

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.:

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWN OF DAVIE, FLORIDA

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

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”).
2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.
3. Defendant, Town of Davie, Florida (“Davie”), is a corporate, governmental body, and a political subdivision of the State of Florida, established pursuant to the laws of the State of Florida. Davie is located in Broward County, Florida, within the jurisdiction of this Court.
4. Davie established the Davie Fire Rescue Department (the “Fire Department”). The Fire Department is part of Davie and not a separate legal entity.
5. Davie 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).

COUNT I – Discrimination based on Sex (Pregnancy)
Lori Davis Was Harmed by Davie’s Pregnancy Discrimination

6. In February 2005, Davie hired Lori Davis (“Davis”) as a firefighter/paramedic.

7. On or about January 24, 2008, Davis learned from her doctor that she was pregnant. Davis’ doctor wrote a letter stating that because Davis’ job duties presented a “great potential for [Davis] or her unborn child to be endangered it would be prudent to put her on desk duty” from February 4, 2008 until her delivery.

8. On January 25, 2008, Davis submitted to Davie a memorandum requesting light duty starting on February 4, 2008 based upon her doctor’s recommendation.

9. In January 2008, the Fire Department, which required its female firefighters to notify Davie upon learning of a pregnancy, adopted a new policy or practice for handling light duty for pregnant firefighters. Though it operated under a written policy that allowed the Fire Chief discretionary authority to grant employee requests for light duty assignments, it started a practice of not granting a pregnant firefighter light duty until the start of her second trimester regardless of her medical or physical needs. Despite the restriction on a pregnant firefighter’s ability to obtain light duty in her first trimester, at the time the Fire Chief maintained a policy or practice of routinely granting other firefighters’ requests for light duty needed because of non-work related injuries.

10. Davis was the first firefighter to request light duty due to a pregnancy under the policy and practice established by the Davie Fire Department in 2008 that required pregnant firefighters to wait until their second trimester before being granted light duty.

11. In response to Davis’ request for light duty, Davie requested that Davis have her doctor fill out a Davie Medical Return to Work Evaluation Form stating when her second trimester was starting.

12. At Davis' request, on or about February 2, 2008, Davis' doctor provided an evaluation to Davie indicating that Davis' second trimester would begin March 16, 2008. Her doctor also stated in the evaluation that she believed Davis should be immediately placed on light duty.

13. On or about February 2, 2008, Davie informed Davis that consistent with its new practice, she would not receive light duty until March 13, 2008 (the start of the pay period in which her second trimester would begin). Davie also told Davis that because her medical evaluation meant she was unfit for duty on the fire truck, she would not be allowed to work at all until March 13th.

14. Davis was not allowed to return to work until March 13, 2008 when she was given a light duty assignment. Davis then remained on light duty until the birth of her child and returned to her regular duties following maternity leave.

15. The following year, on October 5, 2009, Davis' doctor told her that she was again pregnant. As required by Davie's pregnancy policy, on October 7, 2009, Davis sent Davie a memorandum informing it of the pregnancy.

16. At that time, Davis' then Battalion Chief, Andy Popick, reminded Davis that, under Davie's policy and practice, Davie would not grant her light duty until her second trimester.

17. On information and belief, Davis' doctor told her that her pregnancy was considered high risk and firefighting was hazardous to the pregnancy.

18. On information and belief, Davis did not request an immediate light duty assignment for the first trimester of her second pregnancy because Davie had already told her that it would deny any request for light duty before her second trimester. She also decided to not

submit a note from her physician stating that she needed light duty because she understood that Davie would require her to take unpaid leave during the first trimester.

19. Davis informed Davie that her doctor had determined that her second trimester would start on December 11, 2009, and requested light duty as of that date.

20. Davie decided to place Davis on light duty starting on December 10, 2009.

21. On information and belief, Davis remained on full active duty during her first trimester of her second pregnancy despite her doctor's advice to the contrary because of Davie's policy and practice of denying pregnant firefighters light duty during their first trimesters regardless of the medical needs of the firefighter.

22. On November 16, 2009, Davis fought a fire while on duty as the firefighter on scene operating the hose.

23. On November 24, 2009, Davis began to experience bleeding and BC Popick sent her home. The following day at a hospital an ultra sound confirmed that Davis had suffered a miscarriage.

24. On November 29, 2009, after the completion of the pregnancy discharge procedure, Davis contacted BC Popick and informed him that she had lost the baby and that she would no longer need light duty. Popick called Davis and told her that Davie wanted her to author a memorandum explaining why she no longer needed light duty. Davis subsequently sent Davie a memorandum stating that while on duty on November 24, 2009 she had "started to miscarry my child. Due to this I will no longer require light duty."

25. After an exam on December 7, 2009, Davis' doctor released her for full unrestricted duty starting December 9, 2009, and Davis returned to full duty on that day.

26. On information and belief, the exposure to the heat and chemicals associated with the fire on November 16, 2009 caused Davis' miscarriage.

27. On December 16, 2009, Davis filed with the Equal Employment Opportunity Commission ("EEOC") a charge of discrimination based on sex for being denied light duty. Davis' charge was timely filed with regard to the second pregnancy.

