

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

KRISTI ASPLUND,

Plaintiff,

V.

CITY OF HILLSBORO, a public entity,

Defendant.

Case No. 21CV19456

COMPLAINT (Gender Discrimination; Retaliation)

Fee Authority:

**OR Laws 2012, Ch. 48, Sec. 2;
ORS 21.160(1)(c)**

Amount of Claim: \$750,000

Claim More Than \$50,000: Not Subject to Mandatory Arbitration

JURY TRIAL REQUESTED

Plaintiff Kristi Asplund (“Plaintiff”) alleges:

1.

At all material times, Plaintiff was and is an Oregon resident residing in Multnomah County, Oregon.

2.

At all material times, Defendant City of Hillsboro (“Defendant Hillsboro”) was and is a political subdivision of the State of Oregon. Hillsboro Fire & Rescue (“Hillsboro F & R”) is a department or division of Defendant Hillsboro.

3.

At all material times, Jeff Gurske (“Chief Gurske”) was employed by Defendant Hillsboro as Deputy Chief for Hillsboro F & R. At all material times, Chief Gurske was acting

1 within the course and scope of his employment with Defendant Hillsboro and Defendant
2 Hillsboro is vicariously liable for his actions.

3 4.

4 On August 11, 2020, Plaintiff began working as a recruit for Hillsboro F & R. She had
5 previously worked as a resident firefighter and EMT II in Juneau, Alaska, and was acting as a
6 volunteer firefighter and paramedic in Scappoose at the time of her hire. She started at the same
7 time as three other recruits. The first two weeks were spent completing orientation. During this
8 time, Plaintiff received a module training binder, which outlined the training schedule, skills
9 requirements, and standards for the program.

10 5.

11 The module training binder stated that module tests consisted of 4 components: an EMS
12 scenario, an EMS-focused written exam, a fire skills scenario, and a fire-focused written exam.
13 There were six modules over the first six months, each of which concluded with these four test
14 components. This was the first half of a year-long probationary period and the module training
15 binder explained that recruits were allowed only one failure in an EMS scenario/exam and one
16 failure in a fire-focused scenario/exam during the entire six-month period. If a recruit failed a
17 second time in either area, he or she would be dismissed. On information and belief, Hillsboro
18 F & R does not strictly enforce this rule, especially when a failure occurs on a practical, as
19 opposed to written, exam when the grading is more subjective.

20 6.

21 Plaintiff began on-the-job training on August 24, 2020. She was assigned to the A shift
22 with another recruit and the two other recruits were assigned to the B shift. The recruits assigned
23 to the A shift were Firefighter/Paramedics and the recruits on the B shift were Firefighter/EMTs.
24 Shifts were 24 hours long and, at the completion of each shift, the recruits had a mandatory
25 debrief with their Lieutenant to receive feedback on how they had performed during the shift.
26 Shift training occurred throughout the day, alongside normal station duties, department training,

1 and responding to normal calls.

2 7.

3 During training, there were certain formalities that were required between the recruits and
4 their superiors. Recruits could only call department personnel by their rank and last name. If
5 they had no rank, the recruits addressed them as “sir” or “ma’am.” The superiors called recruits
6 by their last name. Plaintiff noticed, however, that this formality was not observed with her. Her
7 recruit partner—who was male—was consistently called by his last name. Plaintiff, however,
8 was consistently called by her first name by male department personnel. Eventually, Plaintiff
9 asked about this differential treatment during a shift meeting with Firefighters Steven Weaver
10 and Marco Hernandez. She asked Mr. Hernandez directly why she was called by her first name
11 and the other, male recruit was called by his last name. Mr. Hernandez could not give her an
12 answer. Instead, Plaintiff was told at the end of the meeting that her question would be discussed
13 with the rest of the training crew. Plaintiff checked in with her Lieutenant, Matt Dobbin, the
14 following morning during her debrief. She asked Lieutenant Dobbin if he had any follow-ups
15 from her meeting with Mr. Hernandez and Mr. Weaver, but Lieutenant Dobbin did not give her a
16 response about the name issue. Despite Plaintiff’s complaint, male department personnel
17 continued to call Plaintiff by her first name.

