

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**STATE OF KANSAS
(DEPARTMENT OF HEALTH &
ENVIRONMENT)**

Defendant.

Case No. 22-cv-02250-TC

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The United States of America (United States) filed this action against the State of Kansas (Department of Health and Environment) (KDHE) (together, the Parties) to enforce Section 4311 of the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (USERRA), following referral of a USERRA charge filed by Stacy Gonzales (Gonzales) to the United States Department of Justice from the Veterans' Employment and Training Service (VETS) of the United States Department of Labor (DOL).

2. In its suit, the United States alleges that KDHE discriminated against Gonzales in violation of USERRA by eliminating an Aid-to-Local grant to the Finney County, Kansas, Health Department which funded Gonzales's Disease Intervention Specialist (DIS) position, thereby eliminating Gonzales's DIS position, because of her service in the uniformed service.

3. KDHE denies that it discriminated against Gonzales in violation of USERRA or in any other manner.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).

5. Venue is proper in this judicial district pursuant to 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b).

6. The Parties agree that all conditions precedent to the institution of this action have been fulfilled.

7. The Parties have decided to enter into this Settlement Agreement (Agreement) to resolve their dispute without further litigation.

8. The Parties agree to this Agreement as final and binding between them with regard to all issues raised: (a) in Gonzales's VETS charge giving rise to the Complaint filed in this action (Charge No. KS-2019-00002-20-G); and (b) in the Complaint filed by the United States.

9. In resolution of this action, the Parties agree to the following material terms and conditions:

II. PARTIES AND DEFINITIONS

10. "Days" refer to calendar days. If any deadline referenced in this Agreement falls on a weekend or federal holiday, the deadline shall be moved to the next business day.

11. "Effective Date" refers to the latest date this Agreement is executed by a Party.

12. "Employees" include both individuals employed directly by KDHE and individuals whose employment opportunities are controlled by KDHE through programming grants and similar contractual arrangements.

13. "KDHE" refers to the Kansas Department of Health and Environment and includes its current, former, and future agents, employees, officials, designees, and successors in interest.

14. "Parties" refers collectively to Plaintiff United States and Defendant KDHE.

15. “Party” refers to Plaintiff United States or Defendant KDHE.

III. INDIVIDUAL RELIEF FOR GONZALES

16. In settlement of the Parties’ claims in this action, KDHE agrees to provide Gonzales with the individual relief set forth below.

17. Within ten days of the Effective Date, KDHE shall make a settlement payment to Gonzales, mailed to Gonzales via certified mail, return receipt requested. Unless otherwise instructed by the United States, KDHE shall make the check payable to Stacy Gonzales. The United States shall inform KDHE to what address to send the check. KDHE will provide the United States with written confirmation of payment and the certified mail tracking information within twenty-four hours of mailing the settlement payment to Gonzales.

18. The check shall be for the sum of \$35,000 without any withholdings. KDHE shall issue Gonzales an IRS Form 1099, and any other appropriate tax forms, on or before the date required by law.

19. In consideration of the relief being provided to her as described in this Agreement, within seven days of receipt of the check, Gonzales shall release and discharge KDHE from the claims identified in the Complaint filed in this action and in her DOL Charge, USERRA Case No. KS-2019-00002-20-G. *See* Attachment A.

IV. PROHIBITION AGAINST DISCRIMINATION AND RETALIATION UNDER USERRA

20. KDHE, by and through its officials, agents, employees, and all persons in active concert or participation with KDHE in the performance of employment or personnel functions, shall not take any action which violates any provision of USERRA, including, but not limited to, USERRA’s provisions prohibiting (a) discrimination against any employee or prospective employee because of uniformed service and (b) retaliation for exercising, or interference with the

exercise of, a person's rights under USERRA.

V. POSTING AND DISTRIBUTION OF USERRA NOTICES

21. Within 15 days from the Effective Date, if it has not already done so, KDHE shall post the DOL "Your Rights Under USERRA Poster," (Poster) *see* <https://www.dol.gov/agencies/vets/programs/userra/poster> advising its employees of their rights under USERRA. The Poster shall be posted in prominent places frequented by its employees in KDHE's workspace in the same manner as other mandatory equal employment opportunity (EEO) notices. KDHE shall also distribute the Poster to all employees within 30 days from the date of entry using the method, e.g., electronic mail, by which it communicates employment information to employees in its normal course of business. Upon posting and distributing the Poster, KDHE shall notify the United States of its compliance with this Paragraph.

