

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI

KIRSTEN NABHOLZ

Plaintiff,

V.

LIBERTY SCHOOL DISTRICT NO. 53

Serve Superintendent:

MIKE BREWER

605 Conistor Lane

Liberty, MO 64068

MIKE BREWER,

Serve at Place of Employment:

650 Conistor Lane

Liberty, MO 64068

and

DR. VOGELAAR

Serve at Place of Employment:

650 Conistor Lane

Liberty, MO 64068

Defendants.

Case No.:

12CY-CV02613

Division

2

FILED

MAR 12 2012

TIME: 1209 CL

Clay County Circuit Court

PETITION

COMES NOW, Plaintiff Kirsten Nabholz, by and through undersigned counsel, and for her Petition against the above named defendants, states and alleges as follows:

INTRODUCTION

1. Plaintiff, while an employee of defendant Liberty School District was subjected to unlawful discrimination on the basis of gender and age, and was subjected to unlawful retaliation following her complaints of discrimination, all of which resulted in her constructive discharge.

2. Plaintiff seeks compensatory and punitive damages against Defendants.

PARTIES

3. Plaintiff is and was at all times relevant to the allegations of the Petition, a female resident of the State of Missouri and an individual over the age of forty at all times relevant herein.

4. Plaintiff was an employee of Defendant for several years prior to her constructive discharge in June of 2011. Plaintiff's most recent position was the position of HR Benefits Specialist.

5. Defendant Liberty School District No. 53 is an employer within the meaning of the Missouri Human Rights Act.

6. Defendant Mike Brewer was the Superintendent at all times relevant herein and a supervisor of plaintiff. Defendant Brewer is an employer within the meaning of the Missouri Human Rights Act.

7. Defendant Vogelaar was the Assistant Superintendent at all times relevant herein and a supervisor of plaintiff. Defendant Vogelaar is an employer within the meaning of the Missouri Human Rights Act.

JURISDICTION AND VENUE

8. Jurisdiction and venue are proper in this Court as the actions and omissions of defendants occurred in the State of Missouri and in Clay County, Missouri.

FACTUAL BACKGROUND

9. Plaintiff was employed with Liberty School District for several years prior to her constructive discharge in June of 2011.

10. Plaintiff most recently held the position of HR Benefit Specialist with the District.

11. Plaintiff began to experience discrimination on the basis of her gender and age in January of 2010.

12. In January of 2010, plaintiff and a colleague of similar age, asked for and expressed interest in attending a class that would provide them with specialized SPHR/PHR certification and make them eligible for promotions and other positions.

13. In response, plaintiff and her colleague were told by Dr. Vogelaar that they were not eligible to attend the program.

14. The following Monday, a newly hired and much younger female employee, with far less experience than plaintiff and her colleague, informed plaintiff that she was taking the certification class.

15. The younger employee also informed plaintiff that Dr. Vogelaar had texted her from the class to inform her that there was an open spot and that he had signed her up for the class, at the District's expense.

16. After learning of this information, plaintiff and her colleague spoke with HR Director, Dee Rosekrans, and reported that they believed they were being discriminated against based on their age.

17. In response, Mr. Rosekrans stated, " I told Bob this would get us in trouble". He further stated that he would discuss plaintiff's concerns with Dr. Vogelaar and be in touch.

18. When plaintiff arrived home that day in January of 2010, she received a call from Dr. Vogelaar. He stated that plaintiff had "misunderstood". The phone call continued for a substantial period of time. The phone call concluded with Dr. Vogelaar asking plaintiff if she "could forgive" him.

19. The next morning plaintiff was called into Dr. Vogelaar's office. Thereafter, he began to cry and again ask for plaintiff's forgiveness.

20. During this meeting, Dr. Vogelaar also stated that he had shared plaintiff's concerns with Defendant Brewer and Ms. Embree, the CFO. Defendant Vogelaar also stated that due to plaintiff's complaint of discrimination, the District would no longer be permitted to pay for the course of the female employee.