18 8.

19 After she was terminated by Hillsboro F & R, Plaintiff learned that, a year before
20 Plaintiff was hired, a female officer, Captain Anne Raven, had made an identical complaint
21 about consistently being called by her first name while her male peers were always referred to by
22 their rank or last name. Captain Raven’s complaint was upheld and directly led to the demotion
23 of a battalion chief.

24 9.

25 Throughout Plaintiff’s training, Hillsboro F & R failed to provide Plaintiff with suitable
26 equipment and forced her to wear equipment, including SCBA masks that were the wrong size.

1 Plaintiff needed a smaller mask than was available and Hillsboro F & R refused to order one for
2 her. Ill-fitting equipment posed a safety risk. Rather than getting appropriate fitting equipment
3 that would keep Plaintiff safe, Defendant's male personnel tried to modify the existing
4 equipment to fit Plaintiff. Chief Gurske and others performed a fit test with Plaintiff where they
5 had her stand with an SCBA mask on for an hour while they took various absurd measures to try
6 to get the mask to fit, including spreading Vaseline on her face (which did not make sense as the
7 mask is supposed to form a tight seal). None of these efforts worked and Plaintiff was forced to
8 use an ill-fitting mask during her training and testing, potentially placing Plaintiff at a safety risk.
9 Captain Raven had previously complained to Chief Gurske about the lack of available equipment
10 for women. She explained to Chief Gurske that she had been forced to go through training
11 without properly fitting equipment and it was horrible because the ill-fitting masks had caused
12 her to inhale more smoke and deplete her oxygen more quickly than her male counterparts. She
13 told Chief Gurske that custom masks could be ordered that would fit feminine facial features.
14 Chief Gurske responded by making a crass comment about getting a mold of a female's face by
15 having her put her face in his lap.

16 10.

17 Not long into Plaintiff's training, Chief Gurske began telling others that he did not like
18 Plaintiff and claimed she was a "know-it-all" and a "pain in the ass." On information and belief,
19 Chief Gurske did not make these types of complaints about male recruits with personality traits
20 similar to those of Plaintiff. On information and belief, Plaintiff, as an intelligent woman who
21 stood up for herself and asked questions, was not the type of female that Chief Gurske wanted
22 working at Hillsboro F & R.

23 11.

24 On September 23, 2020, Plaintiff was due to have her first test day. A day or two
25 beforehand, Chief Gurske excitedly told Captain Raven that Plaintiff may be out of the training
26 program because she had suffered a minor abdominal injury during a fire training exercise.

1 Requiring Plaintiff to withdraw from the program would have been highly unusual because, in
2 the past, Hillsboro F & R had waited an appropriate amount of time, sometimes months, for
3 injured recruits to heal before moving forward with their testing and training.

4 12.

5 Plaintiff's injury healed sufficiently for her to complete the tests as scheduled on
6 September 23, 2020. Plaintiff took her fire skills test, EMS scenario test, and written exams for
7 both fire and EMS. She received a 96% on her fire written exam and a 93% on her EMS written
8 exam, both among the highest scores in the group of recruits.

9 13.

10 Plaintiff also completed and passed her fire scenario test. The test was extremely
11 physical and left Plaintiff tired and dehydrated. As soon as she finished, Chief Gurske rushed to
12 Captain Raven—who was in charge of administering the tests—and ordered her to give Plaintiff
13 her EMS scenario test right away. Defendant's typical practice is to allow recruits to have an
14 appropriate rest period between tests requiring physical exertion to allow the recruit to hydrate
15 and catch their breath. Chief Gurske told Captain Raven that Plaintiff was hurting and that he
16 wanted to see how she does under pressure. On information and belief, Chief Gurske had never
17 interfered in the training process in this way and had never told Captain Raven in what order to
18 administer the tests.

