

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
6/5/2025 10:22 AM
KATHLEEN VIGIL CLERK OF THE COURT
Miquella M Martinez

Case No. D-101-CV-2025-01464

MELANIE LOVATO,

Plaintiff,

v.

Case assigned to Mathew, Francis J.

CITY OF SANTA FE,

Defendant.

COMPLAINT FOR VIOLATION OF THE NEW MEXICO WHISTLEBLOWER ACT

PLAINTIFF by and through her attorneys, DeLara Supik Odegard, P.C. (Alisa Wigley-DeLara) brings this Complaint for Violations of the New Mexico Whistleblower Protection Act pursuant to N.M.S.A. §§ 10-16C-1 — 10-16C-6.

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Melanie Lovato is a resident of the City of Santa Fe, Santa Fe County, New Mexico.

2. At all relevant times and currently, Plaintiff was an employee of the City of Santa Fe.

3. The Defendant City of Santa Fe is a municipal corporation providing public services to the public and the taxpayers of the City of Santa Fe.

4. At all material times, the City of Santa Fe acted through its respective administrators, officers, directors, employees, agents, or apparent agents, and is responsible for their acts or omissions pursuant to the doctrines of *respondeat superior*, agency, or apparent agency.

5. All acts complained of herein occurred within Santa Fe County, New Mexico.

6. Jurisdiction and venue are proper in Santa Fe County, New Mexico.

II. STATEMENT OF FACTS

7. Melanie Lovato is a long-time employee of the City of Santa Fe, starting her employment in or about July of 2005 as a Human Resources Assistant.

8. In or about 2008, Ms. Lovato was promoted to a Risk & Safety Administrative Specialist. At that time, she became involved with and was trained in the policies and procedures of the City of Santa Fe's claims handling processes for claims and lawsuits presented against the City.

9. In or about February of 2020, Ms. Lovato was promoted to the position of Risk Analyst. In that capacity, she provided more in depth assistance and direction with regard to the City's claims handling processes, to include working with the Third-Party Administrators, insurance adjusters, outside counsel retained to defend the City in litigation, and City management to reach a prompt and equitable resolution of claims and lawsuits presented against the City.

10. As a Risk Analyst, Ms. Lovato analyzed claims and trends to assess the needs for employee training, program development, and safety inspections designed to educate and train the employees of the City to potentially reduce the number of claims made against the City.

11. As a Risk Analyst, Ms. Lovato reviewed the City's insurance coverage needs, obtained appraisals, assisted with the completion of applications for bids for insurance coverage

and reviewed bid proposals, coordinated and managed loss recovery through subrogation and restitution efforts, reviewed contracts to determine if contract language met the City's needs and avoided the acceptance of a risk when not warranted.

12. As a Risk Analyst, Ms. Lovato continued her education and training receiving training to include but not limited to CPM 144 – Risk Management, RM 101 – Safety Basics, RM 113 – Law Related to Costly Claims, RM 142 – Risk Finance, PE-110A & B – Ethics, OSHA 30-hour training, AFSCME Health and Safety Training, Train the Trainer 40 hours, AFSCME Health and Safety Training Program – OSHA 10 General Industry, Beginning Mediation – 40 hour course, Risk Insurance, Creating a Safety-Oriented Culture, and Insurance in the Public Sector. Ms. Lovato will be a Certified Risk Manager in January of 2026.

13. As a Risk Analyst, Ms. Lovato viewed her role as developing a culture of Risk and Safety Management to enhance City operations and reduce financial losses and reduce the number of claims.

14. Ms. Lovato continued to advance with the City, taking on more responsibilities and was dedicated to her job and to the City.

15. In the months before Ms. Lovato was promoted to Risk Analyst, the City split the Risk and Safety Management Department into two separate groups. There was no explanation provided by the City to support this change and the division was not viewed favorably by those within the former Risk and Safety Management Department.

16. The division of the former Risk and Safety Management Department altered the roles of those working within the Department and made it difficult for Ms. Lovato to perform the functions of her job as a Risk Analyst, which necessarily still included safety functions.

17. In or about 2020, Bernadette Salazar, the Human Resources Director, issued a directive that the Drug and Alcohol Program, previously administered by the Risk Management Department, would be transferred to Human Resources.

18. Similarly, in or about February of 2020, Human Resources took over the Risk and Safety authorization vehicle policy.

19. These two programs were designed to ensure that City employees who were operating a City vehicle were properly licensed and included drug and alcohol testing to be conducted on employees if triggered by certain events, such as a motor vehicle accident in a City vehicle.

20. These programs were designed, in part, to reduce the liability of the City and to avoid the improper use of a City vehicle.

21. In October and November of 2020, Ms. Lovato reported that it did not appear that Human Resources was doing the license checks as she identified several City employees with revoked or suspended licenses.

22. In November of 2021, Ms. Lovato requested drug test results from Human Resources for a City employee and was denied access – calling into question whether Human Resources was conducting the appropriate drug testing of City employees.

23. Around this same time, it was discovered that Human Resources was improperly using the budget designated for use by the Safety Division. One of Ms. Lovato's supervisors made a written report of the improper use of this budget by Human Resources. Ms. Lovato made similar verbal reports. No action was taken.

24. Thereafter, Ms. Lovato made ongoing complaints and reports about the Human Resources Department's failure to conduct license checks, implement the drug and alcohol policy appropriately, and the improper use of the Safety Division's budget.

25. On July 24, 2024, Ms. Lovato reported to the Chief Procurement Officer that Human Resources was continuing to use the budgetary funding source that fell under safety's organization and objective within compliance services. At that time, Ms. Lovato also raised the issue to senior staff.

26. These ongoing complaints made Ms. Lovato a target of concerted efforts by the City of Santa Fe management to silence her, which ultimately led to disciplinary action.

27. Simultaneous with the concerns raised by Ms. Lovato regarding the operations of the Human Resources Department that adversely impacted safety issues and budget issues of the City of Santa Fe, Ms. Lovato was also experiencing issues with claims handling by the City Attorneys Office.

28. Erin McSherry became the City Attorney in or about July of 2018.

29. Thereafter, Ms. McSherry and the City Attorney's office undertook efforts to change the claims handling processes for the City of Santa Fe without involving the Risk Management Department.

30. For example, in January of 2019, Ms. McSherry sent an email advising that Tort Claims Act notices were no longer to be sent to Risk Management until the City Attorneys Office said it was okay.

31. Ms. Lovato asked if there had been a change in current practice as this process ensured that claims were promptly opened and addressed with either the Third-Party Administrator and/or the liability insurer for the City.

32. After a meeting on the issue, Ms. McSherry conceded that the Tort Claims Act notices would continue to be sent to Risk Management. However, this was the start of the City Attorneys Office's interference with claims handling.

33. Throughout 2020 and 2021, Ms. Lovato received complaints from the Third-Party Administrator and the City's liability insurer that attorneys working with the City Attorneys Office were circumventing the established processes for claims handling and not including Ms. Lovato in communications involving claims handling. This in turn was creating duplicative efforts and/or contradictory instructions in resolving claims against the City.

34. In July of 2020, Ms. Lovato reminded Assistant City Attorney Christopher Ryan to include her on all emails and notices sent to the Third-Party Administrator.

35. In October of 2020, Ms. Lovato sent an email communication to the City Attorneys Office regarding the proper claims handling processes for claims involving the City's liability insurer versus claims that needed to be presented to the City's Claims Committee.

36. In October of 2020, Ms. Lovato informed her supervisor at that time that the City Attorneys Office was continuing in its efforts to keep her out of the loop.

37. Thereafter, Ms. McSherry was specifically informed about the mishandling of a claim by Assistant City Attorney Christopher Ryan whereby he failed to follow established claims handling processes and did not include Ms. Lovato in these processes.

38. In November of 2020, Ms. McSherry was also informed by Ms. Lovato's supervisor that Mr. Ryan was not following proper protocols for the selection of outside counsel to defend the City in litigation and reminded her of the processes in place.

39. The City Attorneys' intrusions into the claims handling processes of Risk Management continued, which led to problems concerning the timely defense of the City in active litigation cases.

