IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AMY J. WALTERS,

Plaintiff,

v.

MAYO CLINIC HEALTH SYSTEM-
EAU CLAIRE HOSPITAL, INC.,

Defendant.

OPINION AND ORDER

12-cv-804-wmc

On March 27, 2014, the jury returned a verdict in favor of plaintiff Amy J. Walters on her claim that defendant Mayo Clinic Health System-Eau Claire Hospital Inc., interfered with her rights under the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2615(a)(1), by issuing her a written warning in October 2010, and then by relying on that warning in demoting her in December 2010 and terminating her employment in April 2011. (Dkt. #215.) Subject to certain stipulated facts,[1] the parties agreed that the court would hear evidence and decide issues of damages to be awarded.[2] Following testimony and the submission of other evidence specific to damages on March 28, 2014, the parties submitted trial briefs on the remaining issues in the case.

In this opinion, the court addresses the following unresolved issues on remedies:

1. Whether the lost wages award should be reduced by (a) Walters' failure to mitigate damages for certain periods of time, (b) Walters' inability to work for

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[1] Subject to certain legal arguments, the parties stipulated to a total amount of lost wages and to plaintiff's reinstatement at another of defendant's hospitals. (Dkt. #220.)

[2] An award of back-pay under the FMLA, may be a "legal" remedy subject to a jury trial. *See Franzen v. Ellis Corp.*, 543 F.3d 420, 425 (7th Cir. 2008).

other periods of time, and (c) the amount she received in social security benefits?

2. Whether plaintiff is entitled to reimbursement under 29 U.S.C. § 2617(a)(1) for (a) uninsured medical expenses, (b) taxes assessed because of Walters' early withdrawal from her retirements accounts, and (c) unpaid pension contributions?

3. How much prejudgment interest should be awarded?

4. Whether the court should award liquidated damages pursuant to 29 U.S.C. § 2617(A)(1)(iii)?

5. Whether the plaintiff is entitled to any additional injunctive relief?

For the reasons that follow, the court will enter a total damages award of $531,126.20. The court will also enter an order requiring defendant to (1) consistent with the parties' stipulation, reinstate plaintiff's employment at a Mayo facility other than Mayo-Eau Claire; (2) calculate the missing pension contributions that would have been made on plaintiff's behalf had she continued working for Mayo-Eau Claire uninterrupted and deposit on her behalf an amount equal to the sum that would currently be in that fund had those contributions been timely deposited; (3) purge the October 6, 2010, written warning, and the subsequent corrective actions from plaintiff's personnel file; and (4) file a report with the court describing modifications made to policies and practices and training which Mayo-Eau Claire has implemented addressing issues raised in this lawsuit by December 31, 2014.

FACTS

Following an adverse ruling on liability, the parties stipulated to plaintiff's reinstatement at a Mayo facility, other than Mayo-Eau Claire where she formally worked,

within a reasonable commuting distance from plaintiff's home to a mutually agreeable position at an agreed-upon hourly rate with seniority as if she had had no break in employment. The parties also stipulated to lost wages in the total amount of $248,373.60 under 29 U.S.C. § 2617(1)(A)(i) subject to reductions claimed by defendant and addressed below. Finally, the parties stipulated that plaintiff incurred medical and other expenses post-termination in the amount of $19,049.00, also subject to defendant's challenges discussed below. Additional facts will be described in the opinion where relevant.

OPINION

The FMLA's enforcement provision sets forth the following remedies for civil actions by employees:

> (1) Liability
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> Any employer who violates section 2615 of this title shall be liable to any eligible employee affected--
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> **(A)** for damages equal to--
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> **(i)** the amount of--
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> **(I)** any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or
>
> **(II)** in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks (or 26 weeks, in a case involving leave under section 2612(a)(3) of this title) of wages or salary for the employee;

> **(ii)** the interest on the amount described in clause (i) calculated at the prevailing rate; and
>
> **(iii)** an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 2615 of this title proves to the satisfaction of the court that the act or omission which violated section 2615 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 2615 of this title, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and
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> **(B)** for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

29 U.S.C. § 2617. With this section as framework, the court will address the specific remedy issues posed by the parties.

