

SLR:MJG: KHF

CV 15

6417

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

AMON, CH.J.

.....X

UNITED STATES OF AMERICA,

COMPLAINT

SCANLON, M.J.

Plaintiff,

Civil Action No.  
CV-15 \_\_\_\_\_

-against-

TRIBOROUGH BRIDGE AND TUNNEL  
AUTHORITY a/k/a MTA BRIDGES AND  
TUNNELS,

( , J.)  
( , M.J.)

Defendant.

.....X

FILED  
CLERK  
2015 NOV 10 AM 10:33  
U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

Plaintiff United States of America, by its attorney, ROBERT L. CAPERS, United States Attorney for the Eastern District of New York, Kelly Horan Florio, Assistant United States Attorney, of counsel, alleges as follows:

**SUMMARY OF THIS ACTION**

1. This is a civil action brought by 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"). As set forth more fully below, Defendant TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, a/k/a/ MTA BRIDGES AND TUNNELS ("TBTA" or "Defendant") has engaged in a pattern or practice of discrimination against pregnant TBTA Bridge and Tunnel Officers, Sergeants, and Lieutenants (collectively, "TBTA Bridge and Tunnel Operating Force Officers or "BTOFO's"). Regardless of the BTOFOs' ability to perform their duties, the TBTA removes their guns and diminishes their duties solely because they are pregnant.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 2000e-6, and pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper pursuant to 28 U.S.C. §§ 1391 because Defendant conducts business in this District and because the acts and events giving rise to this complaint occurred in this district. Among other things, it employs BTOFOs to work at bridges and tunnels that it maintains within this district, including the Verrazano-Narrows and Robert F. Kennedy (a/k/a/Triborough) Bridges.

## **PARTIES**

4. Plaintiff is the United States of America.

5. Defendant TBTA is a public benefit corporation organized and existing under the Public Authorities Law of the State of New York empowered to acquire, design, construct, maintain, operate, and improve and reconstruct seven toll bridges and two toll tunnels that connect the five boroughs of New York City. The TBTA has its main office at 2 Broadway, New York, New York 10004.

6. Defendant TBTA 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).

## **PATTERN OR PRACTICE OF DISCRIMINATION**

7. The TBTA employs BTOFOs to perform peace officer duties in and around the TBTA's properties. These duties include, among other things, securing bridges and tunnels, effecting arrests, toll collection, patrols, snow removal from bridges, assisting stranded motorists, and administrative work. BTOFOs also carry a firearm when on duty.

8. The TBTA is responsible for establishing the terms, conditions, and other practices that bear upon the employment of BTOFOs. Among other things, the TBTA requires that BTOFOs who miss two or more days of work in a row due to illness or for medical reasons receive medical clearance from the TBTA Occupational Medical Consultant (“OMC”) in order to return to full duty. The TBTA also refers BTOFOs for evaluation by the OMC if it believes that the BTOFO has a medical disability which renders her unable to perform her job duties.

9. Since at least 2007, the TBTA has required any pregnant BTOFO who discloses her pregnancy to the TBTA to report the OMC for a fitness for duty determination.

10. As a result of this fitness for duty determination, since at least 2007, the TBTA has consistently stripped pregnant BTOFOs of their firearms and prohibited pregnant BTOFOs from returning to full duty or required them to take disability leave for the duration of their pregnancies.

A. BTOFO Lori Ann DiPalo

11. BTOFO DiPalo was employed by the TBTA in 2008 and performed her job duties satisfactorily.

12. In June 2008, BTOFO DiPalo became pregnant and, at the recommendation of her doctor, she immediately took two weeks’ medical leave. Upon her return to work, she informed her supervisor that she was pregnant. Her supervisor directed her to meet with the OMC.

13. Accordingly, BTOFO DiPalo met with the TBTA OMC, for a fitness for duty determination. The OMC did not physically examine BTOFO DiPalo. Nonetheless, he declared her unfit for duty because she was pregnant.

