

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

LORI DAVIS,

Plaintiff,

vs.

TOWN OF DAVIE,

Defendant.

/

COMPLAINT AND DEMAND FOR JURY TRIAL

1. This suit is brought and jurisdiction lies pursuant to Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et. seq.

2. This Court has original jurisdiction pursuant to 28 U.S.C. § 1343(a)(4) and 1331.

3. Venue is appropriate in the Fort Lauderdale Division of the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) because the actions complained of herein took place in Broward County at Defendant's places of business located in Davie, Florida.

4. Plaintiff LORI DAVIS is and at all relevant times is a firefighter and crew leader working at the Town of Davie Fire Department.

5. Defendant, TOWN OF DAVIE, is a town in Broward County, Florida, and operates the Fire Department where the discriminatory acts took place.

6. At all material times, Defendant, TOWN OF DAVIE, employed fifteen (15) or greater employees for each regular working day in each of twenty (20) or more calendar weeks in the current and/or preceding calendar year, and is otherwise an "employer" within the meaning of Title VII.

7. Plaintiff, LORI DAVIS is an “employee” as defined by Title VII, 42 U.S.C. § 2000e.

8. Plaintiff, LORI DAVIS has timely filed administrative chargers of retaliation with the Equal Employment Opportunity Commission (“EEOC”).

9. All of the discriminatory employment practices alleged herein were committed within the jurisdiction of the Southern District of Florida, Ft. Lauderdale Division.

10. Plaintiff has complied with all conditions precedent before filing suit. Plaintiff has filed this action within 90 days from receipt of the right to sue in this case. All other conditions precedent have been performed or have been waived.

FACTUAL ALLEGATIONS

11. Plaintiff Lori Davis works as a firefighter at the Town of Davie Fire Department. She has been an above average employee and crew leader.

12. However, once LORI DAVIS became pregnant, the Town of Davie became hostile toward her. The Fire Chief and sometimes Town Administrator, Chief Montopoli, has stated that he believes that women take advantage of the system by getting pregnant while employed by the fire service, and he has enacted hostile policies against women that reflect his attitude and his expressed desire to avoid becoming “like Miami-Dade”, with respect to pregnant female workers.

13. LORI DAVIS has filed prior EEOC Charges and those charges have received cause determinations by the EEOC.

14. Plaintiff LORI DAVIS’S other Charges are currently pending before the Department of Justice.

15. The Town of Davie has entered a Consent Decree with respect to its pregnancy policy with the Department of Justice and MS. LORI DAVIS'S opposition to sexual harassment and gender discrimination and participation in the EEOC and Department of Justice's investigation, along with other Claimants, brought these issues to the forefront and has helped facilitate the policy change at the TOWN OF DAVIE.

16. THE TOWN OF DAVIE'S culture and attitudes toward women has been slower to change, and consequently, LORI DAVIS continues to experience hostile work environment discrimination, gender discrimination, and retaliation for coming forward and opposing discrimination and participating in the investigations that followed her complaints as well as numerous other Charging Parties who have received cause determinations from the EEOC and whose charges are pending, along with LORI DAVIS's other Charges before the Department of Justice.

17. THE TOWN OF DAVIE'S discrimination is ongoing and continues to this day. Even after receiving numerous cause determinations by the EEOC and despite dual investigations by the EEOC and the DOJ (and a consent decree), the TOWN OF DAVIE has continued to target LORI DAVIS and systematically continued to target, harass and harm her professionally.

18. On June 18, 2013, LORI DAVIS was injured during a training exercise, which was witnessed by two decorated Battalion Chiefs, Battalion Chief Popick and Battalion Chief Rivero.

19. The TOWN OF DAVIE seized this as an opportunity to target and discredit LORI DAVIS in a manner unprecedented by other similarly situated male employees. Moreover, LORI DAVIS'S retaliatory treatment by the TOWN OF DAVIE did not occur to similarly

situated employees who have not filed EEOC Charges, participated in EEOC investigations, and opposed unlawful discrimination.

20. Upon being injured, LORI DAVIS was immediately transported via rescue 38 for treatment and then transported to her home. She was treated at Memorial Pembroke Hospital on the same day. A drug test was administered as part of her admission to the hospital, it was negative, except for metabolites from her prescription medications.