I. Defendant's Proposed Reductions

First, defendant seeks a reduction in the award for lost wages by the sum of $26,690.00 based on plaintiff's failure to make reasonable efforts to find employment for the four-month period following her termination (roughly mid-April to mid-August 2011). Plaintiff has a duty to mitigate her damages under the FMLA by seeking other employment post termination. *Franzen v. Ellis Corp.*, 543 F.3d 420, 429-30 (7th Cir. 2008) (citing *Mattenson v. Baxter Healthcare Corp.,* 438 F.3d 763, 771 (7th Cir. 2006) ("The familiar common law duty of mitigating damages is imposed: the employee must make a diligent search for comparable employment."). Failure to mitigate damages,

however, is an affirmative defense on which the defendant bears the burden of proof. *See Schleibaum v. Kmart Corp.*, 153 F.3d 496, 501 (7th Cir. 1998).

In support, defendant points to certain statements Walters made to her treating psychiatrist at the time, Dr. Collier. On May 11, 2011, Walters stated that she did "not plan to immediately seek employment until she is feeling better again." (Ex. 551.) On June 28, 2011, Walters informed her physician that she was "successfully making money selling things on Ebay, and so she is not feeling highly pressured to return to nursing at this point and time." (*Id.*) On August 5, 2011, Walters informed her psychiatrist that "[s]he feels that her confidence is shaken," that "it[']s going to be extremely anxiety-provoking for her to enter into the workplace again," and that she is "looking into doing some traveling nurse work," but is "somewhat reluctant" because "she still feels emotionally frail and discouraged." (*Id.*) Defendant argues that these statements prove Walters was not making reasonable efforts to find work.

During the trial on damages, Walters testified that she looked for work every day, and was always interested in becoming employed again. Walters also submitted records detailing her job search efforts. (Ex. 111.) None of her statements to Dr. Collier about the emotional difficulty in searching for work conflict with her testimony at trial. Indeed, they simply confirm the psychological struggles she had to overcome, along with the practical impediment from having recently been fired by her last employer, in finding new work as a nurse. On this record, therefore, defendant has not demonstrated by a preponderance of the evidence that Walters failed to mitigate her damages by taking reasonable efforts to look for work during the months after her termination.

Even if Walters' efforts were lacking for some period of time, any duty to mitigate is lessened if the employer's unlawful conduct contributed to the employee's ability to mitigate. *See Tobin v. Liberty Mut. Ins. Co.*, 553 F.3d 121, 141 (1st Cir. 2009) ("[T]he employer may be held responsible for the entire amount of lost salary notwithstanding the employee's failure to obtain another job if the employer's unlawful conduct caused the employee's inability to mitigate damages." (citation, quotation marks and alteration omitted)). Here, defendant's termination of her employment, which the jury found was wrongfully based in part on Walters' taking FMLA leave, at least contributed to her existing mental health issues, on top of other significant "stressors" in her life.

Second, defendant seeks a reduction in lost wages in the amount of $85,463.20 based on Walters' inability to work for approximately one year from mid-August 2012 (when Walters submitted supplemental materials for her social security application) to mid-August 2013 (when she began mental health treatment with her current providers). Defendant fails to cite any case law in support of this claimed reduction in its brief. As a "general rule," however, an award of lost wages excludes any period of time for which plaintiff was unavailable to work. *See, e.g.*, *Blackburn v. Sturgeon Servs. Int'l, Inc.*, No. 1:13–cv–00054–JLT, 2014 WL 1275919, at *10 (E.D. Cal. Mar. 27, 2014) ("[T]he general rule is that an employer is not liable for backpay during periods that an improperly discharged employee is unavailable for work due to a disability." (quotation marks and citation omitted)); *see also* 7 Darrell R. VanDeusen, *Labor and Employment Law* § 174.02[12][a] (Matthew Bender 2014) ("Back pay is available only for the time when the employee was actually able to work.").

As evidence, defendant points to certain statements in Walters' social security application where she reported that "social interactions cause anxiety so severe that I can't communicate, thus at this time employment has been impossible," and describes problems with her sleep, ability to prioritize, lack of motivation, and ability to focus. (Ex. 551.) Based on these statements and the social security's determination that Walters had a markedly reduced functional level, defendant's expert, Ms. Albers, opined that Walters was unable to work from August 2012 to August 2013.

In contrast, Walters testified at trial that there were no periods of time between her termination date and the present when she was unable to work as a nurse, except for a few isolated days. Defendant contends that this testimony is not credible in light of her earlier representations to the Social Security Administration. As an initial matter, defendant's expert (whose expertise is in the *availability* of work in the general economy, *not* assessing one's functional capacity to work) acknowledged having no expertise in assessing Walters' ability to work, much less to work for a period of a year. In the end, the court is, therefore, left with Walters' statements on her social security application.

