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Conn. woman alleges genetic discrimination at work

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A Connecticut woman who had a voluntary double mastectomy after genetic testing is alleging her employer eliminated her job after learning she carried a gene implicated in breast cancer.

Pamela Fink, 39, of Fairfield said in discrimination complaints that her bosses at natural gas and electric supplier MXenergy gave her glowing evaluations for years, but targeted, demoted and eventually dismissed her when she told them of the genetic test results. Her complaints, filed Tuesday with the U.S. Equal Opportunity Commission and Connecticut Commission on Human Rights and Opportunities, are among the first known to be filed nationwide based on the federal Genetic Information Nondiscrimination Act.

The law, which went into effect in November, prohibits discrimination by employers and health insurers based on a person's genetic information. Fink says in her case, that information included results showing she carried the hereditary BRCA2 gene linked to many breast cancers.

"What MXenergy did by firing her because of a positive genetic test is wrong and it's illegal," said her attorney, Gary Phelan.

"Part of what she is hoping by going public is that employers will get the message that you can't do this — that you can't use someone's genetic history against them and that individuals won't, out of fear, avoid the advantages of genetic testing," Phelan said.

Company spokesman Todd Miller said MXenergy "emphatically and categorically" denies the allegations, but has a policy not to discuss personnel matters and will not comment further.

Fink was the public relations director for MXenergy from 2006 until her dismissal in March. She said Tuesday that genetic tests that she and her two sisters had done in 2004 at Yale Cancer Center showed all three carried the specific gene predisposing them to breast cancer.

Both sisters developed breast cancer, but survived with treatment. After several biopsies and frightening false alarms, Fink opted for a preventative double mastectomy last year.

Feeling comfortable in what she described as a supportive work environment, she told her bosses at MXenergy about her genetic tests and the surgery, she said.

"I'd had great reviews, I had merit increases, I had bonuses. I really felt it was a place where I could be comfortable and confident and be honest with them, and that was a mistake," she said Wednesday.

She said in her complaint that MXenergy hired a consultant for her work while she was recovering from her first surgery, but that person became her boss when she returned and the company quickly took away her office and most her duties.

She said her job was eliminated — the only one in her department — and she was escorted out in March, about six weeks after she returned from her second surgery.

Phelan said Wednesday they hope Fink's complaint is resolved in her favor by the state and national anti-discrimination agencies, but that they will go to federal court, if necessary.

Catherine Barbieri, a Philadelphia attorney specializing in anti-discrimination employment law, said although she could not rule out the possibility of similar complaints elsewhere, the Connecticut case is the first she's heard about nationwide that cites the genetic tests law. Barbieri, who is also chairman of the board of the national Women's Law Project, said she advises employers to keep medical and personnel records separate to avoid the potential for such conflicts, and not to request in-depth explanations when an employee seeks a medical leave.

For workers, she said, a little discretion may also go a long way toward avoiding misunderstandings and potential discrimination claims or lawsuits.

"Unfortunately, I think in today's day and age people have started sharing a lot more personal information about themselves, whether it's in social media or in the workplace, but I think it may behoove people to keep some of that information closer to the vest," she said.

"I'm not suggesting employers are necessarily going to act on that, but really there may be no need for them to know."