21. Defendant Vogelaar also stated that he had informed the younger female employee of plaintiff's complaint.

22. Defendant Vogelaar thereafter stated that plaintiff could start the class late if she wanted however this was not a feasible option for plaintiff because she had already missed several hours of the class and there were likely no openings.

23. Defendant Vogelaar again asked plaintiff for her forgiveness, however, the tone of voice expressed to plaintiff that he was upset with her.

24. Approximately two weeks later Defendant Brewer called plaintiff to his office and questioned plaintiff about a letter he had receive in the preceding weeks or months. The letter at issue was critical of the District.

25. Defendant Brewer proceeded to question plaintiff about who wrote the letter and told plaintiff to "think harder" when she stated she did not know.

26. Defendant Brewer then stated that it had been written by plaintiff's neighbor and asked if plaintiff had anything to do with the letter.

27. Defendant Brewer's knowledge of plaintiff's home address was not information that he should have been privy to.

28. Plaintiff was intimidated and startled by the tone and substance of the conversation and meeting with Defendant Brewer.

29. This meeting was the first time meeting that plaintiff had ever had with Defendant Brewer.

30. Plaintiff left the meeting abruptly because she felt intimidated.

31. Based on information and belief, plaintiff believes that the meeting with Defendant Brewer was meant to intimidate her and was in retaliation for her complaint of discrimination.

32. Plaintiff thereafter reported the retaliation and conduct by Defendant Brewer to Mr. Rosekrans.

33. Mr. Rosekrans stated he would look into the matter, however no investigation was conducted.

34. Following plaintiff's complaint of discrimination and retaliation, until the time of plaintiff's constructive discharge, Defendant Vogelaar would single plaintiff out in staff meetings, asking for her opinion on controversial issues.

35. Defendant Vogelaar would ignore plaintiff and send any of her work assignments through other individuals, rather than directly interacting with plaintiff.

36. Prior to plaintiff's complaints, plaintiff and Defendant Vogelaar had always worked closely on projects and never had communication issues.

37. Plaintiff was denied the opportunity to apply for promotions because she did not have the SPHR/PHR certification.

38. Plaintiff resigned her employment in June of 2011 due to the discrimination and retaliation she experienced from Defendants, as well as the stress that resulted from defendants' conduct.

39. During plaintiff's exit interview, with Defendant Vogelaar as well as HR Administrator Cherie Smith, plaintiff stated that she was leaving her employment because of the discrimination and retaliation she experienced.

40. Thereafter, plaintiff learned that following her resignation, Defendant Vogelaar instructed Ms. Smith not to conduct an investigation and that there he had no intention of conducting an investigation into plaintiff's allegations of discrimination and retaliation.

41. Plaintiff also learned following her constructive discharge, that Defendant Vogelaar proposed hiring the young female employee at issue for plaintiff's position.

42. As recently as October 2011, plaintiff contacted Defendant Vogelaar and requested an update on the status of an investigation into her complaints of discrimination and retaliation.

43. Defendant Vogelaar responded to plaintiff's inquiry stating that he did not consider plaintiff's complaints to be "formal complaints" and had not initiated an investigation.

44. Based on information and belief, older male employees were not treated less favorably than their younger counterparts.

45. Based on information and belief, plaintiff was treated less favorable than a younger female employee with less experience.

46. At all times mentioned herein, the above described perpetrators were agents, servants, and employees of defendant district and were at all times acting within the scope and course of their agency and employment, or their actions were expressly authorized or ratified by defendant. Therefore, defendant district is liable for the actions of said persons and/or other perpetrators under all theories pled herein.