Even so, it is difficult to reconcile Walters' representation to the SSA that her psychological disability made her employment "impossible" with a finding that she was available to work, but this is only part of the test. The other part is whether "defendant's discriminatory conduct caused the disability" at issue. *E.E.O.C. v. Timeless Invs., Inc.*, 734 F. Supp. 2d 1035, (E.D. Cal. 2010) (citing *Lathem v. Dep't of Children & Youth Servs.*, 172 F.3d 786, 794 (11th Cir. 1999); *McKenna v. City of Philadelphia*, 636 F. Supp. 2d 446, 465 (E.D. Pa. 2009)). Unlike the plaintiff in *Blackburn*, 2014 WL 1275919, who was

found unable to work due to an injury at a subsequent job, the court has little trouble finding on the record before it that Walters' inability to work was due, at least in part, to the residual impact of defendant's wrongful firing. Certainly, plaintiff's already-existing mental health condition contributed to the severity of that impact, but defendant is still responsible for the impact of its action. *Dundee Cement Co. v. Chem. Labs., Inc.* 712 F.2d 1166, 1168 (7th Cir. 1983) (noting the "familiar tort maxim that a tortfeasor takes his victim as he finds him"). Finally, there is nothing in this record -- other than Walters' continued receipt of social security benefits -- that evidences her inability to work on a continued basis for an extended period of time.[3] Given Walters' credible testimony and evidence of her active job searching, the court finds that any period during which Walters was, in fact, unable to work was caused by defendant's termination of her employment and its resulting impact on her mental health.

Third, defendant seeks a reduction in back pay for social security benefit payments Walters received. As part of the parties' motions in limine, the court considered, but reserved on this issue, noting that "[i]t is within the district court's discretion to set off -- or not to set off -- social security disability payments." *Flowers v. Komatsu Mining Sys., Inc.*, 165 F.3d 554, 558 (7th Cir. 1999). In *Flowers*, the Seventh Circuit reversed the district court's decision as to back pay and remanded it for recalculation, including considering whether plaintiff's social security payments should be offset. The Seventh Circuit, however, did not hold that social security payments *must* be offset. In *Schuster v.*

[3] While it would seem equitable to deduct at least some portion of the lost wages award by the social security benefits she received during this period, the defendant has no claim to such an equitable reduction for reasons described below.

Shepard Chevrolet, Inc., No. 99 C 8326, 2002 WL 507130 (N.D. Ill. Apr. 3, 2002), the district court decided not to deduct social security payments from back pay because (1) the plaintiff partially funded those payments by virtue of his social security taxes, and (2) "allowing the defendant to deduct social security benefit payments received by plaintiff from any back pay award would confer on defendant a 'discrimination bonus.'" 2002 WL 508130, at *7 (quoting *E.E.O.C. v. O'Grady*, 857 F.2d 383, 391 (7th Cir. 1988)). Specifically, if the court were to deduct social security payments from an award of lost wages, defendant would only be required to pay the salary defendant would have paid but for the termination "*minus* (rather than *plus*) social security contributions". *Id.* This court agrees with the reasoning in *Schuster*. Accordingly, the court will not deduct social security benefits from Walters' lost wages award.

II. Plaintiff's Proposed Additions

While defendant seeks to reduce the stipulated lost wages award, plaintiff asks the court to increase her damages award by (1) reimbursing her for medical expenses and taxes paid in withdrawing funds from her retirement account; and (2) reimbursing her pension benefits defendant would have contributed if her employment had not been terminated. The court will address each of these proposed additions in turn.

First, plaintiff seeks an award of $10,832.00 for medical expenses incurred post termination.[4] During the trial on damages, this court expressed skepticism that the plain

[4] As described above, the parties stipulated to medical and other expenses post-termination in the amount of $19,049.00. Plaintiff represents that taxes on her early withdrawal from her retirement accounts represents $8,217.00 of the total amount

language of the FMLA remedies section allows both damages for lost "wages, salary, employment benefits, or other compensation" *and* "any actual monetary losses sustained by the employee as a direct result of the violation," noting that 29 U.S.C. § 2617(a)(1)(A) uses "or" between the two types of damages under subsection (a)(1)(A).

