

the laws of Kentucky. Florence is located in Boone County, Kentucky, within the jurisdiction of this Court. Florence is in this Court's Northern Jury Division, Covington docket.

5. Florence 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).

6. On or about July 16, 2014, Florence Police Officer Lyndi Trischler filed a timely charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging that Florence discriminated against her and similarly situated employees on the basis of sex (pregnancy) and disability by denying them light duty accommodations after April 2013.

7. Officer Trischler's charge alleged that, after accommodating her first pregnancy, Florence issued a policy directive on April 19, 2013 that limited light duty to employees with on-the-job injuries or conditions and required other employees to have a release, signed by their doctor, to return to full duty without any restrictions on their ability to work (including restrictions that would warrant reasonable accommodations, such as being assigned to light duty). Based on this policy directive, Officer Trischler alleged that Florence was engaged in a pattern or practice of discrimination against pregnant women, and discrimination against employees with disabilities, as a result of its light duty and no restrictions policies.

8. The EEOC investigated Officer Trischler's charge and found reasonable cause to believe that Florence discriminated against Officer Trischler, other pregnant employees, and other employees with disabilities, in violation of Title VII and the ADA. After conciliation failed, the EEOC referred the charge to the U.S. Department of Justice.

9. On or about January 9, 2015, Florence Police Officer Samantha Riley filed a timely charge of discrimination with the EEOC alleging that Florence discriminated against her on the basis of sex (pregnancy) by denying her light duty work.

10. The EEOC investigated Officer Riley's charge and found reasonable cause to believe that Florence discriminated against Officer Riley and other pregnant employees, in violation of Title VII. After conciliation failed, the EEOC referred the charge to the U.S. Department of Justice.

11. Pursuant to Section 707 of Title VII, 42 U.S.C. § 2000e-6, the United States, through the Department of Justice, conducted an investigation of Florence's employment practices to determine whether the City is engaged in a pattern or practice of discrimination on the basis of sex (pregnancy) and notified the City of that investigation.

12. All conditions precedent to the filing of this action have been performed.

FACTUAL ALLEGATIONS

13. Florence employs more than 200 employees, including a Police Department of approximately 64 sworn police officers. There are approximately 20 female employees total in Florence's workforce and only two female police officers.

Florence's Light Duty Policies and Practices Before April 19, 2013

14. Prior to 2006, Florence's light duty employment practices did not distinguish between on- and off-the-job injuries or conditions. Instead, per an unwritten practice, Florence's supervisors considered for light duty any employees who were temporarily unable to perform their regular job duties, regardless of the source of their impairments.

15. Beginning in or around 2006, Florence adopted a written policy in its City handbook that allowed light duty for employees who suffered an on-the-job injury or condition.

16. Under this on-the-job-injury light duty policy, Florence's supervisors placed employees in light duty as long as there was "appropriate and available" light duty work. The

policy also expressly provided that light duty assignments could be made anywhere in the City, even outside the employee's usual department.

17. Between 2006 and the present, Florence has routinely granted light duty to employees who were injured on the job and unable to perform their regular job duties, and has assigned employees light duty outside their usual departments and job positions.

18. However, even after Florence adopted this on-the-job-injury light duty policy in 2006, Florence's supervisors still granted light duty to employees with non-work-related injuries or conditions.

19. Prior to April 2013, Florence's City Coordinator, Richard Lunnemann, knew of occasions where employees were granted light duty for non-work-related injuries and conditions and did not stop this practice from occurring.

Trischler's First Pregnancy-2013

20. In February 2012, Officer Trischler was hired as a Florence police officer and was assigned to the Patrol Unit.

21. In or around December 2012, when she was pregnant and expecting her first child, Officer Trischler requested light duty for the remainder of her pregnancy.

22. Prior to Officer Trischler's request, Florence had never received a pregnancy-related light duty request from a police officer.

23. Between December 2012 and January 2013, Florence Mayor Diane Whalen and Coordinator Lunnemann held several meetings with then-Police Chief Tom Szurlinski, during which they discussed Officer Trischler's pregnancy and light duty request.

24. Mayor Whalen and Coordinator Lunnemann made statements evidencing animus against pregnant employees.

25. Mayor Whalen and Coordinator Lunnemann told employees in the Police Department that they did not want Officer Trischler to receive light duty, but instead wanted her to use paid and unpaid leave for the remainder of her pregnancy.

