

LAW OFFICE
D. GAYLE LOFTIS
210 RIVER STREET
HACKENSACK, NEW JERSEY 07601
(201) 646-9141
Attorney for Plaintiff

YVONNE COLEMAN-DAVIS,

Plaintiff,

vs.

COUNTY OF HUDSON

Defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No.:

COMPLAINT
AND
JURY DEMAND

Plaintiff, **YVONNE COLEMAN-DAVIS**, by way of Complaint against the Defendant,
County of Hudson, says:

COUNT ONE

[§ 1983 action - policy of discrimination
against disabled pregnant females and
retaliation for complaints]

1. The Plaintiff, Yvonne Coleman-Davis, is a resident of the City of Jersey City, County of Hudson, State of New Jersey.

2. The Defendant, County of Hudson, is a unit of local government authorized under Title 40A of the New Jersey Statutes to conduct business on behalf of the county throughout the State of New Jersey.

3. The Hudson County Department of Corrections (hereinafter "HCDC"), is a department within the County of Hudson structure having responsibilities for various governmental functions relative to detainees and prisoners, and on average employs more than 800 employees.

4. This case arises under the United States Constitution and under federal law, more

particularly the First and Fourteenth Amendments to the United States Constitution, as well as the laws of the State of New Jersey.

5. Plaintiff asserts that by the actions of the Defendants and in the manner as will be more fully set forth herein, there has been a violation of her rights under the Petition and Speech clauses of the First Amendment of the United States Constitution, as well as a violation of the federal statutory rights she had as a nursing mother,.

6. This Court has jurisdiction of this case under and by virtue of 28 U.S.C. §§ 1331, 28 U.S.C. § 1343(a)(3) and 29 U.S.C. § 216(a)(3), and may exercise supplemental jurisdiction over such state claims and causes of action as may be alleged herein.

7. Venue properly resides with this Court pursuant to 28 U.S.C. § 1391(b).

8. Plaintiff is a black female citizen of the United States.

9. On or about April 19, 1991, Plaintiff was hired as a Corrections Officer in the Hudson County Department of Corrections (hereinafter “HCDC”), and was assigned within “holding” in the housing unit during the relevant times of the actions set forth within this Complaint.

10. Among the duties of officers assigned to that unit, is the requirement that female officers physically conduct strip searches of female prisoners who arrive at the jail. Those prisoners are in various conditions and stages of health, cleanliness, drug use and hostility, and are required to be searched by a single, unassisted officer, in a small shower stall area.

11. Prior to 2010, the Plaintiff had a history of ectopic pregnancy, miscarriages, orthopedic injuries, pulmonary condition, and physical limitations to her back and knee.

12. In the spring of 2010, and at the age of 41, the Plaintiff became pregnant with twins, and was considered by her physicians to be a high risk pregnancy with symptoms of vaginal bleeding, and further diagnoses of hyperemesis and hypertension.

13. Subsequent to the inception of her pregnancy and the development of the medical condition of hyperemesis, interaction in close quarters with unkempt and unclean prisoners caused the Plaintiff to become uncontrollably and violently ill such that she had even vomited on prisoners she was searching, which prisoners would understandably become quite agitated and hostile.

14. Upon learning of her pregnancy, the Plaintiff informed her superiors of the fact that she had a pregnancy that was not a normal pregnancy, but rather one that was high risk with various symptoms, inclusive of the need to take medication on a 24-hour/7-day basis by utilization of a pump for medication to treat the hyperemesis, and the development of hypertension.

15. The Plaintiff found that she was unable to function in her duties at work while wearing the medication pump and had her physicians change her medication delivery system so that it could be delivered to her in a manner other than by pump during work hours, but by pump during non-work hours. Such an alteration of the medication administration method permitted her to work.

16. In May of 2010, the Plaintiff made repeated requests to the supervisory within her chain of command, to have her assignments modified as a consequence of her hyperemesis so that she would not be required to have close physical interaction with inmates, and suggested various alternative positions or posts for which she was qualified, such as the records or classifications area, where such interaction was greatly reduced. All of the Plaintiff's suggestions and requests were denied and she was kept in holding.