22. Within 30 days from the Effective Date, KDHE shall modify its Non-Discrimination Policy to include:

- a. Uniformed service as a prohibited basis for discrimination in all provisions in which prohibited bases are listed (e.g., "Overview," "Compliance Program," and "Non-Discrimination Policy Statement);
- b. The following information about rights under USERRA within the Policy's "Legal Framework":

The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, (USERRA) prohibits employers from discriminating against any employee or prospective employee in initial employment, retention in employment, promotion, or any benefit of employment because of uniformed service and retaliating against anyone for exercising rights under USERRA. USERRA also requires employers to reemploy uniformed service members in their civilian jobs if they leave that job to perform service in the uniformed service.

- c. A reference to USERRA in the "Agency Contracts, Grants, Loans and

Intergovernmental Agreements” provision.

23. The United States shall review the modified Non-Discrimination Policy and provide its non-objection or comments to the proposed Non-Discrimination Policy within 15 days of its receipt.

VI. KDHE’S USERRA POLICY AND PROCEDURES

24. Within 30 days from the Effective Date, KDHE shall provide to the United States KDHE’s: (a) written procedures for handling an alleged USERRA violation (Procedures) and (b) written policy prohibiting discrimination and retaliation because of an individual’s service in the uniformed service (Policy) for the United States’ non-objection or comment.

25. At a minimum, KDHE’s Procedures shall include the following:

- a. designating a USERRA Officer who shall be trained in, and specifically responsible for, accepting complaints alleging USERRA violations for all KDHE departments;
- b. requiring the USERRA Officer to take prompt action to address the alleged USERRA violation;
- c. requiring all managers to report any alleged USERRA violation to the USERRA Officer within a certain period of time;
- d. documenting in writing a complainant’s alleged USERRA violation, including documenting in writing any oral complaint made to a manager;
- e. the time period for investigating and resolving the complaint;
- f. the steps to be taken during the investigation of the complaint and during the resolution process;
- g. issuing a final written decision after investigation of the complaint; the written

decision shall include reasons supporting the final decision;

- h. providing the complainant with a copy of the final written decision;
- i. the steps for appealing the final written decision;
- j. requiring disciplinary action, up to and including termination if appropriate, for employees, including supervisors, who are proven to engage in discrimination or retaliation against current, former, or prospective service members, or otherwise violated an employee or applicant's rights under USERRA; and
- k. setting forth the disciplinary procedures to be followed when there is a finding substantiating the complainant's allegations.

26. At a minimum, KDHE's Policy shall:

- a. define discrimination under USERRA, with examples;
- b. define retaliation under USERRA, including what activity is protected by USERRA, with examples;
- c. the terms "discrimination" and "retaliation" as defined by KDHE in this Policy may include acts that do not rise to the level of adversity necessary for the discriminatory or retaliatory act to violate USERRA. By defining the terms in this way, KDHE can learn of and address discrimination and retaliation before a USERRA violation occurs;
- d. explain who is covered by USERRA, including employees and applicants who are past or present members of the uniformed service; those who have applied for membership in the uniformed service; those who are obligated to serve in the uniformed service; and anyone assisting in the enforcement of USERRA rights;

- e. describe the Procedures set forth in Section VI, Paragraph 25;
- f. include a statement encouraging employees to report alleged USERRA violations as soon as practicable;
- g. include a statement that an employee, along with, or in lieu of, filing an internal complaint with KDHE, may also file a complaint with DOL or in a court with jurisdiction; and
- h. provide that compliance with this Policy shall be a factor in each manager's performance evaluation.

27. The United States shall review the Procedures and Policy and provide its non-objection or comments to the proposed Procedures and Policy within 15 days of its receipt.

28. Within 15 days of receiving the United States' non-objection or comments on the Procedures and Policy, KDHE shall (a) adopt and implement the Procedures and Policy and provide to the United States written certification of implementation of the Procedures and Policy and (b) distribute the Procedures and Policy to all employees using the method, e.g., electronic mail, by which it communicates employment information to employees in its normal course of business and provide to the United States written certification of the distribution.

VII. USERRA TRAINING

29. Within 30 days of implementing the Procedures and Policy, KDHE shall provide to the United States, for the United States' non-objection or comment, the training materials KDHE proposes to use to train all employees on the Policy.

30. The United States shall review and provide its non-objection or comments on the proposed training within 15 days of its receipt.