26. Chief Szurlinski informed Mayor Whalen and Coordinator Lunnemann that he wanted to accommodate Officer Trischler's pregnancy by assigning her to the Detective Unit.

27. Florence does not have a separate job position for "detective" but instead temporarily assigns police officers duties in the Detective Unit on a rotating basis.

28. At all times relevant to this Complaint, Florence has assigned other police officers light duty in the Detective Unit and in other City departments when they were injured on the job and were unable to perform their patrol duties.

29. Florence has also assigned other police officers light duty in the Detective Unit when they had non-work-related injuries or conditions that impaired their ability to patrol.

30. Officer Trischler was qualified for an assignment in the Detective Unit.

31. Despite their disagreement with Chief Szurlinski, Mayor Whalen and Coordinator Lunnemann eventually agreed to Officer Trischler being assigned to the Detective Unit.

32. Officer Trischler worked in the Detective Unit from approximately January 7, 2013 until she took maternity leave on July 2, 2013.

33. Officer Trischler received a positive performance evaluation during her time in the Detective Unit.

34. After Officer Trischler was assigned to the Detective Unit, Mayor Whalen and Coordinator Lunnemann continued to discuss Officer Trischler's pregnancy and light duty with Florence's Finance and Human Resources Director, Linda Chapman.

35. Coordinator Lunnemann conducted research on pregnancy discrimination.

36. In or around January 2013, Coordinator Lunnemann also contacted several neighboring jurisdictions and inquired whether they had a light duty policy for pregnancy and other non-work-related injuries or conditions.

37. Coordinator Lunnemann's inquiries to neighboring jurisdictions specifically referenced pregnancy and police officers.

38. Coordinator Lunnemann's review of Florence's light duty policy was prompted by Officer Trischler's light duty request.

39. In or around late January 2013, Coordinator Lunnemann sent Mayor Whalen and Director Chapman a memorandum summarizing the information he had gathered on neighboring jurisdictions' policies. He also set forth recommendations for how Florence could implement a formal non-work-related light duty policy and asked to discuss it with them.

40. Florence rejected the recommendations in Coordinator Lunnemann's memorandum.

41. Despite Coordinator Lunnemann's recommendations, Florence's history of accommodating employees regardless of the source of their impairments, and the relative ease with which it could accommodate any pregnant employee who needed light duty, Florence changed its light duty policy after Officer Trischler used the policy to obtain light duty during her pregnancy.

April 19, 2013 No Restrictions and Light Duty Policy

42. On April 19, 2013, Coordinator Lunnemann issued a memorandum to all department heads, announcing that Florence had only a light duty policy for employees who suffered an on-the-job injury or condition and that it did not have a "policy or procedure that

allows for temporary modified duty (light duty) for employees who become injured, contract an illness, or other condition that is not work-related.”

43. Although Florence’s April 19, 2013 policy acknowledged that it had previously granted various “exceptions” to the on-the-job-injury light duty policy, it mandated that this practice would stop “[e]ffective immediately moving forward.”

44. The April 19, 2013 policy further provided that employees with non-work related injuries, illnesses, or conditions “must have a release to return to full duty within their authorized position without restriction, signed by their doctor, before return to work will be permitted. The City also reserves the right to require employees to have a ‘fit for duty’ evaluation as well.”

45. After issuing the April 19, 2013 light duty policy, Florence has denied light duty to all employees who requested it for their pregnancies. Florence has required that employees use paid or unpaid leave if they are limited in their ability to work due to their pregnancy.

46. While denying pregnant employees light duty, Florence has continued to grant light duty to other, non-pregnant employees who are similar in their ability or inability to work.

47. After issuing the April 19, 2013 no restrictions policy, Florence required employees to whom the policy was applied to be able to work with no restrictions.

48. When applying the no restrictions policy to individuals with disabilities, Florence failed to engage in an individualized assessment of each person’s ability to perform the essential functions of the job with or without reasonable accommodation.

49. The employees with disabilities to whom the April 19, 2013 no restrictions policy was applied had to use paid or unpaid leave while suffering from their impairments.

Trischler's Second Pregnancy-2014

50. In September 2013, Officer Trischler returned to her position in the Florence Police Department's Patrol Unit, after taking maternity leave for her first pregnancy.

51. In 2014, Officer Trischler became pregnant again.

52. During Officer Trischler's second pregnancy, she was diagnosed with the pregnancy-related condition of lethal fetal skeletal dysplasia.

