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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>DAWNYA TAYLOR HALLIDAY, Plaintiff, vs. CITY OF SARATOGA SPRINGS, Defendant.</p>	<p>COMPLAINT AND JURY DEMAND Case No.</p>
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Plaintiff alleges:

NATURE OF THE CASE

1. This is an action for damages against the City of Saratoga Springs where Plaintiff was employed, and thereafter subject to ongoing discrimination and unlawful retaliation based upon her gender and disability. Defendant's conduct violates Title VII of the Civil Rights Act of 1964 (42 U.S.C § 2000E et seq., and the Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. §12111 et seq.

PARTIES AND JURISDICTION

2. Plaintiff is a resident of Utah.
3. Plaintiff is a citizen of the United States who resides in Saratoga Springs, Utah.
4. Defendant City of Saratoga Springs is a city or municipality created under the laws of the State of Utah.
5. This court's jurisdiction is invoked pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000(e) et seq. for claims arising from actions of the Defendant in violation of Title VII, and Title I of the Americans with Disabilities Act, 42 U.S.C. § 12111 et seq.
6. Plaintiff filed Charges of Discrimination with the Utah Anti-Discrimination and Labor Division and received a Notices of Right to Sue, a copy of which are attached as Exhibit One hereto.
7. Venue is proper in this district.
8. Plaintiff demands that the claims and defenses in this case be tried to a jury.

BACKGROUND ALLEGATIONS

7. Plaintiff is female.
8. Plaintiff was a member of the Saratoga Springs fire department, having first joined the department in 2000.
9. Plaintiff was a captain within the department and had served as acting fire chief after the untimely death of the chief.
10. In approximately September 2011, Jess Campbell was hired as fire chief.
11. Chief Campbell is the Defendant's agent and his actions are binding on Defendant, and the

Defendant is directly liable for his actions

12. Chief Campbell was Plaintiff's immediate supervisor with authority to hire, fire, and alter the terms and conditions of Plaintiff's employment.
13. In the alternative, Chief Campbell was Plaintiff's co-employee and the Defendant was negligent in permitting Chief Campbell to discriminate against Plaintiff.
14. Upon his hiring by the City, Chief Campbell began a campaign to intimidate the female members of the department in order to get them to resign.
15. Plaintiff and other female fire fighters were subjected to ongoing discrimination which includes, but is not limited to the following: a nonstandard physical agility test implemented by a new Chief in 2012 and adjusted so as to favor certain groups of people, but to disfavor female firefighters.
16. The test was adapted by Chief Campbell from a different test used for applicants seeking to become fire fighters but never used as a test for fire fighters who have already been employed and trained.
17. Upon information and belief, Chief Campbell has no training in developing standardized tests for fire fighters.
18. The test sought to evaluate aspects of performance which are irrelevant to the Plaintiff's situation.
19. For example, the test tested a fire fighter's ability to climb 180 steps even though there is no building in Saratoga Springs or anywhere else Plaintiff would be required to perform firefighting services which has 180 steps.

20. As a further example, the test tested a fire fighter's ability to perform with 70 pounds of equipment even though Plaintiff's equipment did not weigh 70 pounds.
21. Preferential exceptions were given to male employees regarding time to prepare for this test, tools used during the test and methods of administering and grading the test.
22. Failing to meet testing standards resulted in disciplinary action including suspension and or termination.
23. Male employees were allowed exceptions during the test and not subjected to disciplinary action when testing standards were not met.
24. Plaintiff was tested, along with another female, by Chief Campbell personally, but male employees were tested by other employees.
25. The test was implemented as a way to discriminate against female employees.
26. Plaintiff passed all standardized tests she was required to take.
27. Following the test, Plaintiff was subjected to disciplinary action.
28. Plaintiff was denied the exceptions made available to male employees and was disciplined at a more severe level than male employees.
29. Plaintiff and other females were not tested using the 45 pound weight vests made for females, but were instead tested using vests made for males.
30. The testing did not comply with the EEOC's Employment Tests and Selection Procedures.
31. Plaintiff was intimidated and told by Chief Campbell that she, "...should thank [him] for allowing [her] to go home and be a wife and mother," notwithstanding the fact that the Plaintiff was, at the time, a single mother.