28. On March 22, 2010, Davis' doctor confirmed that Davis was again pregnant and indicated that her second trimester would start on May 3, 2010.

29. On March 24, 2010, Davis sent Davie a memorandum notifying it of her pregnancy and the date her second trimester would begin.

30. On April 26, 2010, Davis requested from Davie "light duty due to [her] pregnancy" without specifying anything about a timeframe. Davie granted her light duty starting on May 3, 2010.

31. Upon information and belief, though Davis and her doctor believed the job was dangerous to her fetus, Davis continued to work until May 3, 2010 because she needed the income and did not have sufficient leave to take time off both at the beginning and after her pregnancy.

32. Davis did not respond to any fire calls before her light duty started on May 3, 2010.

33. Davis had her second child and came back to work on November 3, 2010.

34. On information and belief, from January 25, 2008 until September 19, 2012, other similarly-situated pregnant firefighters, Devon Sweet and Kirsten Rohrer, were required by Davie's pregnancy policy and practice in effect during this time period to remain on active duty

during the first trimesters of their pregnancy when they would have preferred light duty to avoid the risks associated with firefighting while pregnant.

35. The EEOC received a timely charge of discrimination from Lori Davis. Pursuant to Section 706 of Title VII, the EEOC investigated the charge and found reasonable cause to believe that she and other similarly-situated employees or prospective employees were subjected to discrimination in violation of Title VII. The EEOC referred the matter to the United States Department of Justice after an unsuccessful attempt to conciliate the charge.

36. All conditions precedent to the filing of a Title VII suit on behalf of Lori Davis have been performed or have occurred.

COUNT II – Retaliatory Hostile Work Environment
Davie Retaliated Against Monica Santana For Alleging Discrimination

37. In May 2003, Monica Santana started working as a firefighter/paramedic at the Davie Fire Department.

38. Santana is still employed by the Davie Fire Department.

39. In January 2009, Santana was on light duty at Davie because of an injury.

40. On January 12, 2009, before returning to her regular duties after being on light duty, Deputy Chief Michael Malvasio and BC Glenn Samson ordered Santana to complete a “re-acclimation process.” This re-acclimation process required Santana to complete additional training and tasks to establish her ability to perform her regular duties.

41. Santana was unaware of any male firefighters who were required to undergo a re-acclimation process when returning from light duty and questioned whether it was a Fire Department policy.

42. Santana told Samson that she felt that she was being “discriminated against” and “singled out” because of her sex.

43. At the time, neither Sampson nor Santana knew of any male firefighter who had been subjected to a similar re-acclimation process at Davie.

44. Santana had a good faith basis for believing the policy had not previously been applied to her male firefighter colleagues under similar circumstances.

45. On information and belief, Samson understood Santana was complaining about discrimination based on her sex and conveyed Santana's concerns to Malvasio.

46. Malvasio instructed Sampson to tell Santana that he wanted to speak with her to explain the need for the re-acclimation. When Samson summoned Santana to speak with Malvasio, she initially requested union representation. Santana ultimately attended the meeting without representation based on Sampson's order to do so.

47. At the meeting, Malvasio did not provide Santana with any documentation to support the existence of a policy. Malvasio acknowledged that he may have "missed some people" with the application of the re-acclimation policy, but he reiterated that the policy existed. He ordered Santana to complete the process.

48. On January 13, 2009, Santana asked Samson if she could see a copy of the re-acclimatization policy before she started. On information and belief, Samson became angry and yelled at her. Santana completed the re-acclimation process as instructed.

49. On January 14, 2009, Samson issued Santana a formal counseling for initially refusing to meet with Malvasio.

50. In September 2009, Santana was next in line on a promotion list for a vacant driver/engineer position opening.

51. On information and belief, BC Jose Rivero told Malvasio that he wanted Santana to be promoted into a driver/engineer position, which was on the shift he supervised as a Battalion

Chief. Malvasio expressed to Rivero reluctance to promote Santana because “we had a problem with her back in administration.” Rivero understood Malvasio’s statement to be in regard to Santana’s complaint about the re-acclimation process. Santana was not promoted to driver/engineer at that time.

52. In November 2009, Santana passed the lieutenant promotional exam with the second highest score at a time when there were two lieutenant positions open. The lieutenant rank was a step above the driver/engineer position.

53. Malvasio informed Santana that her driving record was “far below par” and that she would be required to drive five additional shifts before being promoted to lieutenant. At that time, Santana had already completed 190 hours of driving time, and Davie had promoted a male, Roddy Barnes, to lieutenant a year earlier after he had driven only 160 hours.

54. On December 7, 2009, Santana filed a discrimination charge with the EEOC alleging that Davie had discriminated against her based on sex and retaliated against her.

55. In December 2009, Malvasio ordered Santana to drive more shifts before being promoted even though she had already completed the five driving shifts previously ordered.

56. In January 2010, after being informed of Santana’s EEOC charge, Davie promoted Santana to driver/engineer, and then immediately promoted her to lieutenant.

57. On November 29, 2010, Santana participated in a deposition in an administrative process related to her initial December 7, 2009 EEOC charge.