53. Officer Trischler was diagnosed with a high-risk pregnancy.

54. Officer Trischler suffered heart palpitations that affected her respiratory and circulatory systems.

55. Officer Trischler retained five times the amount of normal amniotic fluid, causing severe back pain. Officer Trischler's fetus was in a breech position.

56. Due to Officer Trischler's impairments, her physician recommended that she work light duty because her high-risk pregnancy caused her to be substantially limited in her ability to push, pull, and lift over 20 pounds; to stand for long periods; to perform manual tasks; and to walk long distances in police gear.

57. Officer Trischler was substantially limited in the operation of major bodily functions.

58. During her second pregnancy, Officer Trischler was a person with a disability because she had physical impairments that substantially limited one or more major life activities and she had a record of having such impairments.

59. On or about April 2014, Officer Trischler informed her supervisor, Corporal Chad Ridell, that she was pregnant and asked about light duty.

60. On or about May 7, 2014, when she had not heard back from Corporal Ridell, Officer Trischler sent an electronic message to Patrol Captain Steven Butts asking to speak with him about her pregnancy and light duty.

61. When Officer Trischler arrived for their meeting later that day, Captain Butts immediately took her to Human Resources where she met with Captain Butts, Director Chapman, and current Police Chief John McDermond.

62. During the meeting, Officer Trischler requested light duty for her pregnancy.

63. Director Chapman told Officer Trischler that she was not eligible for light duty under Florence's policy and referenced the April 19, 2013 memorandum.

64. Director Chapman also made negative statements about Officer Trischler's pregnancy, including telling Officer Trischler that her pregnancy was "bad timing" and that she should have "waited longer to get pregnant."

65. Florence knew about Officer Trischler's pregnancy and her health condition.

66. Florence denied Officer Trischler's light duty request.

67. On or about July 2, 2014, when she was 23 weeks pregnant, Officer Trischler was forced to take leave for the remainder of her pregnancy and recovery.

68. A substantial portion of Officer Trischler's leave was unpaid.

69. When Officer Trischler was forced to take leave, there was appropriate and available light duty work that she could perform, including work in the Detective Unit.

70. After Officer Trischler took leave, Florence continued to grant light duty to other, non-pregnant employees who were similar in their ability or inability to work.

71. Officer Trischler suffered significant economic hardship and emotional distress as a result of Florence's discrimination.

Riley's Pregnancy

72. In or around August 2008, Officer Riley was hired as a Florence police officer and was assigned to the Patrol Unit.

73. Officer Riley became pregnant in or around early 2014.

74. In or around February 2014, Officer Riley asked Captain Butts for light duty work for her pregnancy.

75. Captain Butts told Officer Riley that she was not eligible for light duty for her pregnancy under Florence's policy and gave her a copy of the April 19, 2013 memorandum.

76. Florence denied Officer Riley's light duty request.

77. On or about July 26, 2014, when she was 24 weeks pregnant, Officer Riley was forced to take leave for the remainder of her pregnancy.

78. When Officer Riley was forced to take leave, there was appropriate and available light duty work that she could perform, including work in the Detective Unit.

79. After Officer Riley took leave, Florence continued to grant light duty to other, non-pregnant employees who were similar in their ability or inability to work.

80. Officer Riley suffered significant economic hardship and emotional distress as a result of Florence's discrimination.

Co-Mingling of Medical and Personnel Records

81. Florence maintained employees' medical records, including medical records related to light duty requests, in their personnel files.

82. Along with other employees, Officer Trischler's and Officer Riley's medical records were kept in their personnel files.

CAUSES OF ACTION

COUNT I:

Title VII, 42.U.S.C. §§ 2000e-6, 2000e-2(a), 2000e(k)
Pattern or Practice of Discrimination Because of Sex (Pregnancy)

83. The United States repeats and incorporates by reference the factual allegations set forth in paragraphs 1-82.

84. Since April 19, 2013, as part of its regular practice, Florence has routinely denied light duty to all pregnant employees who needed it due to pregnancy while accommodating other, non-pregnant employees who are similar in their ability or inability to work.

85. All pregnant employees who require light duty due to their pregnancies will be denied it under Florence's light duty policies, including the April 19, 2013 policy.

86. Florence was motivated by animus against pregnant employees when it adopted the April 19, 2013 policy.

87. Florence's adoption of the April 19, 2013 policy and subsequent denial of light duty to pregnant employees were not isolated, accidental, or sporadic discriminatory acts.

