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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CHRISTINE MOSBY, Plaintiff, vs. AMERICAN FORK CITY, Defendants.	**COMPLAINT AND JURY DEMAND** Case No.: Honorable Judge:

Plaintiff Christine Mosby ("Plaintiff" or "Mosby"), by and through her undersigned counsel, complains against American Fork City ("AFC" or "Defendant") as follows:

NATURE OF THE CASE

1. This is an action against AFC seeking redress for deprivation of property interest in employment without due process of law under the Fourteenth Amendment to the U.S. Constitution, and in violation of the Utah Constitution, Art. I §7. This action also seeks redress

for violations of the Family and Medical Leave Act, 29 U.S.C.A. § 2615 and the Fair Labor Standards Act 29 U.S.C. § 206.

PARTIES

2. Plaintiff resides in the State of Utah, Salt Lake County, and she was formerly employed by Defendant and worked in Human Resources.

3. AFC is a municipality created under Utah Code Ann. § 10 *et. seq*.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§1331 and 1343, in that this action arises under federal law, specifically, 42 U.S.C. § 1983.

5. The conduct alleged to be unlawful was committed within the jurisdiction of the United States District Court of the Northern Division of Utah, thus, venue is proper pursuant to 28 U.S.C. § 1391.

6. The Court has pendant jurisdiction over the State and common law claims pursuant to 28 U.S.C. § 1367.

GENERAL FACTUAL ALLEGATIONS

7. Utah Code Ann. §10-3-1105 states as follows: "(1)(a) Except as provided in Subsection (1)(b) or (2), each employee of a municipality shall hold employment without limitation of time, being subject to discharge, suspension of over two days without pay, or involuntary transfer to a position with less remuneration only as provided in Section 10-3-1106.

8. Utah Code Ann. §10-3-1106 provides various procedural protections afforded to employees including, but not limited to, the right to appeal the termination to an appeal board where the employee has the right to be represented by counsel, the right to a hearing open to the public, the right to confront witnesses, and the right to examine the evidence to be considered by the appeal board.

9. Plaintiff was hired on January 11. 2016.

10. Plaintiff was initially hired as an intern.

11. On February 6, 2017, Plaintiff was offered, and accepted, a full-time merit position as a Human Resource Specialist which typically included full medical and retirement benefits. However, Plaintiff was not provided any of these fringe benefits other than retirement through the Utah Retirement System.

12. Plaintiff was paid $17.84 per hour.

13. On May 3, 2017, long after her probationary period ended, Plaintiff was reduced from working forty hours a week to thirty. It was never mentioned to Plaintiff that her merit employment status was changing with the reduced schedule.

14. An employee who works 30 hours a week for American Fork City is still considered a full-time employee.

15. Despite being told that she would be working on a reduced schedule, Plaintiff was given far more work than could be accomplished in thirty hours a week.

16. During 2017, Plaintiff averaged thirty-three hours per week.

17. On or around June 21, 2017, Ms. Judy Thamakis, who had been Plaintiff's supervisor, was terminated from her employment with American Fork City as Director of Human

Resources. Many of the responsibilities that Ms. Thamakis had been handling were temporarily shifted to Plaintiff.

18. On Monday, July 10, 2017, Ms. Mosby came into work, but had to leave quickly to attend to a family emergency. Before leaving, she sent an email to her new supervisor, Camden Bird, which said "I'm not going to be coming in, I've got some FMLA paperwork I will need to send you. I came in this morning and had to leave due to a family emergency. . .."

19. On July 11, 2017, Plaintiff was required to attend an event hosted by the Society of Human Resources Management.

20. Ms. Mosby was fired on July 11, 2017, which was the very next day after she mentioned FMLA leave to her supervisor.

21. Ms. Mosby was not paid for her time in attending the conference on July 11, 2017.

22. In terminating her employment, Defendant alleged that Plaintiff was no longer a merit employee and was not entitled to any of the protections of the Utah Municipal Code.

FIRST CAUSE OF ACTION

(42 U.S.C. §1983 – Deprivation of Plaintiff's Due Process and Property Interests)

23. Plaintiff reasserts and incorporates by reference all paragraphs set forth above.

24. Plaintiff had the reasonable expectation of continuing her employment with Defendant, therefore she had a property interest in her continued employment.

25. The termination of Plaintiff from AFC, without a predetermination hearing, a post deprivation hearing, the opportunity to be represented by counsel, and without just cause violated Plaintiff's right to procedural due process of law under the United States Constitution.

26. AFC's conduct violated Plaintiff's Fourteenth Amendment rights by depriving Plaintiff of a property interest without due process.

27. As a result of Defendants' wrongful conduct, Plaintiff's long-term employment was terminated.

28. As a result of Defendants' actions, Plaintiff has suffered, and will continue to suffer, both economic and non-economic loss, including but not limited to: loss of wages and benefits, future pecuniary losses, emotional distress, damage to her reputation, and other compensatory damages. Plaintiff is entitled to recover for those losses and to injunctive relief, pursuant to 42 U.S.C.§ 1983, *et seq.*

29. Defendant acted maliciously and/or in reckless disregard of Plaintiff's federally protected rights, and Plaintiff is therefore also entitled to punitive damages.

30. Plaintiff is also entitled, under 42 U.S.C. § 1988, to recover attorney fees and costs incurred in pursuing her claims.

SECOND CAUSE OF ACTION

(Declaratory Judgment re: Plaintiff's Status as a Merit Employee)

31. Plaintiff reasserts and incorporates by reference all paragraphs set forth above.

32. The treatment of Plaintiff raises issues and concerns about the rights and obligations of the parties which require determination and clarification by the court.

33. Included in the issues that are ripe for a declaratory judgment are the issues of property interests in employment, procedural due process protections to Plaintiff's property interests, and other statutory and constitutional matters which are disputed and that are of substantial concern to Plaintiff.

34. Plaintiff is therefore entitled to a declaratory judgment declaring her status as a merit employee.

THIRD CAUSE OF ACTION

(Interference with Plaintiff's Rights Under of the Family Medical Leave Act, 29 U.S.C.A. § 2615)

35. Plaintiff reasserts and incorporates by reference all paragraphs set forth above.

36. At all times alleged herein, Defendant was a "covered employer" as defined under the Family and Medical Leave Act of 1993 (the "FMLA").

37. At all times alleged herein, Plaintiff was an "eligible employee" as defined under the FMLA.

38. At all times alleged herein, Plaintiff was entitled to exercise her rights to leave, and return from leave, under the FMLA.

39. By sending an email to her supervisor on July 10, 2017, Plaintiff was exercising her rights - or attempting to exercise her rights - under the FMLA.

40. Defendant's actions - including the termination of Plaintiffs employment and employment benefits - interfered with Plaintiff's exercise of her rights under the FMLA.

41. Due to Defendant's violation of the FMLA, Plaintiff is entitled to recover actual damages, compensatory damages, back pay, front pay, equitable relief, liquidated damages, attorney's fees, and costs.

FOURTH CAUSE OF ACTION

(Retaliation in Violation of the Family Medical Leave Act, 29 U.S.C.A. § 2615)

42. Plaintiff reasserts and incorporates by reference all paragraphs set forth above.

43. Defendant's actions - including the termination of Plaintiff's employment and employment benefits - was in retaliation for Plaintiffs exercise of her rights under the FMLA.

44. Respondent's same day termination of Plaintiff constitutes discrimination and wrongful discharge under the Family and Medical Leave Act. 29 U.S.C. § 2615(a)(2).

45. Defendant's actions - including the termination of Plaintiff's employment and employment benefits - were in violation of the FMLA.

46. Due to Defendant's violation of the FMLA, Plaintiff is entitled to recover actual damages, compensatory damages, back pay, front pay, equitable relief, liquidated damages, attorney's fees, and costs.

FIFTH CAUSE OF ACTION

(Failure to Pay Minimum Wage in Violation of the Fair Labor Standards Act.)

47. Plaintiff reasserts and incorporates by reference all paragraphs set forth above

48. At all relevant times Defendants were required to pay each Plaintiff minimum wage pursuant to 29 U.S.C. § 206.

49. Defendants failed and willfully refused to pay Plaintiff's minimum wage as required by the FLSA, 29 U.S.C. § 206 for the time she spent attending the conference on July 11, 2018.

50. In failing to pay minimum wages to Plaintiff, Defendants acted knowingly and willfully and/or showed a reckless disregard as to whether their conduct was prohibited by the FLSA.

51. Defendants are liable to Plaintiffs under the FLSA for unpaid wages, attorney's fees, as well as liquidated damages in an additional amount equal to the unpaid wages.

REQUEST FOR JURY TRIAL

Plaintiff requests that this matter be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For reinstatement of employment in her former position or front pay in lieu thereof;
2. For full reinstatement of fringe benefits and seniority rights;
3. For the payment of back wages;
4. For such other actual damages suffered by Plaintiff in an amount to be proven at trial;
5. For damages to include compensatory damages for the various violations set forth above;
6. For punitive damages in an amount to be determined by the jury;
7. For a declaratory judgment defining Plaintiff's employment with AFC as a merit position;
8. For all of costs of litigation and attorneys' fees; and
9. For such other further relief and additional relief as the Court deems just and proper.

DATED this 27th day of November, 2018.

Pearson Butler & Carson

/s/ Jason D. Haymore
Jason D. Haymore (13236)
Attorney for Plaintiff