31. Within 30 days of receiving the United States' non-objection or comments on the

proposed training, KDHE shall provide the training for (a) all individuals employed directly by KDHE, absent extenuating circumstances (e.g., Family Medical Leave Act leave) and (b) all individuals whose employment opportunities are controlled by KDHE through programming grants and similar contractual arrangements to whom KDHE provides other human resources, EEO, or job-related training. KDHE shall distribute the Procedures and Policy to all attendees at the training or inform the attendees where they can find an electronic version of the Procedures and Policy.

32. The trainings outlined in Paragraph 31 shall be interactive and trainer-led and may be conducted in person or virtually.

33. All persons who undergo training pursuant to Paragraph 31 shall sign an acknowledgement of attendance at the training. Acknowledgements required under this paragraph may be accomplished by electronic means, such as by e-signature.

34. Within 30 days of completion of the training, KDHE shall provide certification to the United States that the training has been completed as required in Paragraph 31.

VIII. DISPUTE RESOLUTION

35. If the United States believes that KDHE has failed to comply timely with any requirement of this Agreement, or that any requirement has been violated, the United States will notify KDHE in writing, and the Parties shall attempt to resolve informally any dispute that may occur under this Agreement. The Parties shall engage in good faith efforts to resolve the issue before initiating any court action. If the Parties are unable expeditiously to resolve the issue, the United States may sue for breach of this Agreement, or any provision of it, in the United States District Court for the District of Kansas provided that written notice is first provided to KDHE at least fourteen days in advance of taking such action. In any action filed under this Paragraph,

KDHE agrees not to contest the exercise of personal jurisdiction over it by this Court and not to raise any challenge on the basis of venue.

36. If the United States sues for breach of this Agreement under Paragraph 35, the United States may seek and the Court may grant as relief any remedy authorized at law or equity.

IX. MISCELLANEOUS

37. Any time limits for performance imposed by this Agreement may be extended by mutual written agreement of the Parties.

38. The United States and KDHE shall bear their own costs and fees in this action, including the costs of compliance or monitoring.

39. If any provision of this Agreement is found to be unlawful, only the specific provision in question shall be affected and all other provisions shall remain in full force and effect.

40. To the extent possible, all documents required to be delivered to the Parties under this Agreement shall be sent via electronic mail.

41. Where electronic delivery is not possible, documents delivered under this Agreement to the United States should be sent to the following physical address via FedEx or UPS service:

Robert L. Galbreath
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
4 Constitution Square
150 M Street NE, Room 9.143
Washington, D.C. 20530

42. Where electronic delivery is not possible, documents delivered under this Agreement to KDHE shall be sent to the following physical address:

David R. Cooper, Esq.
Fisher Patterson Saylor & Smith
3550 SW 5th Street
Topeka, KS 66606

43. The Parties may update physical or electronic mailing addresses without requiring any changes to this Agreement.

44. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one Agreement. The Parties agree to be bound by electronic signatures.

45. The Parties agree that, as of the Effective Date of this Agreement, litigation is not “reasonably foreseeable” concerning the matters described in this Agreement. If any Party has implemented a litigation hold to preserve documents, electronically-stored information, or things related to the matters described above, that Party is no longer required to maintain it. Nothing in this Paragraph relieves any Party of any other obligations under this Agreement.

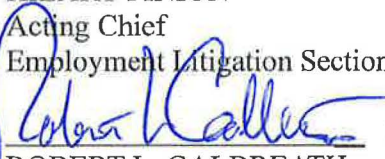
Agreed and Consented to:

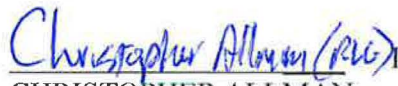
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 Date: 8/27/26
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1000 SW Jackson
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*Counsel for Defendant Kansas Department of
Health and Environment*

*For Kansas Department of Health and
Environment*

ATTACHMENT A

In consideration of the Parties' agreement to the terms of the Settlement Agreement entered into in the case of *United States v. State of Kansas (Department of Health and Environment)*, No. 22-cv-02250-TC (D. Kan.) and in consideration of the payment of \$35,000, I, Stacy Gonzales, hereby release and forever discharge the Kansas Department of Health and Environment from any and all discrimination claims set forth in the Complaint in the action named above and in the charge I filed with the Department of Labor, USERRA Case No. KS-2019-00002-20-G, that I may have had against them as of the Effective Date of the Settlement Agreement.

I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated: _____

Stacy Gonzales