88. Florence's light duty policies discriminate against female employees because of sex (pregnancy), in violation of Section 703(a) of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e(k).

89. The acts and practices described in paragraphs 1-82 above constitute a pattern or practice of discrimination against female employees because of sex (pregnancy), in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6.

90. As a result of Florence's unlawful sex discrimination, Officer Trischler, Officer Riley, and any other similarly situated employees have suffered significant monetary loss, including loss of earnings and other benefits.

COUNT II:

Title VII, 42.U.S.C. §§ 2000e-2(a), 2000e(k)
Disparate Treatment Because of Sex (Pregnancy) Against Officer Trischler,
Officer Riley, and Any Other Similarly Situated Employees

91. The United States repeats and incorporates by reference the factual allegations set forth in paragraphs 1-82.

92. Florence discriminated against Officer Trischler, Officer Riley, and any other similarly situated employees because of sex (pregnancy) by denying them light duty work for their pregnancies, childbirths, and/or related medical conditions, in violation of Section 703(a) of Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e(k).

93. Florence's purported reasons for denying Officer Trischler, Officer Riley, and any other similarly situated employees light duty are a pretext for sex discrimination.

94. Florence's light duty policies impose a significant burden on pregnant employees, and Florence's reasons are not sufficiently strong to justify the burden.

95. As a result of Florence's unlawful sex discrimination, Officer Trischler, Officer Riley, and any other similarly situated employees have suffered significant monetary loss, including loss of earnings and other benefits.

96. As a result of Florence's unlawful sex discrimination, Officer Trischler, Officer Riley, and any other similarly situated employees have suffered severe emotional pain, suffering, and other nonpecuniary losses.

COUNT III:

42.U.S.C. §12117(a) (incorporating by reference Section 706(f) of Title VII, 42.U.S.C. §
2000e-5(f)); Title I of the ADA, 42 U.S.C. §§ 12112(a), (b);
29 C.F.R. §§ 1630.2(o), 1630.4, 1630.9
Failure to Provide a Reasonable Accommodation

97. The United States repeats and incorporates by reference the factual allegations set forth in paragraphs 1-82.

98. Florence discriminated against Officer Trischler, who was an otherwise qualified individual with a disability, for her known disability, by failing to provide her with a reasonable accommodation of light duty, where such an accommodation was available and did not pose an undue hardship. 42 U.S.C. §§ 12112(a), (b); 29 C.F.R. §§ 1630.2(o), 1630.4, 1630.9.

99. Florence discriminated against any other similarly situated employees who are otherwise qualified individuals with disabilities, for their known disabilities, by failing to provide reasonable accommodations necessitated by disability-related restrictions upon return to full duty in their positions, where such accommodations were available and did not pose an undue hardship. 42 U.S.C. §§ 12112(a), (b); 29 C.F.R. §§ 1630.2(o), 1630.4, 1630.9.

100. Florence failed to engage in an interactive process with Officer Trischler, and any other similarly situated employees with disabilities, to identify the limitations resulting from their disabilities and potential accommodations that could overcome those limitations. 29 C.F.R. § 1630.2(o).

101. Florence's policies and practices deprive people with disabilities of equal employment opportunities and otherwise adversely affect their status as employees because of their disabilities.

102. As a result of Florence's unlawful disability discrimination, Officer Trischler, and any other similarly situated employees, have suffered significant monetary loss, including loss of earnings and other benefits.

103. As a result of Florence's unlawful disability discrimination, Officer Trischler, and any other similarly situated employees, have suffered severe emotional pain, suffering, and other nonpecuniary losses.

COUNT IV:
42.U.S.C. §12117(a) (incorporating by reference Section 706(f) of Title VII, 42.U.S.C. §
2000e-5(f)); Title I of the ADA, 42 U.S.C. §§ 12112(a), (b)(1), and (6);
29 C.F.R. §§ 1630.5, 1630.10
Use of Discriminatory Qualification Standards
and Limiting, Segregating, or Classifying Employees

104. The United States repeats and incorporates by reference the factual allegations set forth in paragraphs 1-82.

105. During the relevant time period, Florence had a no restrictions policy, which required employees to provide a doctor's release to return to full duty in their authorized position without any medical restrictions.

106. Under Florence's no restrictions policy, Florence fails to make individualized assessments of its employees' ability to perform the essential functions of their jobs with or without a reasonable accommodation.

