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Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA, ILLINOIS

Diane Redwitz,	)	
	)	
Plaintiff,	)	
	)	Case No. 2:18-cv-02208
v.	)	
	)	
County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, Mark Rogers, Lynn Mackin and Andrew DeLong,	)	
	)	
Defendants,	)	

FIRST AMENDED COMPLAINT

NOW COMES, Plaintiff, Diane Redwitz, by and through her attorneys, Rathbun, Cservenyak & Kozol, LLC, and for her First Amended Complaint against Defendants, County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, Mark Rogers, Lynn Mackin, and Andrew DeLong, states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Complaint pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C., §§ 2000e to 2000e-17, 28 U.S.C. §1331, 28 U.S.C. § 1343, 28 U.S.C. § 1367, and 29 U.S.C. § 2601, et seq.

2. Venue is proper in the United States District Court for the Central District of Illinois, because the Plaintiff engaged in employment activities in Kankakee County, Illinois.

3. Plaintiff, Diane Redwitz, timely filed charges alleging retaliation, age discrimination, and sex discrimination against the Defendant, County of Kankakee, with the Equal Employment Opportunity Commission (hereinafter "EEOC").

4. On or about April 18, 2018, Plaintiff, Diane Redwitz, was issued and received a Notice of Right to Sue Letter from the U.S. Equal Employment Opportunity Commission.

5. This Court has supplemental jurisdiction over Plaintiff's claims under Illinois common law because they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.

II. PARTIES

6. Plaintiff restates and realleges paragraphs 1-5 above as if fully set forth herein.

7. Plaintiff, Diane Redwitz, is an individual residing in Bourbonnais, Kankakee County, Illinois, female and age 65.

8. Defendant County of Kankakee is a body politic, containing various departments.

9. Defendant Kankakee County Sheriff's Office is the sheriff's police office for the County of Kankakee.

10. Defendant Kenneth McCabe is an individual and the sheriff for the County of Kankakee.

11. Defendant Kankakee County State's Attorney's Office is the state's attorney's office for the County of Kankakee.

12. Defendant James Rowe is an individual and the State's Attorney for Defendant County of Kankakee.

13. Defendant Mark Rogers is an individual and the County Engineer for Defendant County of Kankakee.

14. Defendant Lynn Mackin is an individual and the Human Resources Director for Defendant County of Kankakee.

15. Defendant Andrew DeLong is an individual and employee of the Kankakee County Highway Department.

III. OPERATIVE FACTS

16. Plaintiff restates and realleges paragraphs 1-15 above as if fully set forth herein.

17. In or around 2006, Plaintiff became employed with Defendant's Highway Department as a GIS Technician.

18. As a GIS Technician, Plaintiff worked in the Engineering Division within the Highway Department.

19. During all times relevant to this Complaint, the other employees of the Engineering Division of the Highway Department were Andrew DeLong (male), Shaun Luedtke (male), Tim Hamilton (male), and the supervisor of the Division, Mark Rogers (male).

20. On or about March 19, 2013, Shaun Luedtke began engaging in harassing conduct towards Plaintiff, including but not limited to, yelling at her, swearing at her, and altering her work space.

21. On or about March 19, 2013, Shaun Luedtke became angry with Plaintiff and yelled at her to "get the fuck" in her office.

22. Shortly after that incident, also on March 19, 2013, Plaintiff complained to her supervisor, Mark Rogers, regarding Shaun Luedtke's conduct. Mark Rogers advised Plaintiff "not to worry about" Shaun Luedtke's conduct.

23. On March 20, 2013, Plaintiff arrived at work and discovered that green board had been placed in the windows of her office by Shaun Luedtke.

24. On March 22, 2013, Plaintiff again spoke with Mark Rogers and advised that she believed Shaun Luedtke was harassing her and requested that he be written up.

25. Thereafter, Shaun Luedtke's harassing conduct towards Plaintiff increased, and Andrew DeLong and Tim Hamilton also began harassing Plaintiff.

26. Plaintiff continued to make regular complaints to Mark Rogers and Lynn Mackin regarding the harassment, but Defendants failed and refused to stop her co-workers' harassment.

27. Because her employer failed and refused to protect her, from on or about June 12, 2017, until on or about August 18, 2017, Plaintiff began setting her cell phone on her office desk in plain sight while it recorded, in hopes of capturing her co-workers harassing behavior.

28. On August 24, 2017, Plaintiff was sitting at her desk in her office within the Highway Department. Andrew DeLong was outside her office talking with other individuals and using vulgar language.

29. Plaintiff stepped out of her office and asked to speak with Andrew DeLong when he finished his conversation.

30. Shortly after, Andrew DeLong came into the doorway of Plaintiff's office, blocked the door, and yelled at her, making Plaintiff fear for her safety.

