01.

26
27 **PRAYER FOR RELIEF**

28 **WHEREFORE**, Mortenson prays for relief as follows:

WEISS BROWN
6263 N. SCOTTSDALE ROAD STE. 340
SCOTTSDALE, ARIZONA 85250
480.327.6650

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ORIGINAL of the foregoing
filed with the Clerk of Court
this 22nd day of February, 2019

/s/ Heather Barr

APPENDIX



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