40. In January of 2022, an email exchange occurred between the City's Third-Party Administrator, Ms. Lovato and her supervisor, and the City Attorneys Office regarding the potential of missed answer deadlines on two new lawsuits. Ms. Lovato reminded the City Attorneys Office of the importance of providing Risk Management with all information on claims and lawsuits, as the Central Office, so that nothing would be missed. Ms. Lovato told the City Attorneys Office that Risk Management was being excluded in communications and the exchange of information for claims that Risk Management should be handling. The need to include Risk Management was supported by Ms. Lovato's supervisor.

41. While Erin McSherry responded to these communications with a desire to get on the "same page," no resolution occurred and the City Attorneys Office's interference with claims handling continued and became more pronounced.

42. For instance, starting in 2022 and into 2023, the City Attorneys Office started taking a different approach to IPRA requests, which led to a large number of IPRA lawsuits being filed for the City's failure to either turn over information or to respond to the IPRA request on a timely basis. The City Attorneys Office opted to ignore the established protocols and chose to handle the defense of the IPRA lawsuits without notifying Risk Management, the City's Third-Party Administrator, or the City's liability insurer.

43. These decisions led to requests being made by the City Attorneys Office to settle IPRA lawsuits with no open claim and no budget to pay for it.

44. Ms. Lovato raised continual complaints about this practice as it caused disruption with the claims handling processes and caused budgetary concerns.

45. Instead of acknowledging Ms. Lovato's complaints, on June 21, 2023, the City Attorneys Office, with the approval of the City Manager, sent a letter to the City's liability insurer with instructions to bypass Ms. Lovato as the point of contact for liability claims opened with the insurer.

46. On June 24, 2023, Ms. Lovato was promoted to the position of Risk Manager, a position designed to give her more control over the Risk Management Office and safety and claims handling processes. Her direct supervisor was the Deputy City Manager.

47. At odds with this promotion and the processes in place, by late 2023, the City Attorneys Office established monthly "check-in" meetings with Risk Management and the Safety Department. This was viewed by Ms. Lovato as the City Attorneys Office trying to position itself as oversight of Risk Management and Ms. Lovato.

48. Ms. Lovato reminded the City Attorneys Office of the need to stay separate and independent from Risk Management to avoid conflicts of interest, duplication of efforts, and proper claims handling for the benefit of the City.

49. Ms. Lovato's complaints were ignored.

50. By the end of 2023, the Risk Management and Safety departments had been gutted with very low staffing and a refusal by management to hire employees within either department.

51. By the end of 2023, the Risk Management department was in large part being monitored and controlled by the City Attorneys Office at odds with City policy and procedure.

52. By the end of 2023, the City Manager had advised Ms. Lovato that he had no understanding of the claims handling processes in place, essentially telling her she had no support from the City Manager.

53. Not surprisingly, without a fully functioning Risk and Safety Department, by the end of 2023, the number of claims against the City that resulted in a monetary settlement had increased.

54. To make matters worse, by late 2023, the City of Santa Fe received notice from its liability insurer that the carrier would stop providing coverage for the City at the end of the fiscal year, June 30, 2024, because the carrier was no longer writing policies in the region that encompassed the City of Santa Fe.

55. Ms. Lovato worked to secure bids for liability insurance coverage for the City of Santa Fe, which were more difficult to secure because of the number of paid claims against the City. Essentially, in securing new liability insurance coverage, the City became self-insured as its self-insured retention limit went from \$200,000 in FY 2021-2022 to \$1,500,000 in FY 2024-2025.

56. During the bidding process, Ms. Lovato continued to raise concerns with City management about the City Attorneys Office's refusal to acknowledge existing claims handling processes, the role of Risk Management, and the City's separation of the Risk Management and Safety departments – problems which she reported had led to an increase in claims against the City.

57. Beginning in 2023 and continuing through 2024, Ms. Lovato did assessments to determine which departments were responsible for the highest number of claims in an effort to bring losses down. The two departments identified with the highest claims were the

City Attorneys Office and Human Resources. Ms. Lovato's assessments were not viewed favorably by City Management.