107. Florence's no restrictions policy is a discriminatory qualification standard that screens out or tends to screen out for employment individuals with disabilities or a class of individuals with disabilities. 42 U.S.C. §§ 12112(a), (b)(6); 29 C.F.R. § 1630.10.

108. Florence's no restrictions policy discriminates against people with disabilities because it limits, segregates, or classifies employees in a way that adversely affects the opportunities or status of such employees because of the disability of such employees. 42 U.S.C. §§ 12112(a), (b)(1); 29 C.F.R. § 1630.5.

109. Florence's policies and practices deprive people with disabilities of equal employment opportunities and otherwise adversely affect their status as employees because of their disabilities.

COUNT V:

42.U.S.C. §12117(a) (incorporating by reference Section 706(f) of Title VII, 42.U.S.C. § 2000e-5(f)); Title I of the ADA, 42 U.S.C. §§ 12112(a), 12112(d)(3)(B)-(C), (d)(4)(C); 29 C.F.R. § 1630.14(b)-(d)

Co-Mingling of Medical Records in Personnel Files

110. The United States repeats and incorporates by reference the factual allegations set forth in paragraphs 1-82.

111. Florence co-mingles employees' medical records within their personnel files.

112. By co-mingling employees' medical records within their personnel files, Florence is engaging in discriminatory employment practices in violation of Title I of the ADA. 42 U.S.C. §§ 12112(a), 12112(d)(3)(B)-(C), (d)(4)(C); 29 C.F.R. § 1630.14(b)-(d).

PRAYER FOR RELIEF

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

A. Award all appropriate monetary relief, including back pay where applicable, to Officer Trischler, Officer Riley, and any other similarly situated employees to make them whole for any loss suffered as a result of the discrimination alleged in this Complaint;

B. Award compensatory damages to Officer Trischler, Officer Riley, and any other similarly situated employees to compensate them for their emotional pain, suffering, and any other nonpecuniary losses suffered as a result of the discrimination alleged in this Complaint;

C. Enjoin Florence from using any light duty or other policy that fails to provide any employee affected by pregnancy, childbirth, or related medical conditions equal access to accommodations, including light duty, as that enjoyed by any other Florence employees similar in their ability or inability to work;

D. Enjoin Florence from using any no restrictions policy, or other policy, that fails to allow for an individualized assessment of a person's ability to perform the essential functions of the job with or without a reasonable accommodation;

E. Enjoin Florence from subjecting any employee affected by pregnancy, childbirth, or a related medical condition, or by a disability, to any act or practice that discriminates on the basis of sex or disability;

F. Enjoin Florence's practice of co-mingling medical records within employees' personnel files;

G. Order Florence to restore the paid leave that Officer Trischler, Officer Riley, and any other similarly situated employees were required to use during their pregnancies;

H. Order Florence to:

- i. adopt policies that do not discriminate on the basis of sex or disability, including an accommodation policy for women affected by pregnancy, childbirth and related medical conditions and for individuals with disabilities that complies with Title VII and the ADA;
- ii. adopt policies to prevent discrimination on the basis of sex or disability, including policies that establish an effective mechanism for receiving and responding to reasonable accommodation and light duty requests and for receiving and responding to discrimination complaints; and
- iii. provide adequate training on discrimination to all of Florence's officials, officers, agents, and employees who are responsible for making determinations on employees' reasonable accommodation and light duty

requests and who are responsible for investigating and responding to
employees' discrimination complaints; and

I. Grant such other and further relief as may be just and proper together with the
United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a jury trial 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.

Date: October 26, 2016

Respectfully submitted,

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

BY:

DELORA L. KENNEBREW
Chief
SHARYN A. TEJANI
Deputy Chief
/s/ Catherine N. Sellers
CATHERINE N. SELLERS (WA Bar No. 44563)
Senior Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Room 4924
Washington, DC 20530
Telephone: (202) 307-6491
Facsimile: (202) 514-1005
Email: catherine.sellers@usdoj.gov

REBECCA B. BOND
Chief
KEVIN J. KIJEWski
Deputy Chief
/s/ Elaine Grant
ELAINE GRANT (DC Bar No. 457163)
Senior Trial Attorney

United States Department of Justice
Civil Rights Division
Disability Rights Section
950 Pennsylvania Avenue, N.W.
New York Avenue Building, Room 4006
Washington, DC 20530
Telephone: (202) 305-8686
Facsimile: (202) 305-9775
Email: elaine.grant@usdoj.gov

Counsel for Plaintiff United States