

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

ELIZABETH HINTON,)
v.)
Plaintiff,) Case No.: _____
v.)
JURY TRIAL DEMANDED
THE CITY OF OLATHE, KANSAS,)
Serve: Olathe Mayor Michael Copeland)
100 E. Santa Fe Street)
Olathe, Kansas 66061)
Defendant.)

DESIGNATION OF PLACE OF TRIAL

Plaintiff hereby designates the Federal Court in Kansas City, Kansas as the place of trial.

COMPLAINT

COMES NOW Plaintiff Elizabeth Hinton, by and through her undersigned counsel, and states and alleges the following against Defendant The City of Olathe, Kansas (“Defendant”) in support of her Complaint.

NATURE OF THE CASE

1. This is an action for legal and equitable relief to redress the deprivation of Plaintiff's civil rights pursuant 42 U.S.C. § 2000e *et seq.* (Title VII) and for retaliation in violation of Title VII.

2. Plaintiff seeks all available remedies from Defendant including compensatory and punitive damages, and equitable relief the Court deems warranted.

JURISDICTION AND VENUE

3. The claims alleged herein arise out of Plaintiff's employment as a Firefighter Paramedic with Defendant in Olathe, Kansas.

4. Plaintiff alleges Defendant violated Title VII by subjecting her to sexual harassment and disparate treatment based on her gender, and by retaliating against her for engaging in protected activity.

5. Plaintiff's claims arise under federal law giving this Court jurisdiction under 28 U.S.C. § 1331.

PARTIES

6. Plaintiff is a female who resides in the State of Kansas.

7. Defendant is a Municipal Corporation organized under the laws of the State of Kansas and doing business in Johnson County, Kansas.

ADMINISTRATIVE PROCEDURES

8. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on or about May 9, 2016. A true and correct copy of this Charge is attached hereto as **Exhibit A** and is incorporated herein by reference.

9. Plaintiff filed her First Amended Charge of Discrimination with the EEOC on or about August 4, 2016. A true and correct copy of this Amended Charge is attached hereto as **Exhibit B** and is incorporated herein by reference.

10. The EEOC then issued Plaintiff a "Notice of Right to Sue" dated October 12, 2016. A true and correct copy of the Notice is attached hereto as **Exhibit C** and is incorporated herein by reference.

11. This lawsuit has been timely filed with this Court and Plaintiff has fully complied with all administrative prerequisites before filing this action.

FACTS

12. Plaintiff began working as a Firefighter Paramedic for Defendant in its Fire

Department (the “OFD”) on or about May 8, 2006.

13. Plaintiff was the only female firefighter working for Defendant for many years.

14. From the very beginning and throughout her employment with Defendant,

Plaintiff has been subjected to continuous sexual harassment and discrimination.

15. On one of her first shifts, Plaintiff was informed by one of her fellow firefighters that there were bets going around that someone could get her to quit, that no one wanted her there, and that she had entered the biggest frat house.

16. And Plaintiff was later made to complete the online sexual harassment training for three of the more senior firefighters, who commented, “Is it weird that our only female is doing all our sexual harassment training?”

17. And Plaintiff was continuously subjected to all kinds of discriminating and harassing comments, including but not limited to: “Do her curtains match her drapes?” “She’s a spinner if you know what I mean,” and “I like it when they swallow.”

18. The continuous harassment and discrimination continued and worsened after Plaintiff became pregnant.

19. Plaintiff was the first firefighter working for the OFD to become pregnant.

20. Plaintiff informed OFD Battalion Chief Parker and that she was pregnant, to which he responded, “Well say goodbye to that body. That’s why I don’t date young girls like you. You’re too fertile.”

21. Plaintiff also advised OFD Battalion Chief Fischer that she was pregnant to which he responded, “You’re probably going to want to quit after the babies are born.”

22. Plaintiff inquired as to the maternity leave policy and was told by OFD Deputy Fire Chief Todd Hart, “We don’t have anything. We can do whatever we want this way.”

23. Plaintiff was also subjected to ridicule by her fellow firefighters who disagreed that she should still be working while pregnant. She was told, “I would never let my wife work while pregnant; that’s selfish.”

24. When Plaintiff returned to work after giving birth to her twins, she was not given a dedicated, private space with a lock to pump breastmilk.

