

17-0243-C26

NO. _____

BRETT HORVATH,

Plaintiff,

v.

CITY OF LEANDER, TEXAS,

Defendant.

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IN THE DISTRICT COURT OF

WILLIAMSON COUNTY

_____ **JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Comes now Plaintiff, Brett Horvath, and complains of Defendant City of Leander, Texas.

In support of his complaint, Plaintiff states the following:

DISCOVERY LEVEL

I.

Plaintiff intends that discovery in this case be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 190.3.

REQUESTS FOR DISCLOSURE

II.

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

PARTIES

III.

Plaintiff Brett Horvath is an individual Texas resident who was employed by Defendant.

IV.

Defendant City of Leander is a municipal corporation operating under its home rule charter within its geographical boundaries in Williamson County, Texas. Defendant City may be

served by serving Mayor Christopher Fielder or City Secretary Dara Crabtree at 200 West Willis, Leander, Texas 78641, or wherever they may be found.

JURISDICTION AND VENUE

V.

The Court has jurisdiction over the case pursuant to TEX. CONST. art. V, § 8; and TEX. GOV'T CODE §§ 24.007–24.008. Venue is proper in this Court pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002. As is required by TEX. R. CIV. P. 47, Plaintiff pleads that he seeks, at the current time, monetary relief, including attorney fees and costs, in an amount over \$1,000,000, along with non-monetary relief.

FACTUAL ALLEGATIONS

VI.

Before being fired in March 2016, Plaintiff Horvath was an employee of Defendant for almost four years. Horvath was hired as a fire fighter and promoted to the rank of Driver Pumper Operator. Horvath received several service commendations and was a member of the Williamson County Technical Rescue Team.

VII.

Prior to February 2016, the Leander Fire Department had accommodated Horvath's sincerely held Christian beliefs by exempting him from obtaining prophylactic vaccinations required of other fire fighters. In February 2016, Leander Fire Chief Bill Gardner canceled that reasonable accommodation, telling Horvath that he would be required to take a Tdap vaccine or to propose a substitute accommodation in order to retain his position. Horvath began the interactive process of trying to reach a substitute reasonable accommodation to replace the one that Chief Gardner canceled.

VIII.

Chief Gardner responded, suggesting a set of infection control procedures. Horvath agreed that most of the suggested procedures were reasonable, but stated that he did not believe that the Chief's suggestion that he wear a surgical mask during the entirety of every 24-hour shift was reasonable or supported by any medical authority. As such, Horvath proposed to use Chief Gardner's suggested procedures, with the only modification being that he would wear a surgical mask during specified situations where infection risk was increased.

IX.

At that point, Chief Gardner refused to discuss reasonable accommodations for Horvath's religious beliefs further, stating that the issue was "not negotiable." Nevertheless, Horvath attempted to continue the interactive process in good faith, sharing the medical authorities that he had consulted and inquiring whether any medical authorities justified the constant use of a surgical mask that the Chief was demanding. Horvath made clear that he was willing to reconsider his position on the surgical mask issue based on medical science.

X.

Instead of continuing the dialogue toward reaching an accommodation for Horvath's religious beliefs while addressing the Fire Department's infection-control concerns, on March 29, 2016, Chief Gardner fired Horvath, explicitly stating that the termination was punishment for Horvath's efforts to continue the interactive process to reach a substitute reasonable accommodation to replace the accommodation that Chief Gardner had canceled.

XI.

Horvath could have performed the essential functions of his position with reasonable accommodation for his sincerely held religious beliefs.

CAUSES OF ACTION
XII.

Defendant's cancellation of the reasonable workplace accommodation for Plaintiff's sincerely held religious belief that it previously provided, Defendant's failure and refusal to continue meaningful engagement in an interactive process to discuss a substitute reasonable accommodation, and Defendant's termination of Horvath's employment all violated Chapter 21 of the Texas Labor Code. Defendant terminated Horvath's employment because of Plaintiff's religious beliefs and/or in retaliation for requesting a substitute reasonable workplace accommodation for his religious beliefs. Horvath has exhausted his administrative remedies on this claim, having received the notice of right to sue from the Texas Workforce Commission, dated January 20, 2017.

XIII.

Defendant's cancellation of the reasonable workplace accommodation for Plaintiff's sincerely held religious belief that it previously provided, Defendant's failure and refusal to continue meaningful engagement in an interactive process to discuss a substitute reasonable accommodation, and Defendant's termination of Horvath's employment all violated Title VII of the Civil Rights Act of 1964. Defendant terminated Horvath's employment because of Plaintiff's religious beliefs and/or in retaliation for requesting a substitute reasonable workplace accommodation for his religious beliefs. Horvath has exhausted his administrative remedies on this claim, having received the notice of right to sue from the Equal Employment Opportunity Commission, dated December 6, 2016.

XIV.

Defendant's cancellation of the reasonable workplace accommodation for Plaintiff's sincerely held religious belief that it previously provided, Defendant's failure and refusal to

continue meaningful engagement in an interactive process to discuss a substitute reasonable accommodation, and Defendant's termination of Horvath's employment all violated Horvath's rights to the free exercise of his religion protected by the First and Fourteenth Amendments to the United States Constitution and cognizable pursuant to 42 U.S.C. § 1983.

REQUEST FOR TRIAL BY JURY
XV.

Plaintiff requests and demands a trial by jury.

PRAYER FOR RELIEF
XVI.

Wherefore, premises considered, Plaintiff respectfully requests that Defendant be cited to appear and answer herein, and upon hearing, that the Court award Plaintiff the following relief:

A. Declare that by cancelling the reasonable workplace accommodation for Plaintiff's religious beliefs that it previously provided, by failing and refusing to continue meaningful engagement in an interactive process to establish a substitute reasonable accommodation, and by terminating Horvath's employment, Defendant violated Chapter 21 of the Texas Labor Code, Title VII of the Civil Rights Act of 1964, and the First and Fourteenth Amendments to the United States Constitution.

B. Enter a permanent injunction requiring Defendant to reinstate Plaintiff to his former position with all benefits and emoluments of his position that he would have received if Defendant's discrimination and/or retaliation had not occurred and prohibiting any future acts of retaliation, discrimination, or harassment, and also making Plaintiff whole, as if Defendant's illegal acts of discrimination and/or retaliation had not occurred.

C. Order Defendant to pay Plaintiff back pay as a result of Defendant's discrimination and/or retaliation.

D. Order Defendant to pay Plaintiff compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and/or other nonpecuniary losses as a result of Defendant's discrimination and/or retaliation.

E. Order Defendant to pay Plaintiff punitive damages in an amount sufficient to punish the defendant for its conduct and to deter others from similar actions.

F. Order Defendant to pay Plaintiff's reasonable attorney fees and costs;

G. Order Defendant to pay pre-judgment interest on all amounts for which pre-judgment interest is legally allowable, at the highest lawful rate;

H. Order Defendant to pay post-judgment interest at the highest lawful rate for all amounts, including attorney fees, awarded against Defendant; and

I. Order such other relief, whether legal or equitable, to which Plaintiff is entitled.

Respectfully submitted,

DEATS DURST & OWEN, PLLC

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