

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; BRIAN MCNEMAR; SHAWN  
ANDERSON a/k/a SHAUNTAE ANDERSON.  
And LEANNE JAMES, individually and on  
behalf of all others similarly situated,**

**Plaintiffs,**

vs.

**Case No.: 3:20-cv-00740  
Judge Robert C. Chambers**

**WILLIAM CROUCH, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
CYNTHIA BEANE, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; JASON HAUGHT, in his official  
capacity as Director of the West Virginia Public  
Employees Insurance Agency; and THE  
HEALTH PLAN OF WEST VIRGINIA, INC.,**

**Defendants.**

**DEFENDANT JASON HAUGHT'S  
NOTICE OF WITHDRAWAL OF MOTION FOR ABSTENTION**

Defendant Jason Haught, in his official capacity as Director of the West Virginia Public Employees Insurance Agency (“Defendant”), by and through counsel, Perry W. Oxley, David E. Rich, Eric D. Salyers, Christopher K. Weed, and the law firm of Oxley Rich Sammons, PLLC, hereby withdraws the previously filed Motion for Abstention.

1. On November 18, 2021, the Defendant filed a Motion for Abstention based on the newly added Plaintiff, Leanne James’, pending complaint with the Equal Employment Opportunity Commission (“EEOC”). *See* ECF 162-163.

2. On or about December 23, 2021, Plaintiff James received her Right to Sue letter from the EEOC and the EEOC ended its investigation. *See* Exhibit A.
3. As a result, the Motion for Abstention is now moot.
4. Accordingly, the Defendant withdraws the previously filed Motion for Abstention.

**JASON HAUGHT, in his official  
capacity as Director of the West Virginia  
Public Employees Insurance Agency,**

**BY COUNSEL**

s/Perry W. Oxley

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Eric D. Salyers (WVSB #13042)

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SERVICES; JASON HAUGHT, in his official  
capacity as Director of the West Virginia Public  
Employees Insurance Agency; and THE  
HEALTH PLAN OF WEST VIRGINIA, INC.,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing “**Defendant Jason Haught’s Notice of Withdrawal of Motion for Abstention**” on this 18<sup>th</sup> day of **January, 2022**, with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

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s/Perry W. Oxley  
\_\_\_\_\_  
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Eric D. Salyers (WVSB #13042)  
Christopher K. Weed (WVSB #13868)

EEOC Form 161 (11/2020)

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DISMISSAL AND NOTICE OF RIGHTS**

To: **Leanne James**  
[Redacted]

From: **Pittsburgh Area Office**  
**1000 Liberty Avenue**  
**Room 1112**  
**Pittsburgh, PA 15222**

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

EEOC Charge No.	EEOC Representative	Telephone No.
<b>533-2021-02155</b>	<b>Philadelphia Legal Unit, Legal Technician</b>	<b>(267) 589-9700</b>

**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) **No employer/employee relationship between Charging Party and Respondent**

**- 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



**Deborah A. Kane,**  
**Director**

**12-23-2021**  
(Date Issued)

Enclosures(s)

cc: **William B. Hicks**  
**WEST VIRGINIA PEIA**  
**601 57th ST SE, STE 2**  
**Charleston, WV 25304**

**Nicole J. Schlatt**  
**NICHOLS KASTER PLLP**  
**4700 IDS Center**  
**80 South Eighth Street**  
**Minneapolis, MN 55402**

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),  
the Genetic Information Nondiscrimination Act (GINA), or the Age  
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was issued to you** (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

**PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 – not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

**ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

**ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

**IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.**

Enclosures(s)

cc: