

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

**JOSE RIVERO,**

**Plaintiff,**

**vs.**

**TOWN OF DAVIE,**

**Defendant.**

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**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., which makes it unlawful “for an employer to discriminate against any . . . employe[e]” who (1) “has opposed any practice made an unlawful employment practice by this subchapter”(opposition clause), or (2) “has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter” (participation clause).

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, JOSE RIVERO, (herein “Battalion Chief Rivero”) works 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, Battalion Chief Rivero is an “employee” as defined by Title VII, 42 U.S.C. § 2000e.

8. Plaintiff, Battalion Chief Rivero 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.

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

11. Battalion Chief Rivero is a fire fighter with the Town of Davie Fire Department. He has worked for the Town of Davie since 1996. He is currently a Battalion Chief.

12. While working at the Town of Davie, Battalion Chief Rivero witnessed a severe and pervasive hostile work environment, which included treating a women as second class citizens and ridiculing them on the basis of their pregnancy status and gender. He also witnessed women being denied proper promotions, and otherwise being passed over for other less qualified male fire fighters.

13. Battalion Chief Rivero also witnessed the lengths that the administration at the Town of Davie would go to do single out and retaliate against anyone who opposed unlawful employment practices within the Town of Davie and the lengths that they would go to cover up those unlawful employment practices.

14. Battalion Chief Rivero participated in administrative investigations conducted by the EEOC and the Department of Justice. He was also deposed in an administrative action filed by several females, and one male, who opposed the unlawful employment practices at the Town of Davie.

15. The Town of Davie pressured Battalion Chief Rivero extensively prior to his providing statements in deposition and to agency investigators. Battalion Chief Rivero was reminded that he was “at will” and his ability to provide for his family was threatened by the Town of Davie. So much so that during his deposition, he testified that he would rather be running into a burning building than testifying about the Town of Davie.

16. After he testified, the Town of Davie retaliated against him for his testimony. He was isolated. He was identified as someone who was not a team player. He was publically snubbed by his supervisors.

17. Following his testimony, Fire Administration continually threatened to punish him by assigning him to “days” which is a well-known and commonly used tactic to make an example of someone at the Town of Davie, and particularly an attack that this administration has used on complainants who have opposed the Town of Davie’s unfair employment practices. Davie firefighters typically work a 24-hours-on/48-hours-off schedule, and most structure their lives around this schedule. Shifting a firefighter to “days” means that he or she will no longer have the alternating 48-hours-off for spending time with their families. It impairs his or her

ability, for example, to provide home care for young children or ill or aging family members. The typical schedule is considered one of the benefits of being a firefighter.

18. On August and September 2012, Battalion Chief Rivero was on light duty due to an on-the-job injury. Deputy Chief Malvasio, a party whose discriminatory practices, he had opposed took this as an opportunity to physically harass and attempt to intimidate Plaintiff. Deputy Chief Malvasio regularly snubbed him, even in instances where this would undermine his authority with his chain-of-command. On one occasion, after initially snubbing him, Deputy Chief Malvasio approached Battalion Chief Rivero from behind and grabbed him on his shoulders, squeezed and pushed down as you might use to make a dog heel. This physical harassment only started after Battalion Chief Rivero vocally opposed the Town of Davie's unlawful discriminatory practices. Instances such as these were unwelcome and frankly unprecedented contact in the history of Plaintiff's tenure with the Town of Davie. To provide additional context, Deputy Chief Malvasio then stated in a hostile manner that Battalion Chief Rivero needed to prepare himself and his family because Deputy Chief Malvasio was going to assign him to days soon. It is well-known that Deputy Chief Malvasio utilizes "days" as a means to punish people. In the past, Deputy Chief Malvasio has threatened to give people a "month days" and to use the disruption and hardship of arbitrary "days" assignments to retaliate against people who have opposed his unlawful conduct.

19. On December 2012, during a morning meeting, Deputy Chief Malvasio allowed Battalion Chief Sampson to antagonize and harass Battalion Chief Rivero in front of him. During that meeting, Battalion Chief Sampson became agitated and stated, "Hey do I need to get a rescue for you, you do not look so good you know being old and all" and "Hey just take it easy I don't want you to have a heart attack". When Battalion Chief Rivero asked Deputy Chief

Malvasio if he was going to intervene, he just laughed and said, "I don't see anything wrong with it." Not only was Deputy Chief Malvasio allowing this hostile situation to continue without any recourse, it was clear he was sending a message that such behavior and comments toward him were permissible.