19 14.

20 Captain Raven followed Chief Gurske's order and took Plaintiff right into her EMS
21 scenario test without a chance to adequately catch her breath or hydrate. Plaintiff made a
22 mistake in her EMS scenario and received a fail.

23 15.

24 After Plaintiff failed the test, Chief Gurske told Captain Raven that he was going to "get
25 the ball rolling with HR" to start Plaintiff's termination process. This was highly unusual
26 because termination is not considered until after a recruit fails two tests. On information and

1 belief, Chief Gurske had never previously began the termination process after a recruit failed a
2 single test.

3 16.

4 When a recruit fails a test, he or she is required to retake the test. Chief Gurske ordered
5 Captain Raven to administer Plaintiff's retest on the next business day she was scheduled to
6 work. This was also unusual because recruits are usually given more time to prepare for a retest.

7 17.

8 Finally, Chief Gurske told Captain Raven that he was going to give Plaintiff her "last
9 rites." Later in the day after Plaintiff had failed the test, she was brought into the training
10 conference room with Chief Gurske, Lieutenant Dobbin, and Captain Mark Johnson. Chief
11 Gurske told Plaintiff that she had failed the EMS scenario and would receive a retake on the next
12 business day she worked, which was Friday, October 2, 2020. Chief Gurske told her that she
13 needed to leverage all of the outside resources she could to prepare for the retake because the
14 department would not alter its training schedule and would be moving on to the next module that
15 day. Following that meeting, training on the second module began and Plaintiff worked with the
16 training crew for the rest of the shift, alongside normal duties and calls.

17 18.

18 The following day, on September 24, 2020, the recruits assigned to the B shift had their
19 test day. A male recruit, Reed Keltner, failed his EMS written test. The test he was given had
20 just been rewritten by Captain Raven pursuant to Chief Gurske's orders and was dramatically
21 easier than the test that was given to prior recruit classes. Even with this easier test, Mr. Keltner
22 did not come close to passing. While the recruit he was paired with scored a 93%, Mr. Keltner's
23 score was between 50% and 60%.

24 19.

25 While Captain Raven was in the middle of grading the test, Chief Gurske walked by her
26 as he was leaving for the day. It was clear to Captain Raven that Mr. Keltner was going to fail

1 the test and she told this to Chief Gurske. Chief Gurske responded by asking if it was worth
2 hurting Mr. Keltner's entire career over. This was the day after Chief Gurske had given Plaintiff
3 her "last rites" and said that he was going to "get the ball rolling with HR" after she had failed
4 one test.

5 20.

6 After she had finished grading the test, Captain Raven notified some of the other training
7 supervisors that Mr. Keltner had failed. The other supervisors, who were all male, came to Mr.
8 Keltner's defense and attempted to get Captain Raven to throw out certain questions that Mr.
9 Keltner had missed. Even with those questions removed, Mr. Keltner still would have received a
10 failing grade.

11 21.

12 Captain Raven texted Chief Gurske that night and informed him that Mr. Keltner had
13 failed the test. Chief Gurske said that he was concerned about the difficulty of the test, which no
14 other recruit had failed and which was significantly easier than the test taken by prior recruit
15 classes. Chief Gurske told her that he wanted to retest Mr. Keltner the following Monday with a
16 "modified" test and that they needed to take a "360 [degree] view of the failure." Captain Raven
17 told Chief Gurske that it was unfair to give Mr. Keltner this special treatment after the way he
18 had handled Plaintiff's test failure.

19 22.

