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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

**VALERIE DAVIS and
JAMES H. HARRIS,
Plaintiffs,**

vs.

**FLORIDA AGENCY FOR HEALTH
CARE ADMINISTRATION,
Defendant.**

Case No.: 4:13CV31-RH/CAS

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiffs, VALERIE DAVIS and JAMES H. HARRIS, amend their complaint to add additional retaliation that has occurred since the amended complaint was filed. Defendant has consented to Plaintiffs' filing of this amended complaint.

The Plaintiffs sue the Defendant, FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, pursuant to Fla. R. Civ. P. 1.100 (a) and 1.110 (b), and allege as follows:

JURISDICTION AND VENUE

1. Defendant is an employer within the meaning of the Florida Civil Rights Act of 1992, as amended, Chapter 760, Florida Statutes and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.
2. Plaintiff Valerie Davis is an employee of the Defendant and James H. Harris is a former employee of Defendant within the meaning of the Florida Civil Rights Act of 1992, as amended, Chapter 760, Florida Statutes (FCRA) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (Title VII).
3. Plaintiffs filed charges of employment discrimination and retaliation with the

Florida Commission on Human Relations (FCHR) within 365 days of the alleged violations, per § 760.11 (1). Plaintiffs filed charges of employment discrimination and retaliation with the Equal Employment Opportunity Commission (EEOC) within 300 days of the alleged violations, per 42 U.S.C. § 2000e-5(e)(1).

4. FCHR and EEOC investigated Plaintiffs' allegations and issued Determinations that there was "reasonable cause to believe that ... unlawful employment practice[s] occurred".

5. The Plaintiffs are entitled to bring this civil action against Defendant, per §760.11 (4)(a).

FACTUAL BACKGROUND

6. Plaintiff Valerie Davis (hereinafter Ms. Davis) was hired by Defendant (hereinafter AHCA) on or about September, 2001 as Administrative Secretary and was promoted four years later to the position of Paralegal Specialist in the Facilities Counsel's Office in St. Petersburg.

7. Plaintiff James Harris (hereinafter Mr. Harris) was hired by AHCA on or about June 1, 2007 as Senior Attorney, Assistant General Counsel in the Facilities Counsel's Office in St. Petersburg.

8. Since he began work there, Mr. Harris has been and is currently the supervisor for Ms. Davis.

9. At the time Mr. Harris was hired, there were four Senior Attorneys in the office and two assistants, Ms. Davis and Linda Natter, whose title was Administrative Assistant II, a higher paid position than that held by Ms. Davis.

10. During the time Ms. Natter worked there, Mr. Harris frequently observed her sleeping in the empty office of Amie Ragano, formerly one of the Senior Attorneys who worked

mainly from home.

11. Mr. Harris reported Ms. Natter's behavior to Paula LaGrone, then Administrative Assistant to the General Counsel in Tallahassee, but Ms. LaGrone did not respond or follow up.

12. Ms. Natter left AHCA in April 2010. Before she left, Ms. Natter was heard to advise Catherine Keith, an employee in another AHCA unit, to stay in touch with Tom Walsh, one of the Senior Attorneys in the Facilities Counsel's Office, because the attorneys in that office want her to replace Ms. Natter in the Administrative Assistant II position.

13. Soon after Ms. Natter left, Mr. Harris wrote to then General Counsel, Justin Senior, recommending that Ms. Davis be promoted to the Administrative Assistant II post, reminding him of his stated position favoring promotion from within, and calling to his attention Ms. Davis's excellent performance reviews. He received no response from Mr. Senior.

14. After Natter's last day in the office, she used a great deal of sick leave, some donated, and finally retired on disability. Her position was not advertised for several months, during which time Ms. Davis performed all Ms. Natter's former duties as well as her own, assisting all four attorneys in the St. Petersburg office.