31. Plaintiff immediately complained to Mark Rogers regarding the harassing conduct.

32. On or about August 25, 2017, Plaintiff was driving to work. She began to panic about returning to the harassing work environment. She immediately drove to her doctor's office, who ordered her to take off work on medical leave.

33. From August 25, 2017, Plaintiff remained on medical leave pursuant to her doctor's order.

34. In August 2017, Defendant Lynn Mackin recommended that Plaintiff contact Sheriff Kenneth McCabe regarding the harassment she experienced.

35. On meeting with a detective from the Sheriff's Office, Plaintiff was asked if she had any proof of the harassment. At that time, she voluntarily provided the recordings she had made in her office.

36. On or about September 13 or 21, 2017, Plaintiff contacted the Equal Employment Opportunity Commission ("EEOC") to file a charge of discrimination.

37. On October 31, 2017, Plaintiff went to her workplace to discuss her return to work. At that time, Mark Rogers notified her that her employment was being terminated.

38. On or about October 31, 2017, Defendant Mark Rogers sent correspondence to Plaintiff regarding the termination of her employment. A copy of the letter is attached hereto as Exhibit A. Linda Mackin, James Rowe, and Kenneth McCabe were copied on the letter.

39. On many occasions from March 19, 2013, through the time she was terminated, Plaintiff complained to her supervisor, Mark Rogers, and to Human Resources Director, Linda Mackin, regarding the harassment directed at her. However, Defendants failed and refused to stop the harassing behavior or otherwise protect Plaintiff.

40. Plaintiff attempted to file a grievance with her union about the workplace harassment. However, Tim Hamilton, who participated in the harassment, was the union steward, and her grievance was not accepted.

IV: COUNT I: RETALIATION
County of Kankakee

41. Plaintiff restates and realleges paragraphs 1-40 above as if fully set forth herein.

42. From September 19, 2013, until the termination of her employment, Plaintiff was regularly subjected to harassing conduct from her co-workers Shaun Luedtke, Andrew DeLong, and Tim Hamilton.

43. Throughout that time, Plaintiff frequently complained to her supervisor, who failed and refused to stop the harassment.

44. Plaintiff also attempted to file a grievance with her union, which failed to accept or take action on the grievance.

45. On or about September 13 or 21, 2017, Plaintiff contacted the EEOC to file a charge of discrimination against Defendant.

46. In late September or early October 2017, Plaintiff contacted Defendant's Human Resource Office regarding the ongoing harassment. The Human Resource Director advised her to contact the Sheriff's Office, which Plaintiff did.

47. On October 31, 2017, Plaintiff's employment with Defendant was terminated.

48. The reason given for the termination of Plaintiff's employment was that Defendant intended to file a felony charge against Plaintiff.

49. The termination of Plaintiff's employment was due to her engaging in protected activity, including complaining to her supervisor regarding the conditions of her employment, attempting to file a grievance with her union, and contacting the EEOC regarding the conditions of her employment.

50. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

51. As a result of Defendant's illegal retaliatory conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the form of

loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional and mental anguish.

V: COUNT II: SEX DISCRIMINATION
County of Kankakee

52. Plaintiff restates and realleges paragraphs 1-51 above as if fully set forth herein.

53. The Plaintiff is a member of a protected class as her sex is female.

54. The Plaintiff was qualified to continue serving as a GIS Technician with Defendant, as she was performing her job adequately and met the employer's expectations, having never received a negative performance review.

55. Andrew DeLong's sex is male; Shaun Luedtke sex is male; Tim Hamilton's sex is male; and, Mark Rogers' sex is male.

56. The Defendant, through its employees, engaged in discriminatory and harassing conduct towards and then discharged Plaintiff because of Plaintiff's sex.

57. Specifically, the Defendant's male co-workers yelled at her, swore at her, and otherwise harassed her because of her sex (female).

58. The Defendant favored Andrew DeLong, Shaun Luedtke, and Tim Hamilton to the detriment of the Plaintiff in refusing to properly discipline these male employees and instead terminating Plaintiff's employment.

59. On or about October 31, 2017, Plaintiff's employment with Defendant was terminated. The reason given was that Defendant intended to file a felony charge against Plaintiff.

60. The termination of Plaintiff's employment was due to her sex.

61. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

62. As a result of Defendant's illegal and discriminatory conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the

form of loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional and mental anguish.

VI: COUNT III: AGE DISCRIMINATION
County of Kankakee

63. Plaintiff restates and realleges paragraphs 1-62 above as if fully set forth herein.

64. The Plaintiff is a member of a protected class as she is 65 years old.

65. The Plaintiff was qualified to continue serving as a GIS Technician with Defendant, as she was performing her job adequately and met the employer's expectations, having never received a negative performance review.