58. In response to her complaints, Ms. Lovato was blamed for the City losing its insurance coverage.

59. Likewise, she became the target of disciplinary action and retaliation designed to silence her and designed to potentially get her to leave her employment with the City.

60. On November 15, 2023, the City Attorney's Office through Erin McSherry recommended that Ms. Lovato be disciplined based upon the settlement of a policy liability claim by the City's liability carrier.

61. In response, on April 1, 2024, Ms. Lovato was sent a Notice of Contemplated Action ("NOCA") by the City Manager, John Blair, for purported misconduct associated with the handling of a wrongful death settlement against the City and the handling of a zoom meeting and call with outside counsel regarding an HRB claim.

62. After Ms. Lovato submitted a written response to the NOCA on April 19, 2024, the City took no further action until June 13, 2024, when the City's outside counsel, Mr. Scott Hatcher, contacted another attorney, Mr. Jamie Sullivan, to investigate the issues raised in Ms. Lovato's response.

63. Notably, the City advised Ms. Lovato that based on her response, she may be subject to additional disciplinary action.

64. Jamie Sullivan was used frequently by the City of Santa Fe as outside counsel to defend the City's interests with respect to claims and lawsuits filed against the City.

65. Mr. Sullivan began his investigation by interviewing individuals he identified as pertinent to his investigation.

66. Mr. Sullivan did not interview Ms. Lovato as part of his investigation.

67. Mr. Sullivan did not interview any witnesses identified in Ms. Lovato's response as corroborating witnesses to her version of events.

68. Mr. Sullivan did not interview any of Ms. Lovato's supervisors or coworkers who were involved with claims handling processes used by the City.

69. Mr. Sullivan did not disclose the questions he asked any of the witnesses.

70. Instead, Mr. Sullivan wrote a report dated July 15, 2024, providing a summary of witness interviews and making conclusions adverse to Ms. Lovato.

71. Mr. Sullivan's written investigation was not an independent effort to uncover information and facts but was a one-sided conclusory effort to trump up the allegations against Ms. Lovato.

72. On August 8, 2024, Ms. Lovato received a revised NOCA.

73. On August 23, 2024, a recommendation was made to demote Ms. Lovato from Risk Manager to a Risk Analyst.

74. On September 5, 2024, Ms. Lovato was advised that the effective date of the demotion was September 14, 2024.

75. Mr. Lovato's demotion also came with a pay decrease. However, she was excessively penalized as her pay range dropped from a range of 120 to i 108, and her pay was further reduced by 31%.

76. This pay reduction was excessive and at odds with the plain language of Rule 6.13(B)(4) of the Personnel Rules/Regulations and Policies.

77. Ms. Lovato submitted a written appeal seeking an administrative review of her discipline.

78. Notably, Bernadette Salazar, who was the subject of numerous prior complaints by Ms. Lovato, was responsible for appointing a hearing officer. Ms. Salazar requested Mr. Stephen Ross to serve as the hearing officer.

79. Mr. Ross had been used by the City on prior occasions to serve as a hearing officer. Upon information and belief, Mr. Ross has never ruled against the City of Santa Fe for any matter in which he served as a hearing officer.

80. The administrative hearing was conducted on December 19 and 20, 2024.

81. It soon became apparent that the hearing was a pro forma exercise to support the allegations levied against Ms. Lovato.

82. On the morning of December 19, 2024, before the hearing started, Ms. Lovato overheard a comment made by Mr. Ross to Mr. Scott Hatcher (the attorney representing the City of Santa Fe's interests) saying, "we've got this in the bag."

83. After the hearing officer heard testimony from a witness called by Ms. Lovato who testified about the claims handling processes and procedures used by the City and followed by Ms. Lovato that were at issue with respect to the allegations against Ms. Lovato, a break was taken. As Ms. Lovato was leaving the room, the hearing officer made the comment to Mr. Hatcher – "that was a waste of time."

84. During a pre-hearing conference, Mr. Ross told the parties that he was permitted to rely on hearsay evidence, while allowing evidence proffered by the City. At the hearing itself and after the City raised an objection based on hearsay, Mr. Ross scolded counsel for Ms. Lovato with a detailed explanation of how hearsay evidence was not to be considered, he was not allowed to rely upon it, and he cautioned Ms. Lovato on its future use.