25. As a result, from September 2014 to May 2015, while pumping breastmilk, male firefighters would stand outside the door and make “mooing” noises or they would purposefully walk in on Plaintiff while she was pumping breastmilk.

26. In addition, Plaintiff was regularly subjected to comments by OFD’s firefighters and Command Staff about her breasts, including “Those are bigger!” “Your high beams are on!” “Are you leaking? Must be time to pump!” “Stop making regular milk. Make me chocolate or strawberry milk when you pump.” “With all this milk, we can be rich. We’ll sell it on the black market!” “Are these sugar horns? No, they are for Beth’s boobs.”

27. Plaintiff was also sent a picture of a male firefighter wearing a uniform shirt with two large holes cut out thus displaying his nipples, with a comment, “Do you like the new uniforms?”

28. In addition, despite being repeatedly advised of her schedule to pump breastmilk, the OFD Command Staff regularly scheduled mandatory meetings and training for Plaintiff’s unit which conflicted with her pumping schedule.

29. In addition, upon learning that Plaintiff was paid for work that she did while pregnant and on bed rest, Chief Parker asked Plaintiff, “How the hell did you earn ESS pay by sitting on your ass and eating all day?”

30. Plaintiff was also frequently and regularly subjected to comments and baseless

claims that she must be engaged in a sexual relationship with her Station Captain simply because of her positive professional association with him. She was repeatedly told that he must be her “boyfriend,” “crush,” or “Fire Daddy.”

31. And in or about January 2016, Chief Barnum ordered that Plaintiff be moved to a different Station to “improve her reputation.”

32. Male OFD firefighters who had positive relationships with their Station Captains were not subjected to these kinds of comments and were not moved to different Stations because of these kinds of comments.

33. In addition to the continuous sexual harassment, Plaintiff was subjected to disparate treatment and denied opportunities provided to male firefighters.

34. For example, Plaintiff was disciplined for conduct that male firefighters were not disciplined for.

35. And Plaintiff was denied the same opportunities to participate in professional development programs like those provided to male firefighters.

36. Plaintiff also faced repeated resistance and roadblocks in her efforts to participate in and complete the officer training program despite the fact that she had nine years of excellent performance evaluations.

37. Based upon information and belief, male OFD firefighters with similar seniority and performance evaluations have not encountered the same resistance or roadblocks that Plaintiff has been made to deal with in their efforts to participate in and complete officer training.

38. Plaintiff regularly complained about and reported the continuous sexual harassment and discrimination, including her disparate treatment, to her supervisor, but to no

avail.

39. Instead, she was told “they don’t really mean it” and to just let it go.

40. In or around the end of April 2015, Plaintiff learned that OFD Battalion Chief Barnum was aware of how unhappy Plaintiff was with her treatment and was surprised that she had not just quit.

41. Plaintiff then complained about the harassment and discrimination, including the disparate treatment, to the highest ranking official in the OFD, Fire Chief DeGraffenreid.

42. A few hours after Plaintiff complained to OFD Fire Chief DeGraffenreid, Deputy Fire Chief Todd Hart contacted Plaintiff and asked her if she was just bringing up “these issues” and “starting all this” because of a then-recent newspaper article about a female firefighter who committed suicide after being subjected to bullying by her fellow firefighters.

43. OFD Deputy Chief Todd Hart also asked Plaintiff, “Are you sure this isn’t just a comfort level thing?”

44. Deputy Fire Chief Todd Hart also contacted Plaintiff’s Station Captain and asked if Plaintiff was “just having a bad day because, if so, this isn’t a big deal, she just needs to get thicker skin.”

45. Plaintiff attempted to make another complaint to Fire Chief DeGraffenreid on or about May 2, 2016, to advise that the discrimination and harassment were continuing, but he never returned her call.

46. Plaintiff then filed her first Charge of Discrimination with the EEOC on or about May 9, 2016.

47. A few days later, Plaintiff’s Station Captain advised her that the OFD Command Staff were aware that she had filed a Charge with the EEOC and that everyone was “red in the

face" and "pissed" at Plaintiff.

48. Plaintiff was then interviewed by Vicky Webster, Defendant's Human Resources Compliance Manager.

49. During this interview, Plaintiff again complained about the ongoing sexual harassment and discrimination.

50. But instead of offering up solutions and promising to investigate and address the harassment and disparate treatment, Ms. Webster repeatedly asked Plaintiff what she expected Defendant to do.