32. Chief Campbell referred to female fire fighters in a demeaning fashion such as responding that, “we are not hiring any more of them” upon learning that an applicant was female; asking the male fire fighters, “what are we, women?” and telling the male fire fighters that they, “had better go put on your skirts.”
33. Plaintiff was told she could not participate in a color guard presentation for the Saratoga Springs city celebration because Chief Campbell only wanted men on stage.
34. Plaintiff was treated differently than other male fire captains and Chief Campbell would communicate directly to firefighters on Plaintiff’s crew instead of using the proper chain of command through Plaintiff.
35. During a staff meeting, Plaintiff asked a question regarding proper hair grooming, to which Chief Campbell responded that if Plaintiff had problems with the policy then she should cut her hair because the job is for firefighters, not fire women.
36. The City received new badges for the fire department, but Chief Campbell delayed and refused to provide Plaintiff with her badge despite her being a Captain, and should have been among the first to receive a new badge.
37. Chief Campbell excluded Plaintiff from training for a new reporting program in the fire department, and gave the training position to a male firefighter on his first day.
38. Plaintiff was subjected to other sexist comments and behavior by Chief Campbell.
39. Plaintiff complained about this treatment to the City but nothing changed.
40. Plaintiff filed a grievance, but it was ignored in violation of city policy.
41. Plaintiff suffered both disparate treatment and a hostile work environment at the hands of

Chief Campbell and of the City Management.

42. Plaintiff suffers from Graves' Disease.
43. As a result of that disease she was unable to take a physical agility test at the time Chief Campbell felt she should take it.
44. Plaintiff sought an accommodation of being allowed to train for the test and take it at a time her doctor set.
45. After considering her condition, her doctor told the City that she should be able to take the test within 60 days.
46. The City refused the accommodation of allowing her the additional 60 days and terminated her. This termination was in violation of the Americans with Disabilities Act and the Utah Anti-Discrimination Act.
47. These actions are in addition to the prior actions of the City in which Plaintiff suffered discrimination because of her sex.

**FIRST CAUSE OF ACTION
(Violation of Title VII of the Civil Rights Act of 1964)**

48. Plaintiff hereby incorporates by reference, as if fully set out herein, each of the proceeding paragraphs of her Complaint.
49. Defendant is subject to the provisions of Title VII of the Civil Rights Act of 1964.
50. Chief Campbell is the Defendant's agent, his actions are binding on Defendant, and the Defendant is directly liable for his actions.

51. The actions of the Defendant in discriminating, retaliating, and terminating the Plaintiff were taken because of the gender of the Plaintiff and are therefore in violation of the provisions of Title VII.
52. Defendant's actions damaged the Plaintiff, and Defendant is therefore liable to the Plaintiff for her lost compensation and other benefits of employment occasioned thereby pursuant to 42 U.S.C. § 2000(e)-5, for consequential damages, emotional distress damages, and other damages and costs authorized by said statute.
53. The actions of Defendant in terminating the Plaintiff were taken in reckless disregard for the federally protected rights of the Plaintiff and she is therefore entitled to punitive damages in such amount as may be found proper hereafter.
54. The Plaintiff is entitled to attorney's fees pursuant to 42 U.S.C. § 2000(e)-5(k).

**SECOND CAUSE OF ACTION
(Negligence under Title VII of the Civil Rights Act of 1964)**

55. Plaintiff hereby incorporates by reference, as if fully set out herein, each of the preceding paragraphs of her Complaint.
56. Defendant is subject to the provisions of Title VII of the Civil Rights Act of 1964.
57. In the alternative to Plaintiff's first cause of action, Chief Campbell was Plaintiff's co-employee.
58. The Defendant had a duty not to permit Chief Campbell's discriminatory actions to cause Plaintiff's termination.

59. The Defendant was negligent by failing to remedy and otherwise permitting Chief Campbell's discriminatory conduct in the workplace, which caused the termination of the Plaintiff.
60. Defendant's actions damaged the Plaintiff, and Defendant is therefore liable to the Plaintiff for her lost compensation and other benefits of employment occasioned thereby pursuant to 42 U.S.C. § 2000(e)-5(g), for consequential damages, emotional distress damages, and other damages and costs authorized by said statute.
61. The actions of Defendant in terminating the Plaintiff were taken in reckless disregard for the federally protected rights of the Plaintiff and she is therefore entitled to punitive damages in such amount as may be found proper hereafter.
62. The Plaintiff is entitled to attorney's fees pursuant to 42 U.S.C. § 2000(e)-5(k)

**THIRD CAUSE OF ACTION
(Hostile Work Environment under Title VII of the Civil Rights Act of 1964)**

63. Plaintiff hereby incorporates by reference, as if fully set out herein, each of the preceding paragraphs of her Complaint.
64. Defendant is subject to the provisions of Title VII of the Civil Rights Act of 1964.
65. Chief Campbell's discriminatory conduct was so severe or pervasive that it created a work environment that a reasonable person would consider intimidating, hostile, or abusive.
66. Chief Campbell's offensive conduct described above was a condition of Plaintiff's employment.
67. Defendant's actions have damaged the Plaintiff, and Defendant is therefore liable to the Plaintiff for her lost compensation and other benefits of employment occasioned thereby

pursuant to 42 U.S.C. § 2000(e)-5(g), for consequential damages, emotional distress damages, and other damages and costs authorized by said statute.