20 The following day, Chief Gurske told Captain Raven and the other training supervisors
21 that he was throwing out Mr. Keltner's test result. He claimed the test was invalid and unfair,
22 despite the fact that Chief Gurske had approved the test before it was given and that Mr. Keltner
23 was the only recruit to fail it. Chief Gurske then claimed that he had shown the test to Human
24 Resources and they had determined it was unfair and would not support a termination. Given
25 that no one in Human Resources had knowledge of the subject matter of the test, this explanation
26 did not make sense. Captain Raven asked Chief Gurske who he had spoken with in Human

1 Resources. Chief Gurske said he had spoken with Carlton Babbit. Captain Raven said that she
2 would like to set up a meeting with Chief Gurske and Mr. Babbit. Chief Gurske refused and
3 began to yell at Captain Raven for being insubordinate. The next day, Chief Gurske gave
4 Captain Raven a write-up that criticized her attitude and tone.

5 23.

6 Chief Gurske modified the test, making it even easier. Mr. Keltner was scheduled to
7 retake the modified test on September 28, 2020. Unlike with Plaintiff, who was told the training
8 schedule would not be altered and that she would need to leverage outside resources to prepare
9 for her retake, the recruits and training staff were given time during their shift, apart from
10 personal hours, to help Mr. Keltner study for his retake. Mr. Keltner retook the “modified” EMS
11 written test, which was personally administered and graded by Chief Gurske, and passed.

12 24.

13 Meanwhile, Plaintiff continued working her normal shifts receiving training under the
14 second module. On October 2, 2020, the day she was scheduled to retake the EMS scenario, the
15 department received a call right before she was to begin her test. Plaintiff and others left the
16 station to respond to the call. However, they were then cancelled from the call and returned to
17 the station. Plaintiff was told to immediately get ready to retake the EMS scenario. Mr.
18 Hernandez was sitting across from her and taunted her by saying, “Kristi, know if you make a
19 mistake, you will be fired, but keep your head held high.”

20 25.

21 During the retest, Plaintiff performed substantially better than the first time she had taken
22 the test. She completed the test flawlessly until the very end, when Plaintiff failed to recognize a
23 heartbeat rhythm change. The mistake was a common one, but technically resulted in a failure of
24 the test. After the test, Captain Raven spoke with Chief Gurske and the other training
25 supervisors. Captain Raven said that she felt bad failing Plaintiff because she had performed so
26 well up until the very end. She had shown significant improvement since the first time she had

1 taken the test and, if she could improve that much in a week without help from anyone at
2 Hillsboro F & R, it bode well for her future. Chief Gurske and the other training supervisors
3 refused to see this as anything other than a black and white issue, however. In sharp contrast to
4 Chief Gurske's assertion that they needed to take a "360 [degree] view" of Mr. Keltner's test
5 failure, Chief Gurske stated that, because Plaintiff had received a second failing grade,
6 termination was required.

7 26.

8 Chief Gurske started the process of getting Plaintiff's final paycheck so she could be
9 terminated that day. Before being told what was happening, however, Plaintiff was directed to
10 wait in a storage room where the recruits kept their books and equipment. She waited in the
11 room for 45 minutes with no communication. Finally, Lieutenant Dobbin came in the room and
12 instructed Plaintiff to go to a department training in the conference room with the other recruit on
13 shift A. The projector was not working so they joined the training crew in the kitchen for the rest
14 of the training. None of the other people in the training crew would look at Plaintiff and no one
15 had told her whether she had been dismissed from the program.

16 27.

17 Approximately an hour and a half later, Plaintiff was asked to join Chief Gurske, Captain
18 Johnson, Lieutenant Dobbin, and Captain Raven in the conference room. Chief Gurske told
19 Plaintiff that she had failed and was being let go from probation because it was her second
20 failure. He handed Plaintiff an envelope and said she was being paid through the end of the day.
21 He stated that Captain Raven, as the only other female, would follow Plaintiff around the station
22 to collect her things and to escort her off the property. She was not given an exit interview or
23 any information on who to contact from Human Resources if she had questions.

24 28.