51. Many of Plaintiff's fellow firefighters, as well as the OFD Command Staff, began treating her with increased hostility.

52. For example, one firefighter openly ignored Plaintiff's requests for equipment while on a call.

53. In addition, based upon information and belief, on or about May 24, 2016, Chief Parker was interviewed by Human Resources to discuss Plaintiff's complaints.

54. Within minutes of concluding this meeting, Chief Parker posted on Facebook for all Facebook friends to see, which included Plaintiff, "Some people in this world are truly pathetic. Lmao."

55. In addition, Fire Chief Fischer began spreading untrue rumors that "there is more here" than people realize because this "situation" is really about Plaintiff being "too close" with her Station Captain, Captain DeJulio.

56. Fire Chief Fischer also falsely claimed that this "situation" was really about Plaintiff's inability to adequately perform her job.

57. Plaintiff's requests to attend a women's leadership conference were denied, while

at the same time male firefighters were given the opportunity to attend other leadership conferences.

58. Plaintiff's efforts to complete the officer training program continued to be impeded by Defendant.

59. Additionally, Plaintiff's tenth employment anniversary with Defendant came on or about May 8, 2016.

60. And per Defendant's protocol and procedure, Defendant was supposed to give Plaintiff her performance evaluation and conduct a small ceremony to mark her anniversary at that time.

61. Instead, for months, Defendant delayed giving Plaintiff her performance evaluation or to otherwise mark her work anniversary with Defendant.

62. When Plaintiff inquired as to the status of her evaluation, Chief Barnum advised Plaintiff that she would not be given her review "until this thing is over."

63. After the EEOC issued her Right to Sue Notice, Plaintiff was finally given her performance evaluation on or about November 21, 2016.

64. Based upon information and belief, Plaintiff's immediate supervisor and Station Captain, Captain DeJulio, drafted an evaluation ranking Plaintiff's performance as excellent, which is in line with all of her previous performance evaluations.

65. However, based on information and belief, before the evaluation could be shared with Plaintiff it was submitted to Defendant's Human Resources Department for review.

66. Based upon information and belief, on or about October 24, 2016, Vicky Webster met with Captain DeJulio and instructed him to change Plaintiff's evaluation and to give her a less favorable evaluation.

67. Based on information and belief, when Captain DeJulio refused, Ms. Webster went above his head to Fire Chief DeGraffenreid, who then met with Captain DeJulio and ordered him to change Plaintiff's evaluation.

68. In addition, based upon information and belief, Ms. Webster instructed Captain Stenberg, who Plaintiff worked with for an approximate 4-month period of time in 2016, to give Plaintiff a less favorable evaluation.

69. Captain Stenberg's review was attached as an Addendum to Plaintiff's evaluation. It is inaccurate, incomplete, and misleading, and is the first negative evaluation Plaintiff has received in her ten years as a Firefighter Paramedic for Defendant.

70. In addition, Captain Stenberg's evaluation of Plaintiff unfairly criticizes her for conduct that male firefighters have not been criticized for and is indicative of the disparate treatment Plaintiff has received and continues to receive in the terms and conditions of her employment with Defendant.

71. Defendant knew it was unlawful to harass and discriminate on the basis of sex and did so regardless.

72. Defendant knew or should have known of the alleged conduct of the individuals referenced above who are responsible for or who were involved in the sexual harassment and discrimination, including the disparate treatment, of Plaintiff.

73. The individuals referenced above who are responsible for or who were involved in the sexual discrimination and harassment, including the disparate treatment, of Plaintiff were each acting within the course and scope of their employment or their actions were knowingly ratified by Defendant, making Defendant vicariously liable for the conduct alleged herein.

74. Defendant is an entity which acts through agents. It is liable for the conduct of its

agents acting within the course and scope of their agency, its own negligence or unlawful conduct, the acts of its agents which it knowingly ratifies, injuries incurred by agents' performance of its non-delegable duties, acts done by agents for which the agency relationship allows or assists the agent to perform, and acts its agents take by virtue of their position with Defendant.