58. During Santana’s deposition in November 2010, she testified that Davie’s firehouses had pornographic magazines and materials in common areas, including common bathrooms, and Davie had knowingly tolerated the situation.

59. After being told on December 3, 2010 about Santana's allegation, BC Rivero directed all Davie Captains to search the common areas of their stations for pornographic material, discard it, and report their findings in a memorandum.

60. Santana, who had been promoted to Captain under Rivero, wrote a memorandum as directed stating that she conducted a search that day, found pornographic magazines in a firehouse officer's bathroom, and disposed of them. Santana was the only captain who reported that she found such pornography that day.

61. In response to Santana's memorandum, Malvasio instructed Rivero to direct Santana to draft an additional memorandum providing more information.

62. On December 6, 2010, Santana wrote a second memorandum stating that she had destroyed the pornography as directed by Rivero, and stated that she had previously "complained to [her] superiors per the Town's sexual harassment policy."

63. On December 9, 2010, BC Scott Mogavero ordered Santana to attend a meeting where she was ordered to draft a third memorandum about her allegation of pornographic materials in the firehouse. Mogavero ordered Santana not to leave the room until the memorandum was completed. Santana told Mogavero during the meeting that she was "feeling really harassed right now." At the meeting, Santana wrote a third two-page memorandum regarding pornographic material in the firehouses.

64. On December 15, 2010, Malvasio met with Santana and informed her that she had been "less than forthcoming" because she had not properly answered the questions. Malvasio then ordered her to draft a fourth memorandum addressing the allegations in her December 6 memorandum. Malvasio instructed Rivero to stay with Santana until she finished this memorandum.

65. In February 2011, Davie opened a formal investigation into whether Santana had failed to cooperate with “informal inquiries” made of her concerning the pornography found on December 3 and whether she had complied with her obligation as a supervisor to report sexually offensive materials.

66. In a memorandum dated May 13, 2011, Davie found that Santana “did not follow the Department’s Integrity policy and the Town’s Sexual Harassment policy as it relates to reporting offensive material she claims to have repeatedly seen at the fire stations” because Santana admitted that she never reported the pornography to her superiors during the eleven months she held the position of captain in 2010 before the deposition.

67. On June 1, 2011, Davie formally counseled Santana.

68. On August 1, 2011, Santana filed a third charge with the EEOC alleging that Davie’s repeated requests for memoranda, the internal investigation, and the formal counseling were in retaliation for her deposition testimony alleging the existence of pornography in the fire stations.

69. As described above, Davie’s actions towards Santana from the time of her complaint of discrimination based on sex in January 2009 through its investigation and formal counseling of Santana for failing to report pornography in the workplace in 2011 collectively constituted a retaliatory hostile work environment designed to discourage her from complaining about discrimination and retaliation at Davie.

70. The EEOC received a timely charge of retaliation from Monica Santana. Pursuant to Section 706 of Title VII, the EEOC investigated the charge and found reasonable cause to believe that she had been subjected to retaliation in violation of Title VII. The EEOC

referred the matter to the United States Department of Justice after an unsuccessful attempt to conciliate the charge.

71. All conditions precedent to the filing of a Title VII suit on behalf of Monica Santana have been performed or have occurred.

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 Lori Davis and other similarly-situated Davie firefighters in an amount to be determined at trial to make them whole for any loss they suffered as a result of the discriminatory pregnancy policy or practice as alleged in this complaint;
- (b) award compensatory damages to Davis and other similarly-situated Davie firefighters to fully compensate their pain and suffering caused by Davie's discriminatory pregnancy policy or practice as 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;
- (c) award compensatory damages to Santana to fully compensate her pain and suffering caused by Davie's retaliatory conduct as 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;
- (d) order Davie to remove from Davis' personnel files and any other employer files any negative references pertaining to her discrimination complaint;


- (e) order Davie to remove from Santana's personnel files and any other employer files any negative references pertaining to her discrimination and retaliation complaints;
- (f) enjoin Davie, its officers, agents, employees, successors and all persons in active concert or participation with it, from retaliation against Davis, Santana, or any other employees involved in these proceedings in violation of Title VII;
- (g) order Davie to take remedial steps to ensure a non-retaliatory workplace for its employees, including providing adequate training to all employees and officials responsible for making determinations regarding complaints of discrimination and retaliation; and
- (h) award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND


The United States hereby demands a trial by jury 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.

Respectfully submitted,

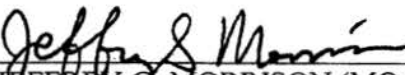
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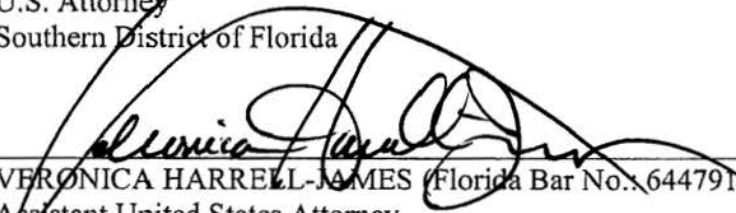


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