25 Captain Raven followed Plaintiff to the engine bay so she could move her fire gear back
26 to a locker. While there, Mr. Hernandez repeated his earlier taunt by smirking and shouting

1 “keep your head high” at Plaintiff. None of the other training crew acknowledged Plaintiff as
2 she collected her things. Captain Raven had been explicitly directed by Lieutenant Dobbin to get
3 Plaintiff’s uniform back before she left. This was highly unusual because the uniform was
4 simply a t-shirt that past terminated recruits had always been permitted to keep. Because of
5 Lieutenant Dobbin’s order, Plaintiff was forced to undress in front of Captain Raven. Captain
6 Raven was polite, although it was obvious to Plaintiff that she felt uncomfortable by the
7 situation. Captain Raven followed Plaintiff out of the station to her car and watched her until she
8 had driven out of the locked gate and the gate had closed behind her.

9 29.

10 After Plaintiff was terminated, Mr. Keltner failed at least two additional tests and was
11 allowed to continue with his training. It was only after Mr. Keltner repeatedly called out sick for
12 the module 3 test that Hillsboro F & R terminated Mr. Keltner.

13 30.

14 The other recruit who was on the B shift with Mr. Keltner also failed multiple tests, but
15 was not terminated and was allowed to complete the training program. After she failed a written
16 test and multiple training supervisors graded the test to confirm she had failed, Chief Gurske
17 regraded the test and claimed that she had passed. While this recruit was a female, she was the
18 girlfriend of Hillsboro F & R Battalion Chief Mark Gregg’s son and, therefore, received special
19 treatment. She also had a personality of the type of female—one who was bubbly and did not
20 question her superiors—that was accepted at Hillsboro F & R.

21 31.

22 Hillsboro F & R and Chief Gurske treated Plaintiff differently because of her gender.
23 Chief Gurske decided early in Plaintiff’s training that she was not a fit at Hillsboro F & R
24 because she was an intelligent female who asked questions, such as why she was consistently
25 called by her first name while male recruits were referred to by their last names. Chief Gurske
26 sought to terminate Plaintiff by subjecting her to different standards than those that were applied

1 to her male counterparts. This differential treatment directly led to Plaintiff's termination.

2 32.

3 On February 9, 2021, Plaintiff timely filed a tort claim notice.

4 **FIRST CLAIM FOR RELIEF**

5 **(Gender Discrimination - ORS 659A.030)**

6 33.

7 Plaintiff realleges and incorporates paragraphs 1 through 32.

8 34.

9 Defendant violated ORS 659A.030(1)(a) by terminating Plaintiff's employment because
10 of her gender.

11 35.

12 Defendant violated ORS 659A.030(1)(b) by discriminating against Plaintiff in the terms,
13 conditions, and privileges of her employment because of her gender. This discriminatory
14 treatment included, but was not limited to, the following:

15 a. Plaintiff was consistently called by her first name while her male counterparts
16 were referred to by their last names;

17 b. Plaintiff was not given equipment that fit, which made training and testing more
18 difficult for her than it was for her male counterparts;

19 c. At Chief Gurske's direction, Plaintiff was required to complete her EMS scenario
20 test immediately after completing her fire scenario test without a chance to adequately catch her
21 breath or rehydrate, which her male counterparts were not required to do;

22 d. Chief Gurske began the termination process and gave Plaintiff her "last rites"
23 after she failed a single test, which he did not do with her male counterparts;

24 e. Plaintiff was not permitted to receive help in studying to retake the test she failed,
25 while her male counterparts were;

26 f. Plaintiff was required to retake the test she had failed on the next business day she

1 worked, while her male counterparts were given more time to prepare;

2 g. Plaintiff was required to retake the same test she had failed, while her male
3 counterpart was given a “modified” test personally administered by Chief Gurske;

4 h. Plaintiff was subjected to a strict rule requiring termination after two test failures,
5 while her male counterparts were not; and

6 i. Plaintiff was required to return her uniform and undress in front of her superior,
7 while her male counterparts were not.

8 36.

