| **Brown v Winston Staffing LLC** |
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| 2026 NY Slip Op 31398(U) |
| April 7, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 159405/2025 |
| Judge: Phaedra F. Perry-Bond |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. PHAEDRA F. PERRY-BOND** **PART** **35**

***Justice***

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LAWATTA BROWN,

Plaintiff,

- v -

WINSTON STAFFING LLC, and NYU LANGONE HOSPITALS

Defendants.

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**INDEX NO.** 159405/2025

**MOTION DATE** 09/17/2025, 01/02/2026

**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 14, 15, 16 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, motion sequence 001 and 002 are consolidated for disposition and are denied.

As alleged in the Complaint in June of 2023, Plaintiff was employed with Defendant NYU Langone Hospitals ("NYU") through Defendant Winston Staffing LLC ("Winston Staffing") as a carrier whose job duties included moving medicine from an NYU pharmacy located at 120 Mineola Boulevard, Mineola, NY (the "Pharmacy") to the NYU building across the street.

Plaintiff has a long-term injury to her left foot which causes her to walk with a limp, but Plaintiff alleges the injury did not prevent her from completing her job duties, including delivering medicine. On June 28, 2023, Plaintiff allegedly fell down the steps in the NYU lobby which caused her to injure her left knee and shoulder. Plaintiff sought treatment on June 29, 2023 and advised her supervisor at NYU, Sinsook Ye. She also advised Jonathan Krangle, the senior staffing consultant employed through Winston Staffing who placed Plaintiff with NYU.

Plaintiff's doctor advised she could return to work on July 3, 2023, but Plaintiff never heard from Ye or Krangle regarding additional shifts. When Plaintiff allegedly reached out to Krangle, she was advised not to come back to work, but Krangle advised Plaintiff he would find another assignment for her. However, despite numerous follow-ups, Plaintiff did not receive another assignment, which she alleges was due to her perceived disability. Plaintiff alleges that in December 2023, Defendants' employees made a carbon-cut gingerbread man cookies for each employee, and on the cookie with Plaintiff's name, the right foot of the cookie was torn apart and stapled back as a means of mocking Plaintiff's foot injury. Plaintiff now sues for discrimination pursuant to the New York State Human Rights Law ("NYSHRL").

Defendants move pre-answer to dismiss Plaintiff's Complaint. Plaintiff opposes. Defendants' motions are denied. When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). A motion to dismiss based on documentary evidence is appropriately granted when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]).

Here, accepting the facts alleged as true, Plaintiff adequately alleged that she was qualified to perform the essential functions of the job as she was able to adequately perform her job prior to her injury. However, while out of work on medical leave due to an injury, which constitutes a disability, Plaintiff was never again rescheduled for a shift (*see Henriquez v City of New York*, 2026 NY Slip Op 01460 at *1 [1st Dept 2026]). Therefore, Plaintiff has alleged she suffered a disability, and that disability caused her to suffer an adverse employment action – namely the loss

of future shifts within the meaning of the NYSHRL (*see Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 146 [1st Dept 2009]). For purposes of a pre-answer motion to dismiss, this is sufficient.

Moreover, Plaintiff adequately alleged facts that the adverse employment action took place under circumstances giving rise to an inference of discrimination. Specifically, she alleges that her disability was mocked at a holiday party where a gingerbread cookie with her name on it had its foot torn off and stapled back together. Further, the temporal proximity between Plaintiff's injury and Plaintiff being removed from any shifts, for purposes of a pre-answer motion to dismiss, gives rise to an inference of discrimination (*see, e.g. Krebaum v Capital One, N.A.*, 138 AD3d 528, 528 [1st Dept 2016]).

Finally, given this is a pre-answer motion to dismiss, NYU's fact intensive argument that it cannot be considered a joint employer with Winston Staffing cannot be resolved at this juncture. A joint employer relationship may be found to exist where there is sufficient evidence that the defendant had immediate control over the other company's employees, particularly with respect to setting the terms and conditions of the employee's work – with the right to "control the means and manner of the worker's performance" being "the most important factor" (*see Brankov v* Hazzard, 142 AD3d 445 446 [1st Dept 2016]). The facts alleged, and the evidence proffered by Plaintiff in opposition, creates an issue of fact – at least on a pre-answer motion to dismiss, as to whether NYU can be considered a joint employer. In particular, NYU set Plaintiff's hours and controlled the means and methods of her work at NYU. It is also alleged that NYU decided it no longer wished to employ Plaintiff after she was injured on the job, and it remains to be determined what NYU's motive was in deciding to no longer employ Plaintiff. After further discovery, NYU may renew this argument on a motion for summary judgment. The Court has considered Defendants' remaining contentions and finds them to be unavailing.

Accordingly, it is hereby,

ORDERED that Defendants' motions to dismiss are denied; and it is further

ORDERED that within twenty days of entry, Defendants shall serve their Answers to Plaintiff's Complaint; and it is further

ORDERED that the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail on or before May 5th, 2026. If there is a serious discovery dispute requiring a Court conference, the parties shall inform the Court accordingly so an in-person conference may be scheduled; and it is further

ORDERED that if the parties seek to resolve this matter through the Court's sponsored ADR program, the parties shall notify the Court so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/7/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

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| CHECK ONE: | ☐ | CASE DISPOSED | | ☒ | NON-FINAL DISPOSITION | | |
| | ☐ | GRANTED | ☒ DENIED | ☐ | GRANTED IN PART | ☐ | OTHER |
| APPLICATION: | ☐ | SETTLE ORDER | | ☐ | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | ☐ | INCLUDES TRANSFER/REASSIGN | | ☐ | FIDUCIARY APPOINTMENT | ☐ | REFERENCE |