

IN THE CIRCUIT COURT OF THE COUNTY OF ST. CHARLES  
STATE OF MISSOURI

DAVID J. HORNING, )

Plaintiff, )

Cause No. )

vs. )

Division )

CENTRAL COUNTY FIRE AND RESCUE, )

Serve: Gary Donovan, Fire Chief )

1220 Cave Springs Boulevard )

Saint Peters, Missouri 63376 )

and )

GARY DONOVAN, Fire Chief, Central County )

Fire and Rescue, )

Serve at: 1220 Cave Springs Boulevard )

Saint Peters, Missouri 63376 )

and )

DAVID TILLEY, Chairman of the Board of )

Directors for Central County Fire and Rescue, )

Serve at: 4 Fishers Hill Drive )

St. Peters, MO 63376 )

Defendant. )

**PETITION FOR EMPLOYMENT DISCRIMINATION IN VIOLATION  
OF THE MISSOURI HUMAN RIGHTS ACT, SECTION 213.010, ET. SEQ., RSMO**

COMES NOW Plaintiff, DAVID J. HORNING (“Plaintiff” or “Horning”), by and through undersigned counsel, and for his Petition for Employment Discrimination in Violation of the Missouri Human Rights Act, § 213.010 *et seq.*, RSMo. (“Petition”) against Defendants CENTRAL COUNTY FIRE AND RESCUE, (“CCFR”), GARY DONOVAN (“Donovan” or “Chief Donovan”), and DAVID TILLEY (“Tilley”), states to the court as follows:

**PARTIES**

1. Plaintiff brings this action under the Missouri Human Rights Act, § 213.010 *et seq.*, RSMo (2000)<sup>1</sup> (“MHRA”), and alleges discrimination based on his health status/disability and/or perceived/history of disability and his age relating to his treatment under Missouri anti-discrimination laws.

2. Plaintiff is an individual over the age of 18 years and at all times relevant herein a resident of St. Charles County, State of Missouri.

3. At all times relevant herein, Plaintiff was employed as a firefighter/EMT by Defendant Central County Fire and Rescue, or any of its members, including its Board of Directors, or as required by statute, and Defendants, all of them, possessed authority and exercised control over the terms and conditions of Plaintiff’s job.

4. Defendant CCFR is a public service fire district that is duly organized, established, and existing under and by virtue of the laws of the State of Missouri, with its principle place of business located at 1220 Cave Springs Boulevard, Saint Peters, MO 63376, in St. Charles County.

5. Defendant CCFR is responsible for the actions, policies, practices, and customs of Central County Fire and Rescue, as well as possessed authority and exercised control over the terms and conditions of Plaintiff’s job, including the hiring, screening, training, supervision, controlling, firing, and disciplining of Plaintiff and other employees of CCFR.

6. Defendant Chief Donovan at all times relevant hereto held the title of Fire Chief of Central County Fire and Rescue and was acting in his official capacity as the designated supervisory agent, officer, employee, and representative of Defendant CCFR; served as supervisor of Plaintiff;

---

<sup>1</sup> All references are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

and was acting within the scope and course of his employment, and with the authority of Defendant CCFR; and was acting with full knowledge regarding Plaintiff's established statutory rights.

7. Upon information and belief, Defendant Chief Donovan is a resident of St. Charles County, Missouri.

8. Defendant Tilley at all times relevant hereto held the title of Chairman of the Board of Directors of Central County Fire and Rescue and was acting in his official capacity as a designated officer, employee, and representative of Defendant CCFR; and was acting within the scope and course of his employment, and with the authority of Defendant CCFR; and was acting with full knowledge regarding Plaintiff's established statutory rights.

9. Upon information and belief, Defendant Tilley is a resident of St. Charles County, Missouri.

10. Defendants are jointly "employers" or "persons acting directly or indirectly in the interest of the employer" and Plaintiff is an employee under §§ 213.010 and 231.055.1 RSMo.

11. At all relevant times, Defendants employed six (6) or more employees within this state and are, therefore, "employers" within the meaning of the MHRA, RSMo. § 213.010(7).

### **JURISDICTION AND VENUE**

12. All of the acts, conduct and omissions of Defendants were performed by Defendants' agents, representatives and employees while in the course and scope of their agency or employment.

13. Defendants' unlawful employment practices complained of herein occurred in St. Charles County, Missouri; therefore, jurisdiction and venue are proper in this court.

14. Further, this case arises under the MHRA, RSMo. § 213.010 *et seq.*, making jurisdiction appropriate in this court.

15. Venue is proper in this court pursuant to § 213.111 RSMo., as the acts, occurrences, and events alleged in this action took place, in whole or in part, in St. Charles County, Missouri.