17. In late April of 2010, the Plaintiff experienced pain and a miscarriage of one twin causing her to be kept from work and on bed rest subsequent to May 6, 2010.

18. The Plaintiff returned to work in early July of 2010, but was not assigned to another position with less, or more limited, inmate contact, despite the employer's knowledge that she was not having a normal pregnancy, had miscarried one of the twins, and was considered by her

physician's to be high-risk of further medical complications which were disabling in and of themselves, such as hypertension.

19. The Plaintiff's requests for an accommodation were ignored and females with no disability, as well as male officers with no disability and less seniority, were permitted to work in areas that had little inmate interaction.

20. Despite her accommodation requests for job modification or reassignment, the Plaintiff was passed over for assignment to classification on the midnight shift, and the position was given to an officer with less seniority. Moreover, the County caused the post to be closed if the other officer whom the County permitted to hold the position was not at work, rather than assign the Plaintiff to that position for that tour.

21. On July 20, 2010, while six months pregnant, the Plaintiff attempted to stop a fight between two inmates, during the course of which she was pushed against a metal bunk bed causing injury to her already, previously injured back and right knee, and one of them kicked her in the abdomen causing injury to her abdominal area.

22. From the abdominal injury, the Plaintiff immediately began to have extreme pain and vaginal bleeding. However, rather than provide emergent transportation of the Plaintiff to the hospital as the HCDC nurse was indicating was needed, one of her supervisors, Lt. Conrad, refused to permit the Plaintiff to be transported to the hospital until she had completed a number of incident reports and forms.

23. While vaginally bleeding and in extreme abdominal, back and knee pain, the Plaintiff was compelled to complete the demanded reports before being taken to the Emergency Room of the Jersey City Medical Center.

24. At the time of the incident, the County was aware that the Plaintiff was not experiencing a normal pregnancy, had complications associated with the pregnancy which had already caused the loss of one of her twins, and that the complications had impacted on her ability to work necessitating an earlier medical leave of absence that had only concluded weeks earlier.

25. Based upon medical advisement, the Plaintiff was kept out of work and on bed rest from July 20, 2010 until after the birth of her child on October 28, 2010.

26. On or about October 13, 2010, a grievance was filed on behalf of the Plaintiff and other similarly situated pregnant corrections officers asserting discriminatory treatment of pregnant female officers and a failure to accommodate them in a fashion such as had been provided to male officers who had disabilities requiring job modification or re-assignment for limited periods of time.

27. Based upon knowledge and belief, there has not been any response to the grievance of October 13, 2010 that was filed with the County.

28. The filing of the grievance by the Union on behalf of the Plaintiff constituted protected activity under the First Amendment petition clause.

29. The verbal requests of the Plaintiff for a modification of her assignments as a form accommodation of the disabilities imposed by her medically diagnosed conditions involving her back and knee, as well as the complications of her high-risk pregnancy inclusive of the hyperemesis and hypertension, constituted protected activity under the First Amendment speech clause.

30. Systemic discrimination against pregnant and physically-limited female officers and disparate treatment of female officers based on their gender or sex, is an issue of public concern.

31. As a result of the failure of Hudson County to accommodate the disabilities of the Plaintiff, she was caused to sustain injury as well as incur a loss of wages, and was not paid for the time she was absent from work.

32. The Plaintiff submits that the delay in providing her with medical care on July 20, 2010, was a act of retaliation against her for the exercise of her Federal Constitutional rights of speech and petition in requesting prior re-assignment to other posts such as classification.

33. The Defendant's actions have constituted violations of the Plaintiff's Constitutional rights of speech and petition under the First Amendment of the United States Constitution, as well as her rights of due process and equal protection under the Fourteenth Amendment of the United States Constitution, were retaliatory, and have caused the Plaintiff to incur damages of an economic, and non-economic nature as well as humiliation, emotional distress and anxiety.