47. The conduct set forth herein constitutes violations of the Missouri Human Rights Act.

CONDITION PRECEDENT

48. Plaintiff filed a timely Charge of Discrimination with the Missouri Commission on Human Rights and the Equal Employment Opportunity Commission on or about November 17, 2011. *A true and accurate copy of the charge is attached hereto as Exhibit A and incorporated herein by reference.*

49. Plaintiff received her Notice of Right to Sue pursuant to the Missouri Human Rights Act. *A true and accurate copy of the charge is attached hereto as Exhibit B and incorporated herein by reference.*

50. This action has been timely filed and plaintiff has met all conditions precedent to filing this action.

COUNT I
MHRA – Gender Discrimination
(Against Defendant District and Defendant Vogelaar)

51. Plaintiff incorporates by reference all of the allegations above as though fully set forth herein.

52. The conduct and actions of the above referenced and described individuals constitutes prohibited gender discrimination.

53. The actions and conduct of the above referenced and described individuals were taken against plaintiff and she was treated less favorably than other individuals based on her gender.

54. The conduct described above has caused plaintiff emotional distress.

55. At the time defendants discriminated against plaintiff. Defendant district's management level employees knew or should have known that such conduct was

unlawful but failed to correct the discriminatory conduct and further failed to implement effective and appropriate procedures to end the discrimination.

56. Defendants' actions and conduct against plaintiff was willful, intentional, malicious, and calculated toward plaintiff and thus such conduct constituted willful violations of the law.

57. The actions and conduct set forth above were outrageous and showed an evil motive or reckless disregard for the rights of plaintiff and others, and therefore plaintiff is entitled to punitive damages from defendants to punish and deter defendants and others from like conduct.

58. At all times mentioned herein, the above described perpetrators were agents, servants and employees of defendant district and were at all times acting within the course and scope of their agency and employment, and/or their actions were expressly authorized by defendant and/or their actions were ratified by defendant thus making defendant liable for said actions under the doctrine of respondeat superior.

WHEREFORE, plaintiff prays for judgment in her favor and against defendants on Count I of the Petition, for a finding that she has been subjected to unlawful gender discrimination prohibited by Mo. Rev. Stat, 213.010 *et seq.*; for an award of compensatory and punitive damages; for her reasonable attorneys' fees and costs herein expended, and for such other relief as this Court deems just and proper.

COUNT II
MHRA – Age Discrimination
(Against Defendant District and Defendant Vogelaar)

59. Plaintiff incorporates by reference all of the allegations above as though fully set forth herein.

60. The conduct and actions of the above referenced and described individuals constitutes prohibited age discrimination.

61. The actions and conduct of the above referenced and described individuals was taken against plaintiff and she was treated less favorably than younger female employees.

62. The conduct described above has caused plaintiff emotional distress.

63. At the time defendants discriminated against plaintiff, defendant district's management level employees knew or should have known that such conduct was unlawful but failed to correct the discriminatory conduct and further failed to implement effective and appropriate procedures to end the discrimination.

64. Defendants' actions and conduct against plaintiff was willful, intentional, malicious, and calculated toward plaintiff and thus such conduct constituted willful violations of the law.

65. The actions and conduct set forth above were outrageous and showed an evil motive or reckless disregard for the rights of plaintiff and others, and therefore plaintiff is entitled to punitive damages from defendants to punish and deter defendants and others from like conduct.

66. At all times mentioned herein, the above described perpetrators were agents, servants and employees of defendant district and were at all times acting within the course and scope of their agency and employment, and/or their actions were expressly authorized by defendant and/or their actions were ratified by defendant thus making defendant liable for said actions under the doctrine of respondeat superior.

WHEREFORE, plaintiff prays for judgment in her favor and against defendants on Count II of the Petition, for a finding that she has been subjected to unlawful age discrimination prohibited by Mo. Rev. Stat, 213.010 *et seq.*; for an award of compensatory and punitive damages; for her reasonable attorneys' fees and costs herein expended, and for such other relief as this Court deems just and proper.

COUNT III
MHRA - Retaliation
(Against All Defendants)

67. Plaintiff incorporates by reference all of the allegations above as though fully set forth herein.

68. Plaintiff engaged in a protected activity by reporting discrimination on the basis of her gender and age, as it related to less favorable treatment than a younger female employee.