21. Plaintiff LORI DAVIS began seeing Dr. Robert Baylis on or about June 28, 2013. The TOWN OF DAVIE sent a nurse case manager, Ms. Sharon Dufek, who coordinated her efforts with risk manager Ms. Cora Daugherty, who has handled the EEOC Discrimination Charges at the TOWN OF DAVIE.

22. Dr. Baylis, acting in concert with the TOWN OF DAVIE, requested a urine sample and misled Plaintiff LORI DAVIS about it stating that it was a UA screen not a drug test. Even though the test was not administered with informed consent, or any of the requirements of statute or the employees' Collective Bargaining Agreement ("CBA"), the results were **negative**, as is accurately reflected in LORI DAVIS'S medical records from that visit. ("Drug test is negative.") This visit and the hospital test were the only two urine tests that were administered prior to MS. LORI DAVIS'S spinal epidural procedure.

23. Ms. Dufek began interfering with LORI DAVIS'S treatment by unilaterally scheduling doctor's appointments without any regard to her schedule, which is violative of the CBA Article 20, and is not done to other similarly situated employees. Moreover, Plaintiff LORI DAVIS'S pregnancies are known by the TOWN OF DAVIE, as is the fact that she is a mother in pain. Thus, the TOWN OF DAVIE knowingly caused considerable hardship by way of these unilaterally cancelled and rescheduled appointments.

24. This retaliatory and discriminatory conduct continued unabated even after Plaintiff LORI DAVIS specifically complained to Ms. Dufek, about the situation and asked to be included in the scheduling or alternatively to be allowed to schedule her own appointments. This Request was disregarded, and the TOWN OF DAVIE continued its mistreatment of LORI DAVIS. In one example, on or about July 8, 2013, the TOWN OF DAVIE'S case manger went so far as to confirm PLAINTIFF LORI DAVIS was going, and then unilaterally canceled it without telling her. There were two witnesses to this event. As a result, LORI DAVIS noted that she was being discriminated against and treated differently than other similarly situated employees, and provided evidence of that by way of the CBA language she believed was being violated. LORI DAVIS never received a response to that e-mail. There was never an e-mail claiming this was an accident, misunderstanding, or miscommunication.

25. The TOWN OF DAVIE then coordinated an attack on her, ostensibly claiming that LORI DAVIS had a drug problem despite her prior clean drug tests and the fact that her injury was well-documented and witnessed by experienced, senior Battalion Chiefs. The TOWN OF DAVIE then sent her own confidential employment records to another doctor she had never met, in violation of HIPAA as well as the CBA and sought an "expert" to try and justify their actions toward her. This doctor was not approved by LORI DAVIS, not part of any Workers' Compensation claim, and was used to provide a self-serving slander against LORI DAVIS utilizing limited information provided to him by the TOWN OF DAVIE.

26. Meanwhile, LORI DAVIS continued to request an epidural spinal injection, because the pain medicine was not working. The TOWN OF DAVIE was more focused on using the non-response to pain medicine as a means to attack her than to try and get her the treatment she needed. Finally, LORI DAVIS's condition worsened, and she could no longer

stand the deterioration of her symptoms. She reported to the ER and was admitted to hospital, and received steroid epidural spinal injections under fluoroscopy for her back injury. She was in the hospital for 3 days.

27. In sum, what the DEFENDANT TOWN OF DAVIE, in conjunction with their case manager and Dr. Bayless, did was to prolong PLAINTIFF LORI DAVIS'S pain and then generate a report calling her a drug user while administering insufficient treatment for her symptoms. The TOWN OF DAVIE did all this despite the fact that PLAINTIFF LORI DAVIS had clearly been injured at work, and transported to the hospital. PLAINTIFF LORI DAVIS had all appropriate documentation for her medicines, and clean drug tests (even from a test that was taken without informed consent, and under false pretenses). When that drug screen was negative, the TOWN OF DAVIE ignored it and pretended otherwise to continue to provide her with poor treatment and interfered with her care. The TOWN OF DAVIE then retained their "expert," whom she has never met, and solicited an opinion slandering her and damaging her reputation while LORI DAVIS recovered in the hospital from a spinal epidural.