85. Mr. Ross' adverse ruling against Ms. Lovato excluding certain evidence under the hearsay rule further demonstrated his bias as it was clearly at odds with his prior position and at odds with similar type evidence that had already been admitted.

86. Following the pro forma hearing, and as expected based upon Mr. Ross' comments, Mr. Ross ruled in favor of the City.

87. Tellingly, during the time Ms. Lovato was demoted, throughout the administrative appeal process, and currently, Ms. Lovato has still been performing the job of Risk Manager, but with significantly lower pay.

88. Also, since the demotion, Ms. Lovato continues to be responsible for the functions of the health and safety compliance officer. Ms. Lovato had previously been promised a temporary salary increase (TSI) because she was performing dual roles. Ms. Lovato was never provided the TSI despite the fact that she is still performing these functions for safety.

89. Further, the retaliation against her has continued.

90. Despite repeated requests for her pay to be corrected in accordance with policy, she is still denied pay.

91. Ms. Lovato was expected to serve as the Risk Manager, even after her demotion, but left in an undefined position. She did not know what she was or was not responsible for, and her efforts to seek clarification and direction were ignored by City management.

92. She is frequently excluded from meetings and communications involving her position and then called upon at the eleventh hour to provide information on an urgent basis.

93. She has been tasked with providing information for the budget, asked to attend a budget meeting, and while waiting for the meeting, advised that the meeting did not happen even though it did.

94. Because Ms. Lovato is frequently asked to provide information to City management on a last minute basis, she has worked outside of customary office hours. While she should be eligible for overtime pay as a Risk Analyst, Ms. Lovato learned that after her pay reduction and how her position is entered into the system, she is not able to get overtime pay. Essentially, Ms. Lovato is expected to provide services for free.

95. Likewise, Ms. Lovato has been denied pay raises, which have been offered to all other permanent employees of the City.

96. The demotion and ongoing retaliation of Ms. Lovato was related to her reporting of improper and unlawful actions and inactions on the part of the City of Santa Fe.

COUNT I: VIOLATION OF THE WHISTLEBLOWER PROTECTION ACT

97. Each paragraph of this Complaint is incorporated as if fully reinstated herein.

98. The facts set forth above are in clear violation of the New Mexico Whistleblower Protection Act, §§ 10-16C-1 – 10-16C-6.

99. The actions and inactions of the City of Santa Fe, acting by and through its employees, staff, and agents, set forth above, retaliated against Plaintiff for:

- a. Ms. Lovato's report on unsafe practices regarding the City's vehicle use policy, license checks, and drug testing,
- b. Ms. Lovato's report on budgetary concerns, and
- c. Ms. Lovato's report on the claims handling practices and safety practices that would negatively impact the potential financial liability of the City.

100. Ms. Lovato suffered the following injuries and damages:

- a. Lost wages as a result of her improper demotion and ongoing
- b. Loss of fringe benefits.

- c. Loss of future earnings and future lost benefits.
- d. Severe and ongoing emotional distress related to harassment, intimidation, and retaliation related to her protected Whistleblower activities.
- e. Past and future psychological expenses.
- f. Loss of reputation as a result of the constant attacks on her character, job, performance, leadership, compliance with policies and procedures, and other slanderous activity by the City of Santa Fe against Ms. Lovato.

101. The actions and inactions of the City of Santa Fe, acting by and through its employees, staff, and agents, were concerted in nature involving numerous City of Santa Fe supervisory employees.

102. The actions and inactions of the City of Santa Fe, acting by and through its employees, staff, and agents, are the direct and proximate cause of Ms. Lovato's injuries and damages.

WHEREFORE, Plaintiff prays for a judgment against the Defendant for all damages allowable under NMSA 1978, § 10-16C-4 to include two times the amount of backpay with interest on the backpay, compensation for any special damages, attorneys' fees and costs, and for such other and further relief as the court deems just and proper.

Respectfully Submitted:

DELARA | SUPIK | ODEGARD P.C.

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