Responding in her damages brief, plaintiff directs the court to a case in which the Fifth Circuit considered the same issue and held that "the correct measure of damages for lost insurance benefits in FMLA cases is either *actual* replacement cost for the insurance, or expenses *actually* incurred that would have been covered under a former insurance plan." *Lubke v. City of Arlington*, 455 F.3d 489, 499 (5th Cir. 2006) (emphasis in original); *see also Bertrand v. City of Lake Charles*, No. 2:10 CV 867, 2012 WL 1596706, at *8 (W.D. La. May 3, 2012) (awarding FMLA plaintiff the amount "she spent on health insurance as a result of her termination"); *Csanyi v. Regis Corp.*, No. CV-03-1987-PHX-JAT, 2009 WL 500833, at *4 (D. Ariz. Feb. 27, 2009) (awarding FMLA plaintiff health insurance premiums paid by her and charged for psychotherapy treatment); *Sherman v. AI/FOCS, Inc.*, 113 F. Supp. 2d 65, 76 (D. Mass. 2000) (awarding FMLA plaintiff damages she sustained because of the termination of her health insurance benefits"). For purposes of statutory interpretation, the Fifth Circuit's approach contemplates an award of medical expenses actually incurred as lost employment benefits under subsection (a)(1)(A)(I), not as an award of actual monetary losses under subsection (a)(1)(A)(II). *See Fath v. Heritage Valley Med. Grp.*, No. 2:12-cv-00989, 2013 WL 433040, at *5

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stipulated, leaving $10,832.00 for medical expenses. (Pl.'s Br. (dkt. #222) 4.) In calculating interest, plaintiff's expert relied on the same amount. (Affidavit of Carol Skinner, Ex. C (dkt. #223-1).)

(holding that "the language of § 2617(a)(1) makes clear that an FMLA plaintiff may not recover for *both* 'wages, salary, employment benefits, or other compensation,' § (A)(i)(I) *and* 'actual monetary losses sustained by the employee [],' § (A)(i)(II)"). Under this approach, there would appear no conflict between an award of *medical expenses* actually incurred and the statutory language requiring plaintiff to choose between lost compensation and actual monetary losses.

In so holding, the *Lubke* court relied on cases describing the remedies available under the ADEA, having found that both the FMLA and ADEA track the remedial provisions of the FLSA. 455 F.3d at 499. While not yet addressing the specific issue raised here, the Seventh Circuit has also recognized that the FMLA incorporated the remedial provisions of the FLSA. *See Byrne v. Avon Prods., Inc.*, Nos. 04-1563, 04-4100, 2004 WL 3049823, at *1 (7th Cir. Dec. 21, 2004) (unpublished) ("[T]he judgment represents liquidated (doubled) damages under the Fair Labor Standards Act, whose remedial provisions the FMLA incorporates."). Coupled with the remedial nature of the FMLA, it seems likely that the Seventh Circuit would follow the Fifth Circuit's approach. Regardless, the court is persuaded by the Fifth Circuit's reasoning, as well as the other district courts that have followed that reasoning as cited above.

While the parties have stipulated to the amount of medical expenses Walters incurred, neither party has put forth evidence of the replacement cost of the health insurance Walters would have received if she had remained employed (in other words, the premiums Mayo Eau-Claire would have paid), nor does defendant dispute that her actual medical expenses would have been covered under Mayo-Eau Claire's insurance

plan. Accordingly, the court will award $10,832 as lost health insurance benefits under § 2617(a)(1)(A)(I).

Second, plaintiff seeks an award of $8,217 to reimburse her for taxes incurred because of an early withdrawal from her employee retirement accounts.[5] Defendant objects to this amount in part because Walters failed to present evidence at trial in support of her contention that she withdrew these funds so that she could take care of her family or that she had no other assets to take care of herself and her family. (Def.'s Resp. (dkt. #226) 2-3.) While the court can reasonably infer from the evidence presented at trial that more likely than not the termination of Walters' employment required her to withdraw funds from her retirement account to support her and her family, this does not alter her statutory legal entitlement to reimbursement of taxes incurred because of her early withdrawal under the FMLA's remedial scheme.

Plaintiff contends that reimbursement of these expenses falls under the "other compensation" category in § 2617(a)(1)(A)(I), but this argument proves too much. While certainly a loss, the court agrees with defendant that there is no statutory basis to claim withdrawal penalties as "employment benefits" or some other form of "compensation." Absent some hook under the FMLA, the court finds no statutory basis to award the stipulated $8,217 incurred in taxes from Walters' early withdrawal from her retirement account.