### **JURISDICTIONAL PREREQUISITES**

16. Defendants subjected Plaintiff to unfair treatment because of his disability and/or because Defendants perceived him to be disabled and because of his age, all in violation of RSMo. §§ 213.055 and 213.070. Specifically, Defendants discriminated against Plaintiff with respect to his terms, conditions, or privileges of employment because of his disability and/or because Defendants regarded him as disabled and/or because of his age by subjecting Plaintiff to discriminatory bias, by failing to offer Plaintiff reasonable accommodation, and by terminating Plaintiff's employment.

17. Plaintiff filed a timely Charge of Discrimination ("Charge") with the Missouri Commission on Human Rights ("MCHR") on or about February 7, 2023 detailing the allegations and claims of discrimination based on disability and age. A copy of the Charge is attached as *Exhibit 1*.

18. On or about September 6, 2023, the MCHR issued to Plaintiff a Notice of Right to Sue. Accordingly, Plaintiff has fully complied with all jurisdictional prerequisites under the MHRA to bring this action. A true and correct copy of Plaintiff's Notice of Right to Sue is attached hereto and incorporated herein by reference as *Exhibit 2*.

19. Plaintiff has timely filed this action within ninety (90) days of September 6, 2023 – the date the Notice of Right to Sue letter issued – and within two (2) years of Plaintiff's termination on November 2, 2022 – the last act of discrimination alleged within the Charge.

20. Plaintiff has satisfied and exhausted all administrative and judicial prerequisites prior to the filing of this action.

**FACTUAL ALLEGATIONS**

21. Plaintiff began working for Defendants at the time the Central County Fire and Rescue department was formed in 1999. Prior to the formation of the Central County Fire and Rescue department, Plaintiff had been employed by St. Charles Fire Protection District, which was merged at the time Central County Fire and Rescue was created.

22. Plaintiff worked for Defendants as a firefighter from 1999 until his employment was severed by Defendants on November 2, 2022. During his employment, Plaintiff was consistently recognized as a good employee and Plaintiff formed his job duties in a satisfactory manner. The termination of Plaintiff's employment with Defendants was not the result of any disciplinary action.

23. On September 11, 2020, Plaintiff suffered a work-related knee injury. Plaintiff was provided treatment and workers' compensation benefits for a period of time until he was returned to work.

24. Around the beginning of November 2020 (approximately November 2, 2020), Plaintiff was released to return to work following treatment for said work-related knee injury. At around that same time, Plaintiff had been diagnosed with stage 3 colon cancer which required surgery and hospitalization, from which he was recovering at the time he was released to return to work from the work-related knee injury.

25. At that time, Plaintiff was placed on short-term disability (later changed to long-term disability) under his employer's group disability insurance policy with The Standard, contract number 633816.

26. As a result of exacerbation and repetitive injuries to his knee during the course of his employment, Plaintiff ultimately required a total knee replacement before returning to work at full

duty. The knee replacement surgery was delayed, in part, due to the cancer diagnosis and recovery from colectomy surgery, and then due to the COVID pandemic. Specifically, once recovered from the colectomy surgery itself in December of 2020, Plaintiff was cleared to schedule the knee replacement surgery, which was scheduled for four months later in April of 2021, the reason for which Plaintiff was told was due to COVID procedures and that he was “not heavy enough” to warrant an earlier surgery date.

27. On April 13, 2021, Plaintiff underwent a left total knee arthroplasty. Following the knee surgery, Plaintiff continued to experience severe pain and began having burning in his thigh, heat and swelling in his knee, and numbness and loss of feeling and strength in his left leg. The knee arthroplasty surgery resulted in significant nerve damage and femoral neuropathy.

28. During the COVID pandemic, and from March of 2020 and beyond, through until December of 2021, conditions and delays associated with medical treatment, physical rehabilitation, wound care, and pain management were substantially delayed and/or significantly curtailed. This created a delay in the recovery process for Plaintiff.

29. During the time Plaintiff remained off work but recovered from surgery and had begun a treatment program related to the nerve damage, Plaintiff inquired from CCFR about the availability of light duty. Light duty has historically been made available by CCFR to persons of Plaintiff’s rank and job description.

30. The Central County Fire and Rescue and International Association of Firefighters Local 2665 Collective Bargaining Agreement Effective January 1, 2022 through December 31, 2022 provides that, with respect to light duty, “Any employee who is unable to perform their normally assigned position due to health or disability and is released by his/her doctor and the District’s doctor

for light duty, may be assigned to light duty until released by their doctor and the District's doctor to full duty. *Light duty shall be at the discretion of the employee.* ... Any employee assigned to a less strenuous position, due to health or disability, shall continue to receive all compensation and benefits, including accumulation of seniority attached to his/her normally assigned position.” (Emphasis added).

31. Plaintiff was advised by CCFR that the policy concerning light duty had been “suspended” due to the COVID pandemic, though Plaintiff never received corroboration relating to this “policy” and no notice was ever provided that the terms of the Collective Bargaining Agreement were “suspended.”

32. Plaintiff remained receiving long-term disability benefits through the date of his termination on about November 2, 2022.

33. Pursuant to the Central County Fire and Rescue and International Association of Firefighters Local 2665 Collective Bargaining Agreement Effective January 1, 2022 through December 31, 2022, with respect to non-job related disability leave, “Any employee who has been on disability leave for twenty four (24) consecutive months will be required to provide the district with a definitive return to work date from the employee’s physician. If the District deems the date reasonable the employee will be allowed to perform Districts the (*sic*) return to work evaluation. ... If the District deems the date unreasonable then the District and the employee will separate service.”

34. Plaintiff was aware of the policy and that as of November 2, 2022, he would have been on disability leave for a period of twenty four consecutive months, and Plaintiff sought a note from his physician in compliance with the collective bargaining agreement.

35. Throughout the time Plaintiff was on leave under long-term disability, he was in regular communication with Defendants as to his treatment status.

36. On about November 2, 2022, Plaintiff presented his physician's letter to Defendants which indicated that Plaintiff was scheduled to receive a dorsal root ganglion stimulation implant which would allow him to return to work by the end of the first quarter for 2023. Given the fact that the surgery was in the process of being scheduled, the doctor was unable to give an exact date and time for return to work. However, the doctor did indicate that Mr. Horning would likely be able to return to work after he recovered from the surgery.

37. On that date, Plaintiff attempted to speak to the Board of Directors regarding his condition and that he was in the process of scheduling the implant surgery at Board's scheduled meeting on November 2, 2022. Plaintiff had emailed the Board of Directors and Defendant Donovan asking that Plaintiff be allowed an extension for three months in order to receive the implant surgery and asked that they consider the delays experienced by Plaintiff in obtaining medical care due to COVID. This was a closed Board meeting, but district and union leaders regularly attend. Plaintiff was advised by one of his fire chief that if it was "his job on the line, he would attend." Plaintiff's union representative and one or two other employees of the District were invited into the closed door meeting. After hearing shouting and cursing by Defendant Tilley from outside the closed door, Plaintiff's union representative came out and told Plaintiff that he would not be allowed to speak to the Board.

38. Subsequently, Plaintiff received a letter on about November 6, 2022 from Defendants notifying Plaintiff that the District elected to separate service effective November 2, 2023 for Plaintiff's "failure to return to employment or present a letter consistent with the Collective



Bargaining Agreement. . .”. Between November 2 and November 6, 2022, Plaintiff had not been notified about his discharge from employment, though Defendants discharged him effective November 2, 2022. This reason for discharge was a false narrative, a pretext created by Defendants to justify unlawful discriminatory behavior.

39. Upon information and belief of Plaintiff, Plaintiff’s position of employment was both opened and filled on the same date Plaintiff’s employment was severed, November 2, 2023, further indicating bad faith and an improper administration of the Collective Bargaining Agreement.

40. This action demonstrated that Plaintiff’s rights were set aside in favor of a new, younger hire before Plaintiff was given an opportunity.

41. Defendants have a history of bending rules for family members (nepotism) and friends of members in authority.

42. Further, upon information and belief of Plaintiff, Plaintiff’s position was filled by a much younger individual.

43. Defendants failed to engage in any sort of true interactive accommodation process with Plaintiff or otherwise formally engage with him in any constructive way regarding his disability.

44. Defendants’ termination of Plaintiff was intentional, willful, malicious, and calculated toward Plaintiff in that Defendants fired Plaintiff without making any good faith efforts to engage in any interactive accommodation process and, thus, such conduct constituted willful violations of Missouri law.

45. Further, Defendant CCFR recently made a change in pension benefits whereby it would be a greater benefit to them to get rid of older employees before they were able to draw their

full pension benefits. Defendants' firing of Plaintiff was motivated by discrimination against persons like Plaintiff who are disabled and older.

46. Defendants have engaged in unlawful discriminatory acts that are prohibited under the Missouri Human Rights Act ("MHRA").

47. Plaintiff is a "person" as defined under the MHRA.

48. Defendants are an "employer" as defined under the MHRA.

49. Disability is a protected class under the MHRA.

50. Further, age is a protected class under the MHRA.

51. Plaintiff, as an individual with a disability, is protected by Chapter 213 RSMo.

52. At all times during his employment with Defendants, Plaintiff performed his job to the best of his ability and satisfactorily met the legitimate job expectations of Defendants and was able to perform the essential functions of his job, with or without reasonable accommodations, and was therefore a qualified individual with a disability under the MHRA. Here, the reasonable accommodation would have been to factor in the delayed medical treatment due to COVID and the approval process (insurance) so that Plaintiff could have the surgery needed and return to work.