69. Defendants retaliated against plaintiff by creating an environment wherein plaintiff was intimidated, humiliated and treated with hostility and/or ignored by management level employees of defendant district.

70. Defendants' retaliatory actions against plaintiff caused her emotional distress.

71. The actions and conduct set forth herein was outrageous and showed evil motive or reckless indifference or conscious disregard for the rights of plaintiff, and therefore plaintiff is entitled to punitive damages from defendants to punish and deter defendants and other from like conduct.

72. At all times mentioned herein, the above described perpetrators were agents, servants, and employees of defendant district and were at all such times acting

within the scope and course of their agency and employment, and/or their actions were expressly authorized by defendant, and/or their actions were ratified by defendant, thus making them liable for said actions under the doctrine of respondeat superior.

WHEREFORE, plaintiff prays for judgment in her favor and against defendants on Count III of the Petition, for a finding that she has been subjected to unlawful retaliation prohibited by Mo. Rev. Stat, 213.010 *et seq.*; for an award of compensatory and punitive damages; for her reasonable attorneys' fees and costs herein expended, and for such other relief as this Court deems just and proper.

COUNT IV
MHRA – Constructive Discharge
(Against All Defendants)

73. Plaintiff incorporates by reference all of the allegations above as though fully set forth herein.

74. Due to defendants' retaliation against plaintiff, as well as defendants' failure to adequately respond to address the discrimination and retaliation experienced by plaintiff, plaintiff's work environment became so hostile and intolerable that she was forced to resign.

75. Defendants' constructive discharge of plaintiff was intentional, willful, malicious and calculated toward plaintiff and thus such conduct constituted willful violations of the law.

76. The actions and conduct set forth herein was outrageous and showed evil motive or reckless indifference or conscious disregard for the rights of plaintiff, and therefore plaintiff is entitled to punitive damages from defendants to punish and deter defendants and other from like conduct.

77. At all times mentioned herein, the above described perpetrators were agents, servants, and employees of defendant district and were at all such times acting within the scope and course of their agency and employment, and/or their actions were expressly authorized by defendant, and/or their actions were ratified by defendant, thus making them liable for said actions under the doctrine of respondeat superior.

WHEREFORE, plaintiff prays for judgment in her favor and against defendants on Count IV of the Petition, for a finding that she has been constructively discharged, as prohibited by Mo. Rev. Stat, 213.010 *et seq.*; for an award of compensatory and punitive damages; including lost wages, for her reasonable attorneys' fees and costs herein expended, and for such other relief as this Court deems just and proper.

HOLMAN SCHIAVONE, LLC

By: 

Anne Schiavone, MO Bar# 49349
Amy P. Maloney, MO Bar# 48936
4600 Madison Avenue, Suite 810
Kansas City, Missouri 64112
Telephone: 816.283.8738
Facsimile: 816.283.8739
Email: aschiavone@hslawllc.com
Email: amaloney@hslawllc.com

ATTORNEYS FOR PLAINTIFF

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY

☐ FEPA
☒ EEOC

CHARGE NUMBER

E11/11-70034
28E2012-00280C

Missouri Commission on Human Rights

and EEOC

NAME (Indicate Mr., Ms., Mrs.)

Kirsten Nabholz

HOME TELEPHONE (Include Area Code)

816-582-0828

STREET ADDRESS

1576 Ashton Dr.

CITY, STATE AND ZIP CODE

Liberty, MO 64068

DATE OF BIRTH

11-12-60

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

Liberty Public School District No. 53

100 +

816-736-5300

STREET ADDRESS

650 Conistor

CITY, STATE AND ZIP CODE

Liberty, MO 64068

COUNTY

Clay

NAME

Mike Brewer, Superintendent and Dr. Robert Vogelaar, Asst
Superintendent, Dee Rosekrans, Director of HR