COUNT I
Sex Harassment – Hostile Work Environment

75. Plaintiff hereby incorporates by reference every other allegation of this Complaint as if fully set forth herein.

76. Plaintiff is a female who was subjected to offensive sexual comments and harassment in the workplace.

77. This unlawful conduct was unwelcome and was based on Plaintiff's sex or gender.

78. The unlawful conduct was sufficiently severe or pervasive that a reasonable person in Plaintiff's position would have found the work environment to be hostile or abusive.

79. At the time such unlawful conduct occurred and as a result of such unlawful conduct, Plaintiff believed her work environment was hostile or abusive.

80. As a direct result of the conduct described herein, Plaintiff sustained compensatory damages, including but not limited to emotional distress.

81. Defendant's conduct was outrageous, intentional, willful, or shows an evil motive or reckless indifference or conscious disregard for Plaintiff's rights and the rights of others, and therefore Defendant is liable for punitive damages for punishment and deterrence purposes.

WHEREFORE, Plaintiff prays for judgment against Defendant, for a finding that she suffered sex harassment in violation of Title VII, for compensatory and punitive damages, for her

reasonable attorneys' fees, costs, and for such other relief the Court deems just, proper, and equitable.

COUNT II
Sex Discrimination – Disparate Treatment

82. Plaintiff hereby incorporates by reference every other allegation of this Complaint as if fully set forth herein.

83. Plaintiff is a female who was subjected to intentional discrimination by Defendant because of her sex/gender.

84. Defendant's sex-based discriminatory conduct directed at Plaintiff includes, but is not limited to, denying Plaintiff access to professional development opportunities available to similarly situated male firefighters, moving her to a different Station because of baseless rumors about a sexual relationship with her Station Captain that similarly situated male firefighters were not subjected to, and restricting and impeding her efforts to participate in and complete the officer training program in ways that similarly situated male firefighters did not have to deal with.

85. As a direct result of the conduct described herein, Plaintiff sustained compensatory damages, including but not limited to emotional distress.

86. Defendant's conduct was outrageous, intentional, willful, or shows an evil motive or reckless indifference or conscious disregard for Plaintiff's rights and the rights of others, and therefore Defendant is liable for punitive damages for punishment and deterrence purposes.

WHEREFORE, Plaintiff prays for judgment against Defendant, for a finding that she suffered sex discrimination in violation of Title VII, for compensatory and punitive damages, for her reasonable attorneys' fees, costs, and for such other relief the Court deems just, proper, and equitable.

COUNT III
Retaliation

87. Plaintiff hereby incorporates by reference every other allegation of this Complaint as if fully set forth herein.

88. Plaintiff opposed and reported unlawful harassment and discrimination in the workplace by complaining to her Station Captain, Fire Chief DeGraffenreid, Vicky Webster, and others of the OFD Command Staff when the conduct occurred, and by filing charges of discrimination with the EEOC.

89. Plaintiff's opposition to and complaints of sexual harassment and discrimination in the workplace constituted protected activities.

90. By reason of Plaintiff's complaints, Defendant retaliated against Plaintiff, including but not limited to subjecting Plaintiff to harassment and hostility for complaining, denying her requests to participate in professional development opportunities, delaying her annual review for over half a year, and then giving her a less favorable review than she deserved.

91. The actions Defendant took against Plaintiff might well have persuaded a reasonable person in the same or similar circumstances of Plaintiff to not report or to not oppose workplace discrimination.

92. Defendant would not have taken material adverse actions against Plaintiff but for Plaintiff's act of opposing and reporting unlawful discrimination in the workplace.

93. Plaintiff's complaints and reports of unlawful discrimination in the workplace were a determining factor in Defendant's decision to retaliate against her in the manner alleged herein.

94. Defendant's conduct was outrageous, intentional, willful, or shows an evil motive or reckless indifference or conscious disregard for Plaintiff's rights and the rights of others, and

therefore Defendant is liable for punitive damages for punishment and deterrence purposes.

WHEREFORE, Plaintiff prays for judgment against Defendant, for a finding that she suffered retaliation in violation of Title VII, for compensatory and punitive damages, for her reasonable attorneys' fees, costs, and for such other relief the Court deems just, proper, and equitable.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all Counts in this Complaint.

Respectfully Submitted

HOLMAN SCHIAVONE, LLC

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