15. Ms. Natter's position was finally posted in early August 2010, with a closing date of August 4, 2010. Ms. Davis applied as did Ms. Keith and many others. After the application period closed, it was decided that Suzanne Hurley, a new attorney in the St. Petersburg office, would initially screen and grade the applicants.

16. Ms. Hurley had been hired to replace Tom Hoeler who had become Chief Facilities Counsel.

17. When Ms. Hurley had finished grading the applicants, Mr. Harris reviewed her scoring, at the request of attorneys Tom Asbury and Tom Walsh. Mr. Harris disagreed with only

one scoring, that for Valerie Davis, but when he discussed the matter with Ms. Hurley, she agreed that Ms. Davis should score 25 out of 25.

18. Ms. Hurley had scored Catherine Keith as 8 out of 25. Mr. Walsh changed the 8 to a 23 and manipulated subjective interview scoring to make Ms. Keith's score look higher than it legitimately was.

19. After the interviews were done, the job went to Catherine Keith, though she had scored lower than Ms. Davis, without the illegitimate manipulations of her score.

20. Ms. Davis was told she had the highest scores, but that the position was given to Ms. Keith as she had been the best "fit".

21. As she is the only African-American employee in the St. Petersburg Facilities Counsel's office, and as nothing else made sense, Ms. Davis concluded that she had been discriminated against on the basis of her race. Accordingly, she filed a grievance alleging race discrimination with the AHCA Human Resources office on November 12, 2010.

22. Her grievance was referred to the Inspector General's Office for investigation on November 18, 2010.

23. At some point in time, Ms. Davis's performance evaluation, which had been done by Mr. Harris, was downgraded by Tom Hoeler, Chief Facilities Counsel, Justin Senior, General Counsel, and Paula LaGrone, Mr. Senior's Chief Assistant. Mr. Harris objected to the change.

24. By email on December 1, 2010, Mr. Harris wrote to Paula LaGrone, citing Rule 60L - 35.003, Florida Administrative Code, which provides that "completed performance plans and evaluations shall not be changed by a higher level of authority".

25. In this email, he took issue with Mr. Hoeler's characterization of Ms. Davis's work performance as less than "exceptional", stating that, as her supervisor, he viewed her work

as exceptional.

26. The Tallahassee office was clearly displeased with Mr. Harris's defense of Ms. Davis's work performance and his criticism of the changes made to her evaluation by Mr. Hoeler.

27. Mr. Harris was told to participate in a telephonic conference with Justin Senior, Tom Hoeler and Paula LaGrone. Mr. Senior angrily accused Mr. Harris of failing to follow policy by showing the evaluation to Ms. Davis prior to sending it to Tallahassee. Mr. Harris denied having done so.

28. Catherine Keith began work as Administrative Assistant II in the Facilities Counsel office on November 28, 2010. It was decided that Ms. Keith would assist Attorneys Tom Walsh and Tom Asbury and that Ms. Davis would assist Attorneys Suzanne Hurley and James Harris.

29. As Ms. Keith had very little previous legal experience, it was immediately apparent that she was unprepared for her responsibilities.

30. It was up to Ms. Davis and the attorneys to train her. Ms. Hurley also required guidance from Ms. Davis as to Facilities Counsel procedures.

31. Copious emails between Ms. Keith, Ms. Hurley and Ms. Davis attest to their bombardment of Ms. Davis with requests for information.

32. Soon after Ms. Davis's discrimination complaint became known, her relationship with Suzanne Hurley, the new attorney, which had previously been cordial, soured markedly.

33. Ms. Hurley began to leave Ms. Davis curt, critical notes regarding her work performance, and demanded that Ms. Davis perform work done only by attorneys, such as a response to a request for production of documents. She was sharp with Ms. Davis when Ms.

Davis said she did not know how to do it.

34. On January 18, 2011, Dan McCall, Investigator with the Office of the Inspector General, came to the St. Petersburg office to interview employees relative to Ms. Davis's discrimination complaint.

35. In his interview, Mr. Harris stated that Ms. Davis had well performed the Administrative Assistant's duties for all attorneys in the office after the departure of Linda Natter. He also explained his misgivings regarding the hiring of Catherine Keith instead of Ms. Davis.

36. On January 25, 2011, Mr. Harris met with Suzanne Hurley regarding her treatment of Ms. Davis. Ms. Hurley became defensive and reluctant to meet with Mr. Harris about Ms. Davis, whom they both supervised. She told him she had had telephone conferences with Tom Hoeler, Justin Senior and Paula LaGrone concerning Ms. Davis, and Mr. Harris voiced his objection that he had not been included in these conferences.

37. After he left Ms. Hurley's office, Mr. Harris received a call from Paula LaGrone to set a telephone meeting with Justin Senior, Tom Hoeler and Paula LaGrone. AHCA Attorney William Roberts may also have been present. The phone conference took place in Ms. Hurley's office.

38. In that conference, Mr. Senior claimed that there was "disagreement" in the St. Petersburg office. Mr. Harris demurred, stating that he and Ms. Hurley were in agreement as to joint supervision of Valerie Davis.

39. On January 31, 2011, Mr. Harris was scheduled for his monthly telephone call from Tom Hoeler, which Mr. Hoeler had referred to as "one-on-one" meetings. Mr. Harris called Mr. Hoeler's office at the appointed time and had to leave a voice mail.

40. About half an hour later, Mr. Hoeler appeared at the St. Petersburg office to meet with Mr. Harris in person. Mr. Hoeler immediately began to raise his voice to Mr. Harris in an angry manner, criticizing him for failing to follow his direction concerning a case.

41. Mr. Harris countered, stating that Mr. Hoeler had reversed his position about that case. Mr. Hoeler then asserted that Justin Senior was “angry” with Mr. Harris regarding Ms. Davis’s evaluation.

42. Mr. Hoeler claimed that he had received complaints about Mr. Harris from other attorneys, but refused to name them or give the nature of the alleged complaints. Finally, Mr. Hoeler accused Mr. Harris of “yelling” at Ms. Hurley, but it was indeed Mr. Hoeler who was yelling.

43. Advising Mr. Harris not to make the General Counsel angry, Mr. Hoeler rose from his chair and left Mr. Harris’s office.

44. Upset and worried, Mr. Harris called Justin Senior, finally reaching him on February 1, 2011. Mr. Senior denied being “angry” with Mr. Harris, but stated that he was concerned about “tension” in the St. Petersburg office.

45. Mr. Harris related the unreasonable expectations of Ms. Hurley that Ms. Davis perform tasks best suited to an attorney, such as the response to the request for production of documents.

46. On a February 3, 2011 phone conference between Tom Walsh, Suzanne Hurley, William Roberts and Tom Hoeler, Ms. Davis was described as having “an attitude” and Mr. Harris was said to be “the cause”.

47. On February 24, 2011, Mr. Harris filed a charge with FCHR alleging retaliation for his support of Ms. Davis and her allegations of race discrimination as to her failure to be

promoted.

48. On February 25, 2011, Ms. Davis filed a charge with FCHR alleging race discrimination as to her failure to be promoted, and retaliation for her allegations of race discrimination.

49. Since the filing of those charges, retaliation against both Ms. Davis and Mr. Harris has continued.

50. Ms. Davis was subject to a hostile working environment by her then co-supervisor, Suzanne Hurley, including but not limited to Ms. Hurley's wearing of a gas mask upon Ms. Davis's departure from her office. As of May 24, 2012, Ms. Davis has been told that her Paralegal Specialist position has been reclassified as Administrative Assistant I and therefore that she must be placed on a one year probationary status, which removes her Career Civil Service Protections and allows AHCA to terminate her employment at will. This was eventually rescinded.

51. Mr. Harris has suffered discrimination in case assignments.

52. On August 31, 2011, FCHR issued a Determination finding reasonable cause to believe that Ms. Davis was the victim of race discrimination by AHCA and that both she and Mr. Harris had been unlawfully retaliated against by AHCA.

53. In June 2013, AHCA undertook a retaliatory and unjustified investigation of Mr. Harris. On June 28, 2013, AHCA terminated Mr. Harris from his position as Senior Attorney.

COUNT I - RACE DISCRIMINATION UNDER TITLE VII AND FCRA

54. Plaintiffs re-allege paragraphs 1-53 as though fully set forth herein.

55. Ms. Davis is and was the only African-American employee in the AHCA St. Petersburg Facilities Counsel office.

56. Ms. Davis had been employed in that office for 9 years at the time the Administrative Assistant II position was filled. Catherine Keith had been employed elsewhere at the time she received the Administrative Assistant II position.

57. Ms. Davis had performed the job duties of both Administrative Assistant II and Administrative Assistant I for 8 months at the time the Administrative Assistant II position was filled. Catherine Keith had never performed either position when she received the Administrative Assistant II position.

58. Ms. Davis was enrolled in a Paralegal Program and had worked in that capacity for over 10 years at the time the Administrative Assistant II position was filled. Catherine Keith had no comparable legal experience when she received the Administrative Assistant II position.

59. Ms. Davis (black) was more qualified than Catherine Keith (white) for the Administrative Assistant II position, but did not receive the promotion because of her race, in violation of the FCRA.

60. Because of Defendant's discrimination against her, Ms. Davis has suffered emotional distress, mental anguish and loss of dignity.

WHEREFORE, Ms. Davis asks this Court to award her injunctive relief by placing her in the position she would have occupied at the time the Administrative Assistant II position was filled, by promoting her to that position, with all back pay from the date the position was filled, compensatory damages for her emotional distress, including damages for mental anguish and loss of dignity, caused by the Defendant's discriminatory failure to promote her, reasonable attorney's fees and costs, a trial by jury, and all other relief the Court deems just and equitable.

COUNT II - RETALIATION UNDER TITLE VII AND FCRA

61. Plaintiffs re-allege paragraphs 1-53 as though fully set forth herein.

62. Since the filing of Ms. Davis's complaint of discrimination with AHCA, she has been treated less favorably than other employees in her position, and has been subjected to a hostile working environment by her employer.

63. Since the filing of Ms. Davis's charge of discrimination with FCHR and EEOC, she has been treated less favorably than other employees in her position, and has been subjected to a hostile working environment by her employer.

64. Since Mr. Harris was known to support Ms. Davis's claim that she was better qualified for the Administrative Assistant II position, and that she did not receive the position due to race discrimination, Mr. Harris has been treated less favorably than other employees in his position, and has been subjected to a hostile working environment by his employer.

65. Since the filing of Mr. Harris's charge of retaliation with FCHR and EEOC, he has been treated less favorably than other employees in his position, and has been subjected to a hostile working environment by his employer.

66. Since the filing of this lawsuit Mr. Harris has been terminated from his employment with AHCA in retaliation for his support of Ms. Davis's claims and for his participation in this lawsuit.

67. Due to the retaliation by Defendant against both Ms. Davis and Mr. Harris, they have experienced keen emotional distress, including mental anguish and loss of dignity.

WHEREFORE, Ms. Davis and Mr. Harris ask this Court to award them injunctive relief, including the reinstatement of Mr. Davis, compensatory damages, including but not limited to damages for mental anguish, emotional distress and loss of dignity, reasonable attorney's fees and costs, a trial by jury, and all other relief the Court deems just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served on Defendant c/o Thomas M. Gonzalez, Esq. and Christopher M. Bentley, Esq., Thompson Sizemore Gonzalez and Hearing, P.A., 201 N. Franklin St. #1600, Tampa, FL 33602 this 1st day of July, 2013.

/s/ Melissa Horwitz

Melissa Horwitz