14. Shortly thereafter, BTOFO DiPalo provided the OMC with documentation from her own personal physician, which stated that she was medically fit to return to work and to perform the full range of her BTOFO duties.

15. Nonetheless, the OMC refused to declare her fit for duty. He indicated that he made his decision to protect BTOFO DiPalo and her fetus from “abdominal trauma.” He also informed BTOFO DiPalo that pregnancy made her unable to properly safeguard a firearm.

16. Thereafter, the TBTA stripped BTOFO DiPalo of her firearm and required her to perform toll booth duty or to take disability leave.

B. BTOFO Christine Lampropolis

17. In 2008, BTOFO Lampropolis was a Lieutenant with the TBTA who performed her duties satisfactorily. In the spring of 2008, she informed the TBTA that she was pregnant.

18. As a result, her supervisor directed her to meet with the OMC, for a fitness for duty determination. The OMC did not physically examine Supervisory BTOFO Lampropolis. Nonetheless, he, declared her unfit for duty because she was pregnant. As with BTOFO DiPalo, the OMC made his decision to protect Supervisory BTOFO Lampropolis and her fetus from “abdominal trauma” and because he believed that pregnant BTOFOs could not properly safeguard a firearm.

19. The OMC also based his fitness for duty determination on a desire to shield the TBTA from potential legal liability if BTOFO Lampropolis or her fetus became injured while performing her duties.

20. Thereafter, the TBTA stripped BTOFO Lampropolis of her firearm and required her to take disability leave.

C. Other BTOFOs

21. From 2007 through 2011, the OMC evaluated the fitness for duty of 11 other BTOFOs, in addition to BTOFOs DiPalo and Lampropolis, solely because they were pregnant.

22. The OMC found each of those BTOFOs unfit for full duty solely because they were pregnant.

23. The OMC's stated that he found those pregnant BTOFOs unfit for duty to protect them and their fetuses from "abdominal trauma."

**CLAIM FOR RELIEF**  
**(Pattern or Practice of Discrimination)**

24. Plaintiff realleges and reincorporates paragraphs 1 through 23 of the Complaint by reference in this paragraph.

25. The acts, omissions, policies, and practices described in paragraphs 7 through 23 above constitute a pattern or practice of employment discrimination on the basis of sex in violation of 42 U.S.C. § 2000e-2(a). This pattern or practice is intended to deny women the full exercise of the rights secured by Title VII and has caused injury to pregnant BTOFOs. Unless the Court awards the relief requested below, Defendant will continue to pursue policies and practices that are the same as or similar to those that are alleged in this Complaint and will continue to injure pregnant BTOFOs.

WHEREFORE, the United States requests that this Court enter judgment:

A. Enjoining Defendant from subjecting any BTOFO to discriminatory practices in violation of Title VII, on the basis of sex or pregnancy;

B. Directing Defendant to take such other steps as may be necessary to prevent and remedy employment discrimination and the patterns or practices of discrimination in

employment identified above including, but not limited to, providing effective training to the TBTA's employees about Title VII compliance and ensuring that the TBTA's policies comply with Title VII;

C. Awarding remedial relief, including, but not limited to, retroactive seniority and back pay with interest, to individuals injured by Defendant's discriminatory conduct;

D. Taking other appropriate measures to overcome the effects of sex and pregnancy discrimination; and

E. Granting such further relief as is just and proper, together with the United States' costs and disbursements in this action.

Dated: Brooklyn, New York  
November 9, 2015

ROBERT L. CAPERS  
United States Attorney for the  
Eastern District of New York  
Attorney for Plaintiff United States  
271 Cadman Plaza East, 7th floor  
Brooklyn, New York 11201

By: Kelly Horan Florio  
Kelly Horan Florio  
Assistant United States Attorney  
(718) 254-6007  
kelly.horan@usdoj.gov