68. The actions of Defendant in terminating the Plaintiff were taken in reckless disregard for the federally protected rights of the Plaintiff and she is therefore entitled to punitive damages in such amount as may be found proper hereafter.
69. The Plaintiff is entitled to attorney's fees pursuant to 42 U.S.C. § 2000(e)-5(k)

**FOURTH CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983)**

70. Plaintiff hereby incorporates by reference, as if fully set out herein, each of the preceding paragraphs of her Complaint.
71. The actions of the Defendant in discriminating, retaliating, and terminating the Plaintiff were taken because of the gender of the Plaintiff and are therefore in violation of the provisions of section 1983.
72. Defendant's discriminatory treatment of Plaintiff was the result of a municipal policy or custom.
73. Defendant's actions have damaged the Plaintiff, and Defendant is therefore liable to the Plaintiff for her lost compensation and other benefits of employment occasioned thereby, for consequential damages, emotional distress damages, and other damages and costs authorized under said statute.
74. The actions of Defendant in terminating the Plaintiff were taken in reckless disregard for the federally protected rights of the Plaintiff and she is therefore entitled to punitive damages in such amount as may be found proper hereafter.

75. The Plaintiff is entitled to attorney's fees pursuant to 42 U.S.C. § 1988.

**FIFTH CAUSE OF ACTION
(Violation of the Americans with Disabilities Act of 1990)**

76. Plaintiff hereby incorporates by reference, as if fully set out herein, each of the preceding paragraphs of her Complaint.

77. Defendant is subject to the provisions of Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12111, et seq., and Title V, Section 503 of the Act, 42 U.S.C. 12203, et seq.

78. Plaintiff was a qualified individual with a disability, whose impairments substantially limited major life activities, as those terms are used in the ADA.

79. The actions of the Defendant in refusing to provide reasonable accommodation, discriminating, retaliating, and terminating the Plaintiff were taken because of Plaintiff's disability and are therefore in violation of the provisions of the ADA.

80. Defendant's actions have damaged the Plaintiff, and Defendant is therefore liable to the Plaintiff for her lost compensation and other benefits of employment occasioned thereby pursuant to 42 U.S.C. § 12117, for consequential damages, emotional distress damages, and other damages and costs authorized by said statute.

81. The actions of Defendant in terminating the Plaintiff were taken in reckless disregard for the federally protected rights of the Plaintiff and she is therefore entitled to punitive damages in such amount as may be found proper hereafter.

82. The Plaintiff is entitled to attorney's fees pursuant to 42 U.S.C. § 12117.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for damages and further relief as follows:

1. For judgment against Defendant and in favor of Plaintiff awarding damages in such amount as will be shown at trial, including damages for emotional distress.
2. That Plaintiff be awarded her lost back wages and front wages.
3. That Plaintiff be awarded punitive damages against Defendant.
4. That Plaintiff be awarded attorney's fees and costs of this action.
5. An injunction ordering Defendant to cease all current and future discrimination.
6. For such other and further relief as the Court may deem proper.

DATED this 28th day of August, 2015.

/s/ Michael S. Wilde
MICHAEL S. WILDE
Attorneys for Plaintiff

Exhibits:

1 – Notices of Right to Sue

Exhibit 1



U.S. Department of Justice
Civil Rights Division

CERTIFIED MAIL
7010 0290 0000 2016 5397

950 Pennsylvania Avenue, N.W.
Karen Ferguson, EMP, PHB, Room 4239
Washington, DC 20530

June 03, 2015

Ms. Dawnya Taylor Halliday
c/o Michael S. Wilde, Esquire
Law Offices of Blackburn & Stoll
257 East 200 South
Suite 800
Salt Lake City, UT 84111

Re: EEOC Charge Against City of Saratoga Springs
No. 35C201300054

Dear Ms. Taylor Halliday:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC Phoenix District Office, Phoenix, AZ.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

by

Handwritten signature of Karen L. Ferguson in black ink.

Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: Phoenix District Office, EEOC
City of Saratoga Springs



U.S. Department of Justice
Civil Rights Division

CERTIFIED MAIL
7010 0290 0000 2016 5397

950 Pennsylvania Avenue, N.W.
Karen Ferguson, EMP, PHB, Room 4239
Washington, DC 20530

June 03, 2015

Ms. Dawnya Taylor Halliday
c/o Michael S. Wilde, Esquire
Law Offices of Blackburn & Stoll
257 East 200 South
Suite 800
Salt Lake City, UT 84111

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No. 35C201300054

Dear Ms. Taylor Halliday:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action against the above-named respondent under: Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12111, et seq., and, Title V, Section 503 of the Act, 42 U.S.C. 12203.


If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC Phoenix District Office, Phoenix, AZ.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

by 
Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: Phoenix District Office, EEOC
City of Saratoga Springs