28. Once LORI DAVIS got out of the hospital she returned to her shift under the chain of command of Battalion Chief Gonzales who along with Assistant Chief Suriano, Deputy Chief Malvasio, and Chief Montopoli are well known as being part of the discrimination and retaliation problem at the Town of Davie and are the subject of charges filed by LORI DAVIS as well as numerous other claimants at the Town of Davie. Battalion Chief Gonzales approached her in the presence of a coworker and ordered her to drug testing immediately. Instead of handling the testing discreetly, the Town of Davie had her tested in a public way, which was unnecessary given that at this point she was obviously in pain given that she had returned from a hospital stay and spinal injections. Nonetheless, the character assignation and harassment had its

desired effect. LORI DAVIS was publically shamed. She was taken off shift for suspicion of drug use. She was sent publically for testing. Ultimately she received a battery of tests, including having her hair cut. She was not allowed to drive herself home despite having driven herself to work.

29. Pursuant to the CBA this testing should have been the result of complaints by LORI DAVIS'S coworkers. There are a number of procedures in place to make sure that testing like this is handled respectfully and professionally. With other similarly situated male employees and employees who were not being subjected to unlawful retaliation, those CBA and policies are followed. The TOWN OF DAVIE disregarded them with respect to LORI DAVIS.

30. LORI DAVIS asked who had complained and what the nature of the complaints was, given that she had been out of work and in the hospital for the past three days. Contrary to policy and the CBA, the TOWN OF DAVIE refused to provide her any information, a copy of the complaint, or anything else. . PLAINTIFF LORI DAVIS asked for a Union Representative, which should have been easy--there was a Union Meeting going on at the time--but was given none. She requested documentation or anything the TOWN OF DAVIE could tell her about where this was coming from, and they gave her no documentation of any kind. This also violates the CBA/Town Policy.

31. Earlier that day, TOWN OF DAVIE Risk Manager Cora Renee Daugherty had exchanged e-mails with LORI DAVIS about her medical procedure and then an hour later, these events unfolded. She was also the point person who had repeatedly attended most of the TOWN OF DAVIE's discrimination depositions with respect to other discrimination claims. Had the TOWN OF DAVIE had any good faith questions or confusion about LORI DAVIS'S injuries or

her treatment, it could have easily requested that information, but instead, they used LORI DAVIS'S injury and treatment as a way to retaliate against her.

32. Just as the TOWN OF DAVIE had made no effort to keep any of LORI DAVIS'S discrimination claims confidential, and disseminated their hostility toward her through the rank and file, the fact of her testing was widely disseminated by the Town of Davie and soon everyone in the fire service was under the erroneous belief that she had been caught illegally using drugs. This caused considerable damage to her professional reputation, and could have had no other result. Firefighting is a dangerous job and undermining a crew leader creates safety issues. The TOWN OF DAVIE then placed her on administrative leave pending the results. This magnified the problem because as people would cover shifts for her, they would inevitably ask why, and would be advised (and not corrected) by Town of Davie supervisors that LORI DAVIS was out pending a drug test. LORI DAVIS was also hurt financially by these actions, because she loses 5 percent pay by not being on rescue as a result of being on administrative leave.

33. The TOWN OF DAVIE has tested other employees and has not done so in such a public and shaming way. Moreover, in the past when other males were tested the TOWN OF DAVIE followed its policies and CBA in doing so, and did not, as here, use the drug tests as pretext for a fishing expedition and a discriminatory and/or retaliatory character assassination.

34. LORI DAVIS was later returned to her position of crew leader and driver of her rescue truck. People who have worked for the TOWN OF DAVIE for 10-20 years have told her that they know of no other person the TOWN OF DAVIE has tested in this fashion. There are also well-known instances where male employees have been reportedly using illegal drugs, such as where someone contacted the Fire Department and report cocaine use by an employee, and in another incident, where a male employee showed up to TRT training behaving in such an

obviously intoxicated manner that his poor performance and intoxication were documented by several other senior firefighters who were there. He was not investigated further, or subjected to any blood, hair, and/or urine tests. The TOWN OF DAVIE certainly did not contact other “expert” doctors to paper their files with erroneous medical reports based upon materials the TOWN OF DAVIE hand fed those doctors, while an employee was in the hospital.

35. Ever since LORI DAVIE filed her first EEOC Charge, which is pending currently with the Department of JUSTICE along with over ten others, the contempt that the Town of Davie has for the brave men and women who have come forward to effect change at the Town is palpable and relentless. The Town looks for and seizes every opportunity that it can to attack anyone who complains or supports the complaints by participating honestly in the EEOC and DOJ investigations and opposes the discrimination and retaliatory animus at the TOWN OF DAVIE.

36. Since LORI DAVIS filed her Charge and opposed unlawful discrimination the discriminatory animus, retaliation, and hostile work environment have not changed. Deputy Chief Malvasio and Chief Montopoli have been left in their positions and continue to exercise chain-of-command authority against those employees who complained by formally filing charges with the EEOC as well as those who participated in the investigations that followed with both the EEOC and the Department of Justice.

37. As an example, in another instance Deputy Chief Malvasio targeted LORI DAVIS and a witness who provided testimony about the pregnancy policies and Fire Administration about absences. The issue at the time was not that sick time was not being used per policy, it was that the management did not appreciate the employees using it. So months later, Deputy Chief Malvasio called as meeting to address the issue pretextually. When Devin Sweet pointed

out that the stated reason for verbally counseling the female employees violated no policies or rules, and suggested that Deputy Chief Malvasio had created more of a safety issue by pulling trucks out of service to yell at Ms. Sweet, he then responded with loud personal attacks and profanity. The Union representative ultimately had to remind him not to talk that way to staff. Similarly situated male employees are not treated this way. There are a group of males at the Town of Davie who have had repeated instances and complaints who receive little scrutiny or targeting. There are others, such as the women employees at the TOWN OF DAVIE and the individuals who have stepped up and participated and opposed the discrimination at the TOWN OF DAVIE who are constantly subjected to scrutiny, attacked, pressured, and undermined by Fire Administration.

38. The TOWN OF DAVIE also has made no secret of its negativity toward the individuals, including LORI DAVIS, who have brought EEOC Charges against the TOWN OF DAVIE. Since filing her Charge, LORI DAVIS has been publically snubbed, isolated, and undermined by Deputy Chief Malvasio and Chief Montopoli. The TOWN OF DAVIE also had no qualms about letting everyone know who had complained, and even blamed policy changes on the women who had complained at the TOWN OF DAVIE. They have done nothing to protect LORI DAVIS and others who oppose discrimination from derision by their coworkers, and have go so far as to have "sensitivity training" conducted by the same law firm that defended the TOWN OF DAVIE against all the EEOC Charges, the EEOC investigations, and the Department of Justice investigations.

39. In another example, following LORI DAVIS'S EEOC Complaint she was put under the chain-of-command of one of the group of people especially know for discrimination against women and who disparages women at the TOWN OF DAVIE.

40. Since she returned to her shift, LORI DAVIS was also subjected to hostile work environment sexual harassment by members of Chief Montopoli and Deputy Chief Malvasio's group of males that have engaged in discrimination and retaliation. One such person was LORI DAVIS'S direct supervisor. Since filing her EEOC Charge, LORI DAVIS experienced discrimination, retaliation, and harassment. LORI DAVIS received the lowest evaluation she ever had in her career, which she does not believe accurately reflects her performance. LORI DAVIS has had male workers brush against her or and/or touch her in inappropriate ways. Her direct supervisor in one instance grabbed her ponytail in a sexual way that was meant to simulate oral sex. In another instance, the same supervisor grabbed her buttocks during training. After she complained, the TOWN OF DAVIE transferred the supervisor but let it be known that it was due to LORI DAVIS'S complaint. The TOWN OF DAVIE then turned a blind eye to the threats and retaliation that followed, many of which were even documented because they came by way of text. She was told to "watch her back" and that she was "hated" because of her complaints.

41. LORI DAVIS has been discriminated against, retaliated against, subjected to a discriminatory hostile work environment for being female, for having been pregnant, and for having engaged in protected activity by properly reporting her complaints to Human Resources, the Town of Davie, the DOJ and the EEOC.

COUNT I
UNLAWFUL RETALIATION IN VIOLATION OF TITLE VII OF THE
CIVIL RIGHTS ACT OF 1964, AS AMENDED 42 U.S.C. 2000 ET. SEQ.

42. Plaintiff LORI DAVIS repeats and re-alleges each and every allegation set forth in paragraphs 1-41 as if fully set forth herein.

43. Since her EEOC Charge, and continuing to date, Defendant TOWN OF DAVIE engaged in unlawful employment practices in Broward County, Florida in violation of Title VII.

44. Plaintiff was subjected to severe and pervasive sexual harassment by her supervisors and co-workers in the form of gender discrimination and hostility toward her for being a female and for having had children, including open hostility toward women and women who have had children, ridicule, embarrassment, being isolated, and being shamed.

45. Defendant retaliated against Plaintiff for complaining of unlawful discrimination, sexual harassment, and for her participation in EEOC and DOJ investigations into the TOWN OF DAVIE'S discriminatory animus toward women, discriminatory pregnancy policy. Defendant also retaliated by creating a hostile work environment, allowing LORI DAVIS to be targeted, threatened, ridiculed, and attacked. The TOWN OF DAVIE took steps to hinder her recovery from injury and then concealed those efforts by attacking her and labeling her a drug user publically, conducting drug testing without due cause and in contravention of TOWN OF DAVIE CBA/Policy.

46. The TOWN OF DAVIE treated LORI DAVIS dissimilarly than other similarly stated employees, who were male, and who had not opposed discrimination while participating in the ongoing Department of Justice investigations or the EEOC investigations. Those employees were not subjected to this hostile work environment and were not given pretextual drug tests and publically shamed and defamed in the manner that the TOWN OF DAVIE has treated LORI DAVIS.

47. The TOWN OF DAVIE fire department has a long and well known history of discrimination and harassment against women and people who oppose their unlawful and discriminatory employment practices.

48. After LORI DAVIS'S Complaints, participation, and opposition of discrimination, the TOWN OF DAVIE entered into a consent decree in the UNITED STATES

OF AMERCIA V. TOWN OF DAVIE, Florida Case No: 12-61249, prohibiting the Defendant, TOWN OF DAVIE, from engaging in gender discrimination. Despite this, the discrimination and retaliation has continued unabated.

49 The unlawful conduct of the DEFENDANT, TOWN OF DAVIE, was done with intentional oppression and malice; with a reckless and conscious disregard for Plaintiff's rights; and with intent, design and purpose of injuring Plaintiff. Defendant through its officers, managing agents, and/or supervisors authorized, condoned, and/or ratified the unlawful conduct in that Defendants knew or should have known of the complained of discrimination, sexual harassment, and retaliation by the Defendant against Plaintiff. Notwithstanding repeated complaints, and investigations, the Defendant failed to take any disciplinary or remedial action. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from Defendant in a sum according to proof presented at trial.

50. Defendant, TOWN OF DAVIE'S unlawful acts of discrimination and retaliation were intentional and done with malice or reckless indifference to Plaintiff's rights protected by federal law, including Title VII.

52. As a direct and proximate result of Defendant, TOWN OF DAVIE'S violation of existing law, as described herein, Plaintiff has been compelled to retain the services of counsel and thereby incurred and will continue to incur, legal fees and costs. Plaintiff is entitled to recovery of attorneys' fees and costs pursuant to federal law including Title VII 42 U.S.C. § 2000e-5(K) and Federal Rule of Civil Procedure 54.

WHEREFORE, Plaintiff LORI DAVIS, respectfully requests that the Court Order the following:

(A) Grant a permanent injunction enjoining the Town of Davie, and the Town of Davie's Fire Department, its officers, successors, assigns, and all persons in active concert or

participation with it, from engaging in any employment practice which discriminates on the basis of gender;

(B) Order the Town of Davie to make LORI DAVIS whole by compensating her for lost wages, benefits, including any diminished front back, back pay, with prejudgment interest, and other compensation for unlawful gender treatment by the Town of Dave;

(C) Award compensation for mental pain and suffering;

(D) Award attorneys fees pursuant to Title VII and other applicable federal statutes;

(E) Costs incurred in brining and prosecuting this action;

(F) Issue a declaratory judgment that the acts, policies, practices, and procedures of Defendant complained of herein violated Plaintiff's rights under Title VII of the Civil Rights Act 42 U.S.C. § 2000e;

(G) Actual damages in an amount to be determined by proof at the trial of this cause;

(H) Consequential damages in an amount to be determined by proof at the trial of this cause;

(I) General damages in an amount to be determined by proof at the trial of this cause;

(K) Special damages in an amount to be determined by proof at the trial of this cause;

(L) For exemplary damages, nominal damages and any other such relief that this Court deems just and proper upon a showing of proof at the trial of this cause.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by his Complaint and on all other issues so triable.

Dated: July 14, 2014

Respectfully submitted,

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