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

650 Conistor

CITY, STATE AND ZIP CODE

Liberty, MO 64068

COUNTY

Clay

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☒ AGE
☒ RETALIATION ☐ NATIONAL ORIGIN ☐ DISABILITY ☒ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA) LATEST (ALL)
January 2010 June 2011

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I was employed with the Liberty School District for several years with my most recent position being HR Benefit Specialist. I was forced to resign my employed in June of 2011 due to discrimination and retaliation I experienced starting in January 2010. More specifically, in Jan. 2010 a colleague, similar in age, and I asked for information and expressed interest in taking a class that would provide us with SPHR/PHR certification. We were told by Dr. Vogelaar that we were not eligible to attend. The following Monday, a newly hired, much younger female employee, informed us that she was taking the certification class and that Dr. Vogelaar had texted her from the class to inform her that there was an open spot and he had signed her up for the class, at the District's expense. Not only was the female employee much younger and newly hired, she also had far less experience than my colleague and I who had inquired about the class. After learning of this, my colleague and I spoke with the HR Director Dee Rosekrans and reported that we believed we had been discriminated against based on our age. His response was "I told Bob this would get us into trouble". He told us he would discuss our concerns with Dr. Vogelaar and be in touch. When I arrived home that afternoon, I received a phone call from Dr. Vogelaar. He stated that I misunderstood and then during the long and unpleasant phone conversation he tried to explain his actions and concluded the conversation by asking if I could forgive him. The next morning he called me into this office and cried, asked for my forgiveness and told me that he had shared my concerns with Mr. Brewer and Ms. Embree, the CFO. He told me that due to my complaint the District would no longer be able to pay for the course for the young female employee and that he had informed that employee of my complaint. He told me I could start the class late if I wanted to however this was not a feasible option as I had already missed several hours of the class and there were likely no spots left. He again asked for my forgiveness but I could tell by his tone that he was upset with me. Approximately two weeks later Mr. Brewer called me into his office and questioned me about a letter he had received. I had never been called to his

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

NOV 17 2011

Date 11/17/11
EEOC FORM 5 (10/94)

Charging Party (Signature)

EXHIBIT

A

AND SWORN TO BEFORE ME THIS DATE
MO Commission on Human Rights
Jefferson City Office

office before. In his office he showed me a letter that was basically complaining about the District. He asked me who wrote the letter and then told me to "think harder" when I stated I did not know. He then told me it was written by my neighbor, and asked if I had anything to do with it. I felt intimidated by his accusations as well as by his knowledge of where I lived. I abruptly left his office and was visibly upset. I believe that Mr. Brewer was trying to intimidate me in retaliation for my complaint of age discrimination. I thereafter reported this to Dee Rosekran and he stated he would check into it but started no formal investigation. Thereafter and until the time of my resignation, Dr. Vogelaar, in staff meetings, would single me out in staff by asking for my opinions on controversial issues, and would treat me with hostility in these meetings. Additionally, in our everyday interactions he would ignore me and sent any work related assignments to me through others. In the past and prior to my complaints we had always worked closely together and never had issues. I believe the change in his treatment of me was in retaliation for my complaints of discrimination. I was also denied the opportunity to apply for promotions because I did not have the SPHR/PHR certification. I intended to work for the District for an additional 8-10 years however in April of 2011 I became ill. During the time I was hospitalized the doctor stated that my condition was in part caused by the stress I was experiencing at work as a result of the discrimination and retaliation. I thereafter resigned my employment on June 10, 2011 and during my exit interview informed Dr. Vogelaar, as well as Cherie Smith, the HR Administrator, that I was leaving my employment because of the discrimination and retaliation I experienced. Thereafter I learned that following my resignation that Dr. Vogelaar instructed Ms. Smith not to conduct an investigation and that he had no intention of investigating my allegations of discrimination and/or retaliation. I also learned following my constructive discharge, that Dr. Vogelaar proposed hiring the younger female employee, who had been treated more favorably, for my position. As recent as mid October 2011, I contacted Dr. Vogelaar requesting an update on the status of an investigation into my complaints of discrimination and retaliation. He responded that he did not consider my complaints to be "formal complaints" and had not initiated an investigation.