66. Shaun Luedtke's age is 39.

67. The Defendant, through its employees, engaged in discriminatory and harassing conduct towards and then discharged Plaintiff because of Plaintiff's age

68. Specifically, the Plaintiff's 39-year-old co-worker yelled at her, swore at her, and otherwise harassed her, and Defendant failed and refused to stop the harassment or otherwise protect Plaintiff.

69. The Defendant favored Shaun Luedtke to the detriment of the Plaintiff in refusing to properly discipline this younger employee and instead terminating Plaintiff's employment.

70. On or about October 31, 2017, Plaintiff's employment with Defendant was terminated. The reason given was that Defendant intended to file a criminal charge against Plaintiff.

71. The termination of Plaintiff's employment was due to her age.

72. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

73. As a result of Defendant's illegal and discriminatory conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the

form of loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional and mental anguish.

VII: COUNT IV: VIOLATION OF FAMILY AND MEDICAL LEAVE ACT
County of Kankakee

74. Plaintiff restates and realleges paragraphs 1-73 above as if fully set forth herein.

75. On August 25, 2017, due to ongoing workplace harassment, Plaintiff began leave from work under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601, et seq.

76. While off work on protected leave, Plaintiff's employment was terminated on October 31, 2017.

77. Defendant's proffered reason for terminating the Plaintiff was mere pretext.

78. As a result of Defendant's illegal conduct, by and through its employees and/or agents, Plaintiff suffered, and will continue to suffer, significant damages in the form of loss of past wages and benefits, loss of future wages and benefits, reputational damage, and great emotional and mental anguish.

VIII: COUNT V: MALICIOUS PROSECUTION
County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, and Lynn Mackin

79. Plaintiff restates and realleges paragraphs 1-78 above as if fully set forth herein.

80. Although the severe and pervasive harassment against Plaintiff continued for years, Defendant County of Kankakee and its employees, including Mark Rogers and Linda Mackin, failed and refused to protect her.

81. Out of necessity and to protect herself, Plaintiff began leaving her cell phone on her desk, in a public building, in an attempt to record the harassing conduct.

82. At the recommendation of Linda Mackin, the Human Resources Director for the County of Kankakee, Plaintiff contacted Sheriff Kenneth McCabe to assist her with her harassment complaints.

83. During a meeting with a detective from the Sheriff's Office, Plaintiff was asked if she had proof of her harassment allegations.

84. In response, Plaintiff voluntarily supplied the recordings she made in her office, part of a public building, with her cell phone in plain sight.

85. At said time, Plaintiff informed and advised Defendants County of Kankakee and Kankakee County Sheriff's Office that said records were an effort and attempt to protect herself from ongoing severe and pervasive harassment occurring in the workplace.

86. At no time did the detective, or any other County employee, inform or warn Plaintiff that the recordings could constitute evidence of a crime.

87. Rather than investigate her allegations of criminal conduct, Defendant Sheriff Kenneth McCabe then coordinated with Defendants Mark Rogers, Lynn Mackin, and James Rowe, to maliciously prosecute Plaintiff in retaliation for her complaints and to terminate her employment with the County.

88. On or about October 31, 2017, Defendant County of Kankakee terminated Plaintiff's employment. The County of Kankakee claimed that Plaintiff's termination was a result of its intent to file a felony charge against Plaintiff.

89. On or about December 1, 2017, despite knowledge that Plaintiff's recordings in plain sight in a public building were an attempt to protect herself from severe and pervasive harassment, Sheriff Kenneth McCabe and States Attorney James Rowe charged Plaintiff with a Class IV Felony for Eavesdropping.

90. The charge was brought and filed against Plaintiff not to uphold the law, but with a malicious intent to retaliate against her for making complaints of harassment and to terminate her employment and constitute an abuse of the justice system.

91. On or about July 17, 2018, Plaintiff pled guilty to a misdemeanor charge of disorderly conduct at the advice of counsel in order to avoid a trial on a felony charge for which she could have been sentenced to jail if convicted and in order to qualify for eventual expungement of her record.

92. As a direct result of the criminal felony charge, Plaintiff suffered damages in the form of losing her job, loss of reputation, costs for a criminal defense, compensatory damages, emotional and mental anguish, and attorney's fees as a result of the baseless proceedings.

VIII: COUNT VI: CONSPIRACY

County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, and Lynn Mackin

93. Plaintiff restates and realleges paragraphs 1-92 above as if fully set forth herein.

94. Although the severe and pervasive harassment against Plaintiff continued for years, Defendant County of Kankakee and its employees, including Mark Rogers and Linda Mackin, failed and refused to protect her.

95. Out of necessity and to protect herself, Plaintiff began leaving her cell phone on her desk, in a public building, in an attempt to record the harassing conduct.