20. Battalion Chief Rivero had not been treated in this fashion prior to his opposition to the Town of Davie's discrimination and his participation in the Town of Davie's numerous EEOC and Department of Justice investigations. He also has never seen any similarly situated Battalion Chief regularly mistreated in this fashion.

21. To date, Battalion Chief Rivero's workdays typically include terse interactions with Deputy Chief Malvasio, including scowls, glares, speaking to Plaintiff in a demeaning tone. Since Battalion Chief Rivero's testimony, participation, and opposition to discrimination, Deputy Chief Malvasio has taken steps to make Battalion Chief Rivero fear for his job. He was subjected to increased scrutiny in every task, as compared to other similarly situated Battalion Chiefs. He was undermined. And eventually, Deputy Chief Malvasio and the Town of Davie made good on their threats to arbitrarily assign him to "days."

22. On December 28, 2012, Battalion Chief Rivero was advised that he was being taken off his regular shifts and reassigned to "days". This was a method of retaliation that had been utilized by the Town of Davie to retaliate against other employees who opposed discriminatory practices by the Town of Davie.

23. Once Battalion Chief Rivero was on the day shift, Deputy Chief Malvasio and Chief Montopoli began disparately disciplining him for pretextual reasons. He was given a formal counseling on February 22, 2013, for an alleged scheduling error dating back to January 9, 2013. It was also well known that they were acting in concert to try and dig up anything they

could find on him. Other Battalion Chiefs meanwhile enjoyed a favored status where they were subjected to less scrutiny, and were not harassed on a day-to-day basis.

24. Despite his hardship appeals and repeated requests, the Town of Davie left Battalion Chief Rivero on days indefinitely. The Town of Davie initially claimed that its “days” policies would apply evenly to other Town of Davie Fire Department employees. However, when it was time for someone else to be placed on days, the Town of Davie changed its policies and suspended the “days” rule, which had the effect of leaving Battalion Chief Rivero on days for the foreseeable future despite the known hardship this would cause to him.

24. Defendant retaliated against Plaintiff for complaining of the unlawful discrimination by Defendants and for participating in EEOC investigations, DOJ investigations, and testifying about the Town of Davie’s unlawful discriminatory practices. Plaintiff has been targeted, singled-out, isolated, has had his authority undermined, has been subjected to disparate and/or pretextual discipline, and has been assigned to days despite the known hardship it caused, and the Town of Davie has created a continuous and ongoing hostile work environment in response to his opposition and protected activity.

25. The effect of this ongoing and persistent discrimination and retaliatory environment has deprived Plaintiff of equal employment opportunities and otherwise adversely affected his status of employee in retaliation for his opposition to the Town of Davie’s severe and pervasive, well-documented, discrimination practices.

26. The unlawful conduct of the Defendant, TOWN OF DAVIE, described above was done with oppression and malice; with a reckless and conscious disregard for the Plaintiff’s rights and with intent, design and purpose of injuring Plaintiff. Defendants through its officers, managing agents, and/or supervisors, authorized, condoned, and/or ratified the unlawful conduct

in that the Defendant knew or should have known of the complained of sexual harassment and retaliation and failed to take any disciplinary or remedial actions to prevent it. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from Defendant in a sum according to proof presented at trial.

27. Defendant, Town of Davie's unlawful acts of discrimination and retaliation were intentional and done with malice or reckless indifference to Plaintiff's rights as protected by Title VII and federal law.

28. As a direct and proximate result of Defendant, TOWN OF DAVIE's violation of exisiting law, as described herein, Plaintiff has been compelled to retain the services of counsel and has incurred, and will continue to incur, legal fees and costs. Plaintiff is entitled to recover attorneys' fees and costs pursuant to 42 U.S.C. § 2000e-5(K) and Federal law.

**WHEREFORE**, Plaintiff Battalion Chief JOSE RIVERO, 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 Battalion Chief Rivero whole by compensating him 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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