9 As a direct and proximate result of Defendant’s actions, Plaintiff has suffered economic
10 damages in the form of lost wages, including both back pay and lost future wages and benefits,
11 plus cost-of-living increases, salary increases, overtime wages, lost fringe benefits and
12 prejudgment interest in an amount presently unknown but to be specified at trial. Plaintiff has
13 also suffered non-economic damages, including emotional distress, mental anguish, injury to her
14 personal and professional reputation, loss of self-esteem and dignity. As compensation, Plaintiff
15 should be awarded damages against Defendant in an amount to be determined at trial, but in no
16 event less than \$750,000.

17 37.

18 Plaintiff has hired legal counsel to bring these claims and is entitled to the costs incurred
19 and attorney fees on all claims pursuant to ORS 659A.885 and ORS 20.107.

20 **SECOND CLAIM FOR RELIEF**

21 **(Retaliation - ORS 659A.030(1)(f))**

22 38.

23 Plaintiff realleges and incorporates paragraphs 1 through 32.

24 39.

25 Plaintiff engaged in a protected activity when she complained about the differential
26 treatment of male and female recruits.

1 40.

2 Chief Gurske retaliated against Plaintiff by taking actions designed to ensure that Plaintiff
3 would be terminated and by, in fact, terminating Plaintiff's employment.

4 41.

5 A substantial factor in Defendant's decision to terminate Plaintiff's employment was
6 Plaintiff's opposition to the unlawful differential treatment of male and female recruits. As a
7 result, Defendant unlawfully retaliated against Plaintiff in violation of ORS 659A.230(1)(f).

8 42.

9 As a direct and proximate result of Defendant's actions, Plaintiff has suffered economic
10 damages in the form of lost wages, including both back pay and lost future wages and benefits,
11 plus cost-of-living increases, salary increases, overtime wages, lost fringe benefits and
12 prejudgment interest in an amount presently unknown but to be specified at trial. Plaintiff has
13 also suffered non-economic damages, including emotional distress, mental anguish, injury to her
14 personal and professional reputation, loss of self-esteem and dignity. As compensation, Plaintiff
15 should be awarded damages against Defendant in an amount to be determined at trial, but in no
16 event less than \$750,000.

17 43.

18 Plaintiff has hired legal counsel to bring these claims and is entitled to the costs incurred
19 and attorney fees on all claims pursuant to ORS 659A.885 and ORS 20.107.

20 WHEREFORE, Plaintiff requests a trial by jury and requests the Court should grant
21 judgment in favor of Plaintiff against Defendant and grant the following relief:

22 1. On Plaintiff's First Claim for Relief, compensatory damages in an amount to be
23 determined at trial but in no event less than \$750,000, plus attorney fees, costs and
24 disbursements, pursuant to ORS 659A.885(1);

1 2. On Plaintiff's Second Claim for Relief, compensatory damages in an amount to
2 be determined at trial but in no event less than \$750,000, plus attorney fees, costs and
3 disbursements, pursuant to ORS 659A.885(1);

4 3. On both of Plaintiff's Claims for Relief, Plaintiff prays that the Court enter an
5 Order that:

6 (a) Declares that Defendant's discriminatory practices, policies, and/or
7 procedures violate ORS 659A.030;

8 (b) Enjoins Defendant from all practices complained about herein and
9 imposes affirmative equitable relief requiring Defendant, its partners, agents, employees, and
10 assignees, and all other persons in active concert or participation with Defendant, to take
11 affirmative action to provide equal employment opportunities to all employees and applicants
12 without regard to gender;

13 (c) Requires Defendant to attend and pay for an education training, approved
14 or put on by the Oregon Bureau of Labor and Industries, and that focuses on the impacts of
15 discrimination in the employment context;

16 (d) Requires Defendant to develop and implement a plan to provide equal
17 employment conditions for all employees and equal employment opportunities for prospective
18 employees without regard to gender; and

19 ///

20 ///

21 ///

22

23

24

25

26

4. Prejudgment and post-judgment interest at the legal rate; and
5. All such other relief as the Court deems just.

Dated this 12th day of May, 2021.

KELL, ALTERMAN & RUNSTEIN, L.L.P.

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