[5] While the parties stipulated to this amount, plaintiff represents that she paid more than $17,000 in state and federal taxes because of her withdrawal of approximately $60,000 from her retirement accounts. (Affidavit of Amy J. Walters (dkt. #224) ¶¶ 3-4.)

Third, and last, plaintiff seeks unpaid pension contributions from the date of her termination to the present. Unlike the taxes described above, pension contributions are a form of compensation contemplated by § 2617(a)(1)(A)(I). *See Thom v. Am. Standard, Inc.*, 666 F.3d 968, 975 (6th Cir. 2012) (holding FMLA plaintiff was entitled to damages for loss of his pension benefits). While plaintiff is on solid legal ground in seeking unpaid pension or retirement benefits, plaintiff offers no evidence from which the court could craft such an award. Plaintiff acknowledges this gap, but points to defendant's failure to provide this evidence in response to discovery requests and a question posed during the deposition of defendant's HR Director, Ken Lee. (Walters Aff. (dkt. #224) ¶¶ 6-9; Pl.'s Resp. (dkt. #227).) While the court is sympathetic to plaintiff's counsel's reluctance to file needless motions to compel discovery, here, there is no excuse for failing to do so timely when relief from this court is necessary to discover evidence critical to prove her case. Because of plaintiff's failure to put forth *any* evidence from which this court could determine contributions Mayo-Eau Claire should have made to Walters' retirement or pension account, the court has no basis to include this compensation as part of her damages award. On the other hand, defendant's failure to provide timely responses to straightforward discovery requests should not be rewarded either. Accordingly, the court will exercise its injunctive powers to require defendant to calculate the missing pension contributions that would have been made on Walters' behalf had she continued working for Mayo-Eau Claire uninterrupted and to deposit on her behalf an

amount equal to the sum that would currently be in that fund had those contributions been timely deposited.[6]

In summary, the court awards $259,205.60 under 29 U.S.C. § 2617(a)(1)(A)(i), representing $248,373.60 in lost wages and $10,832.00 in lost employment benefits.

III. Prejudgment Interest

Title 29 U.S.C. § 2617(a)(1)(A)(ii) also provides that plaintiff should be awarded "the interest on the amount described in clause (i) calculated at the prevailing rate." Plaintiff's expert Fredric R. Kolb, Ph.D., calculated interest at an annual rate of 3.25%, with compounding done monthly. (Affidavit of Carol Skinner, Ex. C (dkt. #223-1).) Defendant agrees that the prevailing rate of 3.25% applies to any award under § 2617(a)(1)(A)(i), but contends that the court should (1) take into account defendant's proposed reductions; and (2) while not mentioned by defendant, take into account plaintiff's requested increases. Having now done so, the court will adopt Dr. Kolb's methodology, and award prejudgment interest in the total amount of $12,715.00.

IV. Liquidated Damages

Plaintiff seeks additional liquidated damages pursuant to § 2617(a)(1)(A)(iii), which provides for an award "equal to the sum of the amount described in clause (i) and the interest described in clause (ii)," unless "an employer who has violated section 2615 of this title proves to the satisfaction of the court that the act or omission which

[6] Even if this award were not within this court's general equitable powers, it is made pursuant to Section 2617(a)(1)(B) as discussed in part V of this opinion.

violated section 2615 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 2615 of this title." *See also Byrne*, 2004 WL 3049823, at *1 ("The statute provides, however, that liquidated damages are presumed unless the employer demonstrates that it acted reasonably and in good faith.") (citing *Shea v. Galaxie Lumber & Constr. Co.*, 152 F.3d 729, 733 (7th Cir. 1998)).

Arguably, defendant's decision to issue Walters a written warning on October 6, 2010, was made in good faith -- based on Walters' supervisors and HR's determination that she could have provided notice to Lisa Heutmaker before leaving on October 5th.[7] On the other hand, defendant's action in issuing, and worse not rescinding, a formal warning after learning of plaintiff's panic attack *and* approving her for FMLA leave was not reasonable. Indeed, it is defendant's unreasonable reliance on that October 6, 2010, written warning in subsequently demoting Walters in December 2010 and terminating her employment in April 2011 that caused the jury to find defendant liable. Accordingly, the court finds (1) that defendant has failed to rebut the presumption of liquidated damages; and (2) will award plaintiff additional liquidated damages in the amount of $271,920.60.

[7] There is much that is troubling about even this action, including Lisa Heutmaker's claim that she was not advised of Walters' departure because of illness by Denise Pendergast, seemingly frantic escalation of the search for Walters without first taking more obvious and measured steps and failure to give a longstanding, hard-working employee some leeway when her presence that day was for backroom training on her new position only.