96. At the recommendation of Linda Mackin, the Human Resources Director for the County of Kankakee, Plaintiff contacted Sheriff Kenneth McCabe to assist her with her harassment complaints.

97. During a meeting with a detective from the Sheriff's Office, Plaintiff was asked if she had proof of her harassment allegations.

98. In response, Plaintiff voluntarily supplied the recordings she made in her office, part of a public building, with her cell phone in plain sight.

99. At said time, Plaintiff informed and advised Defendants County of Kankakee and Kankakee County Sheriff's Office that said records were an effort and attempt to protect herself from ongoing severe and pervasive harassment occurring in the workplace.

100. At no time did the detective, or any other County employee, inform or warn Plaintiff that the recordings could constitute evidence of a crime.

101. Rather than investigate her allegations of criminal conduct, Defendant Sheriff Kenneth McCabe then coordinated with Defendants Mark Rogers, Lynn Mackin, and James Rowe, to maliciously prosecute Plaintiff in retaliation for her complaints and to terminate her employment with the County.

102. On or about October 31, 2017, Defendant County of Kankakee terminated Plaintiff's employment. The County of Kankakee claimed that Plaintiff's termination was a result of its intent to file a felony charge against Plaintiff.

103. On or about December 1, 2017, despite knowledge that Plaintiff's recordings in plain sight in a public building were an attempt to protect herself from severe and pervasive harassment, Sheriff Kenneth McCabe and States Attorney James Rowe charged Plaintiff with a Class IV Felony for Eavesdropping.

104. The charge was brought and filed against Plaintiff not to uphold the law, but with a malicious intent to retaliate against her for making complaints of harassment and to terminate her employment.

105. On or about July 17, 2018, Plaintiff pled guilty to a misdemeanor charge of disorderly conduct at the advice of counsel in order to avoid a trial on a felony charge for which

she could have been sentenced to jail if convicted and in order to qualify for eventual expungement of her record.

106. Plaintiff's prosecution and the termination of her employment were the result of a concerted effort by Defendants.

107. Defendants County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, and Lynn Mackin coordinated their efforts to retaliate against Plaintiff, terminate her employment, and charge her with a felony, although they knew, or should have known, that Plaintiff's actions did not warrant a felony charge for eavesdropping.

108. As a direct result of Defendant's conduct, Plaintiff suffered damages in the form of losing her job, loss of reputation, costs for a criminal defense, compensatory damages, emotional and mental anguish, and attorney's fees.

IX: COUNT VI: ASSAULT
Andrew DeLong

109. Plaintiff restates and realleges paragraphs 1-108 above as if fully set forth herein.

110. On August 24, 2017, while working at her office desk, Plaintiff overheard Andrew DeLong outside her office talking with other individuals and using vulgar language.

111. Plaintiff stepped out of her office and asked to speak with Andrew DeLong when he finished his conversation.

112. Shortly after, Andrew DeLong came into the doorway of Plaintiff's office, blocked the door, and yelled at her. DeLong's conduct made Plaintiff fear for her safety.

113. Defendant Andrew DeLong's physical conduct was done purposely and with an intent to make Plaintiff fear for her safety.

114. As a result of DeLong's purposeful conduct, Plaintiff feared that Andrew DeLong planned to seriously physically harm her and incurred damages as a result.

WHEREFORE, Plaintiff, Diane Redwitz, prays that this Honorable Court enter judgment against Defendants, County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, Mark Rogers, Lynn Mackin, and Andrew DeLong, and grant the following relief:

(A) Damages in an amount to be proven at trial for loss of past and future wages and benefits, emotional and mental anguish, and loss of reputation;

(B) Punitive Damages;

(C) Pre-judgment interest;

(D) Costs of suit incurred herein;

(E) Reasonable attorney's fees;

(F) Fees as provided by statute; and

(G) Any additional relief as this Court deems just and proper.

DIANE REDWITZ,

BY: /s/ Meghan E. Preston
MEGHAN E. PRESTON - #06293577
MARIO P. CARLASARE - #06308707

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA, ILLINOIS

Diane Redwitz,	)	
	)	
Plaintiff,	)	
	)	Case No. 2:18-cv-02208
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County of Kankakee, Kankakee County Sheriff's Office, Kenneth McCabe, Kankakee County State's Attorney's Office, James Rowe, Mark Rogers, Lynn Mackin and Andrew DeLong,	)	
	)	
Defendants,	)	

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2019, I electronically filed the foregoing *First Amended Complaint* with the Clerk of Court using the CM/ECF system which will send notification of such filings(s) to the following:

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DIANE REDWITZ,

BY: /s/ Meghan E. Preston
Meghan E. Preston, #06293577

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