

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM MCGATHEY)
)
Plaintiff,) Case No.
)
vs.)
)
CITY OF RICHMOND, INDIANA,)
And JERRY PURCELL)
)
) Jury Trial Requested
Defendants.)

COMPLAINT AND DEMAND FOR JURY TRIAL

NATURE OF THE CASE

1. This lawsuit seeks redress for violations of the Family Medical Leave Act of 1993 (“FMLA”), 29 U.S.C. § 2601 *et seq.*, the Americans with Disabilities Act of 1990 (“ADA”) and of Title VII of the Civil Rights Act of 1964, including monetary damages against the City of Richmond and Chief Jerry Purcell for injuries and losses related to retaliation, discrimination and harassment against William McGathey.

JURISDICTION AND VENUE

2. This court has original subject matter jurisdiction of this action pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1331.

3. The claims asserted in this action arose within this district and the alleged retaliation and damage occurred in this district. Venue of this action is therefore proper pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1391.

PARTIES

4. At all times relevant herein, Plaintiff, William McGathey (“McGathey”) was a citizen of the State of Indiana, residing in the City of Richmond, Indiana.

5. At all times relevant herein, McGathey was a full-time member of the City of Richmond Fire Department.

6. At all times relevant herein, Defendant City of Richmond, Indiana is an Indiana Political Subdivision which employs Firefighter personnel by and through its lawful subdivision in the City of Richmond Fire Department, including Chief Jerry Purcell (“Purcell”).

7. At all times relevant herein, Defendant Purcell was a citizen of the State of Indiana, residing in Wayne County, Indiana; was Chief of the Richmond Fire Department and acted directly and/or indirectly in the interest of the City of Richmond.

8. Each Defendant satisfies the definition of “employer” and/or “public agency” as provided by the FMLA, 29 U.S.C. § 2611(4) and 29 C.F.R. § 825.108.

9. The Plaintiff is an “eligible employee” as defined in the FMLA, 29 U.S.C. § 2611(2).

FACTUAL ALLEGATIONS

10. In early January 2022, McGathey began suffering from a mental health disability triggered by a fire on or about the same time.

11. On January 13, 2022, McGathey's treating medical professional, Taylor Hunter, NCA, issued a letter to the City wherein she informed officials that McGathey was seen in her clinic on January 13, 2022, and that it was "advisable at this time that the patient is excused from work until Wednesday, January 18, 2022."

12. This letter triggered a medical leave of absence for McGathey pursuant to the FMLA.

13. The Richmond Fire Department allows for firefighters to take up to one (1) year of FMLA leave for qualifying medical reasons.

14. A firefighter who is on an FMLA leave of absence is required to receive appropriate treatment while on leave in an effort to remedy the ailment that necessitates the leave of absence.

15. The Fire Department furnishes medical evaluation forms to firefighters on leaves of absence to be filled out by their treating medical professional, which are to be returned to the Fire Department so that progress may be appropriately monitored.

16. Upon information and belief, McGathey, an African-American, was one of only two (2) firefighters that were required to submit the medical evaluation forms.

17. At all times relevant, McGathey satisfied the requirement of ensuring the medical evaluation forms were completed and submitted to the Department.

18. On or about February 24, 2022, Chief Purcell called McGathey's nurse practitioner's office and asked if McGathey could have faked the medical evaluation form that had been submitted on his behalf.

19. On or about February 24, 2022, Chief Purcell contacted McGathey's nurse practitioner's office again, stating that he was calling on behalf of Human Resources, and requested McGathey's session notes be sent to Purcell's personal email account.

20. McGathey filed a complaint with the City of Richmond human resources department regarding this retaliation and discrimination.

21. McGathey also filed a Charge of the Discrimination with the Equal Employment Opportunity Commission (“EEOC”). McGathey received his Determination and Notice of Rights Letter on September 11, 2022.

COUNT I: RETALIATION

The Plaintiff, William McGathey, by counsel, incorporates all material statements in rhetorical paragraphs 1-21 and further states:

22. The Defendants retaliated against the Plaintiff for exercising his statutory right to medical leave when Defendants deliberately contacted his nurse practitioner, insinuated McGathey was untruthful, and requested McGathey’s medical records.

23. At all times relevant hereto, Defendants were prohibited to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA, including discriminating and/or retaliating against employees who lawfully request leave under the FMLA. SEE 29 U.S.C. § 2615, and 29 C.F.R. 825.220.

24. As a direct and proximate result of the Defendants’ actions, Plaintiff has incurred, and is now incurring damages.

WHEREFORE, Plaintiff, respectfully prays that this Court enters judgment against the Defendants for:

1. Liquidated damages pursuant to the FMLA, 29 U.S.C. § 2617.
2. Reasonable attorneys’ fees and costs; and
3. Such other and further relief as the Court deems just and proper.

COUNT II: DISCRIMINATION AND HARASSMENT
BASED ON RACE AND DISABILITY

25. The Plaintiff, William McGathey, by counsel, incorporates all material statements in rhetorical paragraphs 1-24 and further states:

26. Title VII of the Civil Rights Act of 1964 (“Civil Rights Act”) prohibits employment discrimination based on race, color, religion, sex and national origin.

27. Title I of the Americans with Disabilities Act of 1990 (“ADA”) prohibits discrimination in employment against qualified individuals on the basis of disability.

28. Defendant’s have violated the Civil Rights Act and the ADA in the following ways:

- Intrusive comments and questions about McGathey’s disability;
- Singling McGathey out for different treatment based on race and disability;
- The failure of the City of Richmond to stop the harassment and discrimination after it was reported;
- Disparate treatment based on McGathey’s race;

COUNT III: DEFAMATION

The Plaintiff, William McGathey, by counsel, incorporates all material statements in rhetorical paragraphs 1-28 and further states:

29. Defendants, by and through Jerry Purcell, made and/or published communications with defamatory imputation, known to be false, regarding McGathey’s reputation by insinuating and/or accusing McGathey of falsifying the medical evaluation form submitted on his behalf.

30. Such communications by Purcell were made with the intent to harm McGathey, his reputation, and his standing in the community.

31. The false and defamatory communications made by Purcell caused McGathey immense reputational and emotional harm.

32. As a direct and proximate result of the Defendants' in communicating the false and defamatory statements, McGathey suffered embarrassment, emotional distress, and damages, including special damages.

WHEREFORE, Plaintiff, William McGathey, demands judgment against the Defendants in an amount sufficient to compensate the Plaintiff for his damages, prejudgment interest, costs of this action, and all other relief just and proper in the premises.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: December 9, 2022

/s/ Edward J. Merchant
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Respectfully submitted,

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Dated: December 9, 2022

/s/ Edward J. Merchant

Edward J. Merchant, #26882-49

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