V. Additional Equitable Relief

Finally, plaintiff seeks certain equitable relief from the court. Section 2617(a)(1)(B) provides that the court may order "equitable relief as may be appropriate." *First*, plaintiff seeks an order requiring defendant to purge the October 6, 2010, written warning, and the subsequent corrective actions. Defendant does not object to this request. Accordingly, the court will enter an order to this effect.

Second, plaintiff seeks an order requiring Mayo management "receive training with regard to the contours of the FMLA, as well as training in the accommodation of employees with mental health disabilities." (Pl.'s Br. (dkt. #222) 16.) Defendant represents that it is "discussing internally ways in which it can improve its policies, practices and programs under the FMLA and the ADA, including providing additional training to supervisory personnel," and offers to "report to the Court and to Walters' counsel within six months of entry of judgment as to those modifications made to policies, practices and training which Mayo-Eau Claire has implemented." (Def.'s Br. (dkt. #226) 4-5.) Rather than craft an order requiring training, the court will accept defendant's proposal and require defendant to submit a report by year's end describing its actions.

Third, plaintiff seeks an award of an "additional sum of money to compensate for the increased tax burden a back pay award may create." (Pl.'s Br. (dkt. #222) 15 (citing *Eshelman v. Agere Sys.*, 554 F.3d 426 (3d Cir. 2009).) The Seventh Circuit, however, instructs that "[g]enerally courts do not increase damages to compensate for expected tax liability on the damage award." *Oddi v. Ayco Corp.*, 947 F.2d 257, 267 (7th Cir. 1991).

As the court explained in *Oddi*, this is because "the amount recovered would . . . have been income, and thus taxable." *Id.*[8]

VI. Remaining Issues

In addition to an award of damages and equitable relief, plaintiff is also entitled to her reasonable attorney's fees and costs. 29 U.S.C. § 2617(a)(3); *see also Franzen v. Ellis Corp.*, 543 F.3d 420, 430 (7th Cir. 2008) ("Unlike most other statutory fee-shifting provisions, section 2617 requires an award of attorneys' fees to the plaintiff when applicable. The award is not left to the discretion of the district court."). Given the parties' ability to stipulate to other categories of damages, perhaps the parties can reach an agreement as to the proper award of fees and costs. If not, plaintiff's petition is due on or before May 28, 2014; defendant's opposition is due ten days thereafter. Both sides are ordered to provide within seven days of the opposition, if any, all invoices from counsel representing them in this matter, proof of payment, if any, and all time and cost records maintained by their respective law firms or an individual attorney.

In the meantime, the court will direct the clerk's office to enter judgment, and will amend the judgment to include an award of attorney's fees and costs.

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[8] Even if the court were to accept this as an appropriate category of equitable relief, plaintiff does not suggest a method or amount to account for the lump sum nature of its award. When coupled with the Seventh Circuit's general criticism of such an award, the court will, therefore, decline to exercise any authority it may have to increase plaintiff's award to account for her increased tax burden.

ORDER

IT IS ORDERED that:

1) the parties' stipulation to reinstatement and damages (dkt. #220) is ACCEPTED;

2) consistent with the parties' stipulation, plaintiff shall be reinstated at a Mayo facility other than Mayo-Eau Claire;

3) defendant shall calculate the missing pension contributions that would have been made on plaintiff's behalf had she continued working for Mayo-Eau Claire uninterrupted and deposit on her behalf an amount equal to the sum that would currently be in that fund had those contributions been timely deposited;

4) defendant shall purge the October 6, 2010, written warning, and the subsequent corrective actions from plaintiff's personnel file;

5) by December 31, 2014, defendant shall file a report with the court describing modifications made to policies and practices and training which Mayo-Eau Claire has implemented addressing issues raised in this lawsuit;

6) plaintiff Amy J. Walters is awarded $531,126.20 in damages against defendant Mayo Clinic Health System - Eau Claire Hospital, Inc. based on the jury's finding of liability under the Family Medical Leave Act, 29 U.S.C. § 2615;

7) plaintiff's petition for attorney's fees and costs is due on or before May 28, 2014 with defendant's objection due 10 days thereafter, and both sides to serve and file records of their attorney's fees and costs as set forth above within seven days of the filing of any opposition; and

8) the clerk of the court is directed to enter judgment consistent with this order and close this case.

Entered this 7th day of May, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge