

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 NIAGARA COUNTY, NEW YORK,)
)
 Defendant.)
_____)

Civil Action No.: _____
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff United States of America (“United States”), alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1331, and 28 U.S.C. § 1345. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1331(b).

3. Defendant Niagara County, New York (“Niagara County” or the “County”) is a governmental body created pursuant to the laws of the State of New York and located within this judicial district.

4. Niagara County is a “person” within the meaning of 42 U.S.C. § 2000e(a) and an “employer” within the meaning of 42 U.S.C. § 2000e(b).

5. The United States Equal Employment Opportunity Commission (“EEOC”) received a timely charge, charge no. 846-2008-18853, filed by charging party Carisa

Boddecker on January 25, 2008, alleging that the Niagara County Sheriff's Office ("NCSO") discriminated against her on the basis of sex and pregnancy. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charge, found reasonable cause to believe that Boddecker's allegations of sex and pregnancy discrimination were true, attempted unsuccessfully to achieve a voluntary resolution of the charge through conciliation, and subsequently referred the matter to the Department of Justice.

CLAIM FOR RELIEF

6. Boddecker began her employment with the NCSO as a part-time corrections officer in August 1999, and became a full-time corrections officer on January 2, 2005.

7. In or around September 2007, Boddecker learned she was pregnant and informed the NCSO of her pregnancy through her chain of command.

8. On or around September 18, 2007, Administrative Captain Daniel Engert advised Boddecker to "communicate to your Tour Sergeants when you or your doctor determine you would like to be removed from exposure to inmates and placed in a more accommodating job conducive to your condition. I am aware that you are a qualified Central Control officer on 4-12 and this will be your assigned duty post upon such notice."

9. On or around September 27, 2007, Boddecker informed her sergeants that she would like to be removed from her regular duties and assigned to a position with no direct contact with inmates and no overtime hours. On or around October 1, 2007, Boddecker began working in Central Control.

10. At the time Boddecker made her restricted duty request in or around September 2007, the NCSO had a policy that addressed restricted duty for pregnant corrections officers. The policy stated, in part, "Upon being notified by a female Correction Officer that she is

pregnant, the Tour Sergeant/Captain shall initiate the following procedures Advise the female Correction Officer that she has the option to be assigned to a duty station that entails no immediate contact with the inmate population (i.e. Control Desk, Records etc. [sic]).”

The policy did not require medical verification of justification for assignment to such a duty post.

11. On or around October 11, 2007, Captain Engert met with Boddecker and told her that because there was a shortage of female officers, the NCSO may require her to perform duties that entail immediate contact with inmates and overtime. He also gave her a document for her doctor to identify any limitations or restrictions on her ability to perform the duties of her corrections officer position.

12. On or around October 23, 2007, Boddecker’s doctor faxed a note to the NCSO, stating that Boddecker was “to have no immediate contact with the inmate population. Carisa is only able to work 8.25 hours per day.”

13. On or around October 24, 2007, Captain Engert advised all corrections officers that the NCSO had revised its pregnancy policy, and that the revision was effective retroactively to October 5, 2007. The revised policy had several changes from the previous version, including: pregnant officers must provide a physicians note that includes “any restrictions or limitations associated with the pregnancy,” a pregnant employee may only be assigned to a position that entails no contact with inmates “if such post is available,” and such position “shall not be recognized as a light/limited duty post.”

14. On or around November 9, 2007, Boddecker received an e-mail from Captain Engert advising her that the NCSO no longer had a position to accommodate her request for restricted duty. A letter attached to the e-mail further stated that, based on the restrictions

from Boddecker's doctor, the NCSO was denying her restricted duty request. The letter continued, "Although the position you hold in Central Control provides some limited distancing and protection from the inmate population, the office cannot, and will not, provide a guarantee that such contact will never occur."

15. On or around November 13, 2007, Boddecker e-mailed Captain Engert and stated that she was still willing to report to Central Control. However, Captain Engert denied her request for the reasons stated in his November 9th letter.

16. Although Boddecker never requested any leave, Captain Engert notified her on or around November 19, 2007 that the NCSO had placed her on leave under the Family and Medical Leave Act ("FMLA") as of November 14. On December 17, Boddecker wrote Niagara County's Human Resources Department that although she had not intended to seek FMLA leave, she felt she had no choice but to do so, and submitted an application for leave.

17. On or around December 18, 2007, Major John Saxton sent Boddecker a letter reaffirming the NCSO's position that it could not accommodate her request for restricted duty.

18. In or around late January 2008, Boddecker filed an EEOC charge and retained counsel.

19. In anticipation that she would exhaust her FMLA leave, Boddecker wrote Sheriff Thomas Beilein on or around February 6, 2008 to request sick leave with half-pay. In a letter dated February 11, 2008 Sheriff Beilein denied Boddecker's request. However, he also stated, "I will continue to offer you a temporary assignment in Central Control if you or your doctor feels that you can perform the duties of this position, which offers minimal to no contact with inmates."

20. On March 3, Boddecker's attorney informed Sheriff Beilein that she was "able and willing to perform the essential functions of her job with the same reasonable accommodations that have been offered to other employees in the past."

21. On or around March 7, 2008, Sheriff Beilein informed Boddecker and her attorney that she was to return to work in Central Control on March 10, 2008.

22. Boddecker returned to work in Central Control on March 10, and continued working there until she went into labor on or around April 13, 2008.

23. Several NCSO employees received restricted duty assignments for non-pregnancy related conditions during the relevant time period.

24. Niagara County discriminated against Boddecker on the basis of her sex and pregnancy, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways by:

- (a) Revoking her restricted duty assignment, and forcing her to take paid and unpaid leave when she was otherwise able to work; and
- (b) Failing or refusing to take appropriate action to remedy the effects of its discriminatory treatment of her.

25. All conditions precedent to filing of suit have been performed or have occurred.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

- (a) Enjoin Niagara County from further discriminating against Boddecker;
- (b) Require Niagara County to:
 - i. adopt, disseminate, and enforce a Title VII compliant sex and pregnancy discrimination policy that addresses restricted duty for pregnant employees;

- ii. adopt a policy that establishes an effective mechanism for receiving and responding to complaints of sex and pregnancy discrimination;
 - iii. provide adequate training to NCSO employees regarding Title VII's prohibition against sex and pregnancy discrimination; and
 - iv. take other appropriate, non-discriminatory measures to overcome the effects of sex and pregnancy discrimination.
- (c) Require Niagara County to provide sufficient remedial relief, including back pay with interest and restoration of leave and seniority, to make Boddecker whole for the loss she suffered as a result of the discrimination alleged in this Complaint.
- (d) Require Niagara County to pay compensatory damages to Boddecker to the mental and/or physical injuries incurred as a result of the discrimination alleged in this Complaint, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

JURY DEMAND

Plaintiff United States hereby demands a jury trial of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

Dated: May 13, 2013

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

By: s/ Delora L. Kennebrew
DELORA L. KENNEBREW, GA Bar No. 414320
Chief
Employment Litigation Section
Civil Rights Division

s/ Meredith L. Burrell
MEREDITH L. BURRELL, MD Bar (no number issued)
Deputy Chief
Employment Litigation Section
Civil Rights Division

s/ Elizabeth B. Banaszak
ELIZABETH B. BANASZAK, IL Bar No. 6299035
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania, Ave., NW- PHB
Washington, DC 20530
Telephone: (202) 305-4071
Facsimile: (202) 514-1105
E-mail: elizabeth.banaszak@usdoj.gov