53. Plaintiff was a model employee whose injuries were largely related to the work he performed and the strenuous nature of that work.

54. During his years of employment, Plaintiff headed the Safe Kids St. Charles County coalition sponsored by CCFR for over seven years and in the first year received recognition for the most improved coalition from this worldwide organization. Plaintiff was an American Red Cross instructor for thirteen years, fire service instructor I and II in live burns, fire officer certified, and had

dozens of FEMA certifications, and received a life saving award for work in 2020, which he was acknowledge and presented with during the period of time he was off work due to his disability.

55. Plaintiff's disability, record of impairment, treatment pertaining thereto, and being regarded as having such an impairment is a "disability" under the law in that it has substantially limited Plaintiff's major life functioning of sleep, concentrating, thinking, and interaction with others that interfered with the operation of major bodily functions.

56. Plaintiff's impairment, record of impairment, treatment pertaining thereto, and being regarded as having such an impairment have been recognized as a condition that qualifies as a "disability" under Missouri anti-discrimination laws.

57. Plaintiff requested accommodations from Defendants, and Plaintiff's disability was at all times fully disclosed to Defendants.

58. Plaintiff's disability and age were both a contributing factor in Defendants' decision to terminate Plaintiff.

59. As a direct and proximate result of the foregoing, Plaintiff suffered intentional discrimination – because of his disability, in violation of § 213.055 RSMo. – at the hands of Defendants.

60. Defendant Donovan is a management-level employee who knew, or should have known, of prohibitions against discrimination based on disability and age, and he did nothing to address the discrimination directed toward Plaintiff and failed to implement effective and appropriate procedure to stop the inequitable treatment of Plaintiff based on his disability and age.

61. By failing to take prompt and effective remedial action, Defendant CCFR in effect condoned, ratified, and/or authorized Defendant Donovan's aforementioned actions and omissions against Plaintiff, and constituted unlawful employment practices under the MHRA.

62. Defendant Tilley, as the Chairman of the Board of Directors, is a management-level employee who knew, or should have known, of prohibitions against discrimination based on disability and age, and he did nothing to address the discrimination directed toward Plaintiff and failed to implement effective and appropriate procedure to stop the inequitable treatment of Plaintiff based on his disability and age.

63. By failing to take prompt and effective remedial action, Defendant CCFR in effect condoned, ratified, and/or authorized Defendant Tilley's aforementioned actions and omissions against Plaintiff, and constituted unlawful employment practices under the MHRA.

64. Defendants did not, and do not, endeavor to protect all their employees from discrimination. As a consequence, employees like Plaintiff are discouraged from complaining and discrimination in the workplace is exacerbated.

65. As a direct result of Defendants' discriminatory practices, actions, omissions, and failure to act as described herein, Plaintiff has sustained, and continues to sustain, damages, including, but not limited to, economic loss in the form of lost wages and benefits of employment, future lost wages and earnings, emotional pain, suffering, humiliation, fear, anxiety, dread, inconvenience, mental anguish, embarrassment, loss of enjoyment of life, and deprivation of his civil rights.

66. In addition, Plaintiff has incurred, and will continue to incur, attorney's fees, costs, and expenses of suit.

67. Defendants' conduct was outrageous because of their evil motive or reckless indifference to the rights of Plaintiff, thereby entitling Plaintiff to an award of punitive damages in an amount that will punish Defendants and deter Defendants and others from like conduct.

68. The individual defendants named herein were an agent, servant, and employee of Defendant CCFR and were at all such times acting within the scope and course of their agency and employment; and/or their actions were expressly authorized by Defendant CCFR; and/or their actions were ratified by Defendant CCFR, thus making Defendant CCFR liable for said actions under the doctrine or *respondet superior*.

69. Plaintiff is entitled to recover reasonable attorney's fees and costs from Defendants, as provided under § 213.111.2 RSMo.

WHEREFORE, Plaintiff David Horning respectfully requests that this court will, after trial by jury, enter judgment against Defendants and in his favor finding that he has been subjected to unlawful discrimination prohibited by § 213.010, *et seq.*, RSMo.; award Plaintiff actual, compensatory, and/or punitive damages in such an amount in excess of \$25,000.00 as is deemed fair and reasonable; prejudgment interest as allowed by law; reinstatement; reasonable attorney's fees and costs on suit; and for such other and further orders this court deems just and proper in the premises.

LAW OFFICE OF NATHAN S. COHEN

By: /s/ Nathan S. Cohen  
Nathan S. Cohen, #36072  
Attorney for Plaintiff  
210 South Bemiston Avenue  
St. Louis, MO 63105  
(314) 727-6088 - Telephone  
(314) 727-6081 - Facsimile  
nathan@nathanscohen.com