34. Hudson County has permitted the continuation of a policy and/or custom of *de facto* discrimination and retaliation against female officers of the HCDC who have requested verbally and/or orally, accommodation of disabilities associated with pregnancies that were not normal pregnancies

35. The actions taken against the Plaintiff as described herein, have been under color of state law.

36. The aforesaid actions of the Defendants constitute a violation of 42 U.S.C. §1983 which have proximately caused the Plaintiff to incur the damages described within this Complaint.

WHEREFORE, the Plaintiff demands judgment against the County of Hudson for compensatory damages and back pay together with interest and costs of suit, as well as counsel fees pursuant to 42 U.S.C. § 1988, and such other just and equitable relief as this Court may order, inclusive of equitable relief requiring the Defendants to be trained in a manner so as not to violate the constitutional rights of females who are pregnant, and equitable relief requiring the Defendants to establish a practice and policy under which employees and/or supervisors who engage in such discrimination against female employees of the Hudson County Department of Corrections, harassment are reasonably held accountable for their actions.

COUNT TWO

[FSLA - 29 U.S.C. § 207(r)]

1. Each and every allegation of Count One is repeated and re-alleged as if set forth at length herein.

2. On March 23, 2010, Section 4207 of the Patient Protection and Affordable Care Act was enacted, and modified the Fair Labor Standards Act with the addition of a new provision at 29 U.S.C. § 207(r).

3. 29 U.S.C. § 207(r) requires employers with more than 50 employees to provide a reasonable break time for a nursing employee-mother to express breast milk for her child for 1 year after the child's birth, each time she has need to express the milk; and to provide a place to do so, other than a bathroom, which is shielded from view and free from intrusion from coworkers and the public.

4. Prior to her return to work after the birth of her child on October 28, 2010, the Plaintiff twice notified her superior officer, Lt. Tish Nalls, that she was breast feeding her child and needed to be able to have a location and times during her shift to express milk and utilize her breast pump while shielded from view and free from intrusion.

5. The Plaintiff was notified on approximately April 7, 2011, by Lt. Nalls that the County would not permit her to bring her breast pump to work or to utilize it during her work shift as "there was no state law that required same."

6. At her return to work on April 9, 2011, the request of the Plaintiff was repeated to the PBA Local Union Vice-President, Joe Jordan, who reported to the Plaintiff that the Director of the HCDC, Oscar Aviles, had indicated that the Plaintiff would not be able to express milk at work,

and that he would not permit the use of a storage area within the female locker room, which room was used by him for his storage, for lactating female employees.

7. The Plaintiff made an additional complaint to Lt. Conyers regarding the County violations of the federal law enacted in March of 2010, and received a direction from him on April 28, 2012 to contact her union concerning the issue.

8. As the Plaintiff has already been specified as a grievant in an unanswered-October 13, 2010 Grievance to the County, on this issue and on the matters set forth in Count One herein, such action on the part of the Plaintiff would have been futile.

9. Due to the refusal of the County to comply with the federal statute, the Plaintiff was denied break time to express her milk, subjected to embarrassment from lactation stains on her clothing, and was forced to stop nursing her child. Rather, she was compelled to purchase milk for her infant's sustenance because of the County actions rather than as her exercise of choices on how to best nurture her child in her first year of life.

10. The acts of the Defendants have been taken under color of law to deprive the Plaintiff of her rights under federal law and are a willful and knowing violation of the Fair Labor Standards Act, 29 U.S.C. §207(r) as amended by Section 4207 of the federal Patient Protection and Affordable Care Act.

11. The Plaintiff may institute action within either federal or state court for violations of the Fair Labor Standards Act, and has chosen this forum as evidenced by the written consent filed with this Complaint and Jury Demand.

12. The Plaintiff, as have others similarly situated to her in this workplace, has been caused, and will continue into the future, to suffer damages by the willful refusal of the County to implement a policy that is consistent with federal law protections and rights for nursing employees.

WHEREFORE, the Plaintiff demands compensatory damages and equitable relief in the form of entry of an Order of Declaratory Judgment against the County of Hudson that it has violated the provisions of 29 U.S.C. §207(r), and for the issuance of a Mandatory Injunction compelling the County of Hudson to comply with Section 4207 of the federal Patient Protection and Affordable Care Act [29 U.S.C. §207(r)], and to implement a reasonable lactation break policy and to provide a location and facility within the County jail so that female nursing employees may express breast milk consistent with the spirit and dictates of the federal statute, and to restrain further violations of the federal law, for counsel fees and for such other just and equitable relief as this Court may order.

COUNT THREE

[§ 1983 action - policy of violation of rights of 29 U.S.C. §207(r)]

1. Each and every allegation of Counts One and Two are repeated and re-alleged as if set forth at length herein.

2. The Defendant violated the Plaintiff's rights under Section 4207 of the federal Patient Protection and Affordable Care Act [29 U.S.C. §207(r)], from her return to work in April of 2011 through October 28, 2011 when her daughter turned one year old..

3. The willful and knowing refusal of the Defendant to comply with the requirements of Section 4207 of the federal Patient Protection and Affordable Care Act [29 U.S.C. §207(r)], evidences a policy of the County which violates the Plaintiff's federal statutory rights and have caused the Plaintiff to incur damages of an economic, and non-economic nature as well as humiliation, emotional distress and anxiety.

4. The Defendant has continued to implement this policy to the harm and detriment of the Plaintiff and other employees who have been nursing mothers subsequent to March 23, 2010.

5. The aforesaid actions of the Defendant constitutes a violation of 42 U.S.C. §1983

which has proximately caused the Plaintiff to incur the damages described within this Complaint.

WHEREFORE, the Plaintiff demands judgment against the County of Hudson for compensatory damages and back pay together with interest and costs of suit, as well as counsel fees pursuant to 42 U.S.C. § 1988, and such other just and equitable relief as this Court may order, inclusive of equitable relief in the form of a Mandatory Injunction compelling the County of Hudson to comply with Section 4207 of the federal Patient Protection and Affordable Care Act [29 U.S.C. §207(r)], and to implement a reasonable lactation break policy and provide a location and facility within the County jail so that female nursing employees may express breast milk consistent with the spirit and dictates of the federal statute, and to restrain further violations of the federal law, and for such other just and equitable relief as this Court may order.

COUNT FOUR

[NJLAD - disability discrimination]

1. Each and every allegation of Counts One through Three are repeated and re-alleged as if set forth at length herein.

2. The high-risk pregnancy of the Plaintiff and the complications of that pregnancy as diagnosed as hyperemesis and hypertension, as well as her back and knee pains and limitations, have all constituted physical disabilities or infirmities as the term is defined in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-5(q).

3. The disabilities noted in the preceding paragraph prevented the normal exercise of the Plaintiff's bodily functions and were conditions diagnosed by laboratory or clinical tests and diagnoses.

4. Male officers who have required short-term re-assignment in order to accommodate disabilities and functional limitations, have been permitted to be re-assigned to other posts within the jail so that they could continue to work and provide services within the County.

5. The failure of the County to accommodate the disabilities of the Plaintiff in 2010, and to refusal to re-assign her to another post with less inmate interaction, was retaliatory and resulted in the injury sustained by her on July 20, 2010 and her inability to work for the balance of her pregnancy.

6. The aforesaid discrimination and reprisal actions of the Defendants constitute violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*.

7. The aforesaid actions of the Defendants have proximately resulted in the Plaintiff incurring injuries and damage, inclusive of, but not limited to, psychological damages, anxiety and emotional distress.

WHEREFORE, the Plaintiff demands judgment against the County of Hudson, for compensatory damages and back pay together with interest and costs of suit, as well as counsel fees pursuant to N.J.S.A. 20:5-27.1 , and such other just and equitable relief as this Court may order, inclusive of equitable relief.

JURY DEMAND

Plaintiffs demands a jury trial on all issues so triable.

D. GAYLE LOFTIS. ESQ.
210 River Street
Suite 32
Hackensack, New Jersey 07601
Telephone: (201) 646-9141
Fax: (201) 488-7029
Dgloftis@aol.com
Dgloftis@dgloftislaw.com

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