FILED

NOV 17 2011

MO Commission on Human Rights
Jefferson City Office



JEREMIAH W. (JAY) NIXON
GOVERNOR

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
MISSOURI COMMISSION ON HUMAN RIGHTS

LAWRENCE G. REBMAN
DEPARTMENT DIRECTOR

ALVIN CARTER
COMMISSION CHAIRPERSON



ALISA WARREN PH.D.
EXECUTIVE DIRECTOR

Kirsten Nabholz
1576 Ashton Drive
Liberty, MO 64068

RE: Kirsten Nabholz vs. LIBERTY PUBLIC SCHOOL DISTRICT NO. 53, ET AL.
E-11/11-40034 28E-2012-00280C

The Missouri Commission on Human Rights (MCHR) is terminating its proceedings and issuing this notice of your right to sue under the Missouri Human Rights Act because you have requested a notice of your right to sue.

You are hereby notified that you have the right to bring a civil action within 90 days of the date of this letter against the respondent(s) named in the complaint. Such an action may be brought in any state circuit court in any county in which the unlawful discriminatory practice is alleged to have occurred, either before a circuit or associate circuit judge. Not only must any action brought in court pursuant to this right to sue authorization be filed within 90 days from the date of this letter, any such case must also be filed no later than two years after the alleged cause occurred or your reasonable discovery of the alleged cause.

IF YOU DO NOT FILE A CIVIL ACTION IN STATE CIRCUIT COURT RELATING TO THE MATTERS ASSERTED IN YOUR COMPLAINT WITHIN 90 DAYS OF THE DATE OF THIS NOTICE (AND WITHIN TWO YEARS OF THE ALLEGED CAUSE, OR THE DISCOVERY OF THE ALLEGED CAUSE, OF YOUR COMPLAINT), YOUR RIGHT TO SUE IS LOST.

You are also notified that the Executive Director is administratively closing this case and terminating all MCHR proceedings relating to your complaint. You may not reinstate this complaint with the MCHR or file a new complaint with the MCHR relating to the same act or practice, but rather, if you choose to continue to pursue your complaint, you must do so in court as described in this letter. This notice of right to sue has no effect on the suit-filing period of any federal claims.

In addition to the process described above, if any party is aggrieved by this decision of the MCHR, that party may appeal the decision by filing a petition under § 536.150 of the Revised Statutes of Missouri in state circuit court. Any such petition must be filed in the circuit court of Cole County.

Respectfully,

Alisa Warren Ph.D.
Executive Director

February 14, 2012
Date

LIBERTY PUBLIC SCHOOL
DISTRICT NO. 53, ET AL.
Mike Brewer, Robert Vogelarr,
Dee Rosekrans
650 Conister,
Liberty, MO 64068

Margaret A. Hesse
34 N. Meramec Ave., Suite 600
St. Louis, MO 63105
Via email

Anne Schiavone
4600 Madison, Ste 810
Kansas City, MO 64112
Via email



3315 W. TRUMAN BLVD.
P.O. BOX 1129
JEFFERSON CITY, MO 65102-1129
PHONE: 573-751-3326
FAX: 573-751-2905



111 N. 7TH STREET, SUITE 808
ST. LOUIS, MO 63101-2100
PHONE: 314-340-7550
FAX: 314-340-7236



P.O. BOX 1300
CRAIK, MO 65703-1300

EXHIBIT

B

www



1410 GENESSEE, SUITE 280
KANSAS CITY, MO 64102
FAX: 816-889-3592



108 ARTHUR STREET
SUITE D
SIKESTON, MO 63801-6454
FAX: 573-472-5321

888
mchr@labor.mo.gov