

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

DOUGLAS ALLEGO,

Plaintiff

v.

SHEETZ, INC.,

Defendant

Case No. 3:14-cv-261

COMPLAINT

Douglas Allego (“Plaintiff”), by and through his counsel Elizabeth L. Pollock-Avery, Esq. and Michael Kraemer, Esq. of Kraemer, Manes & Associates LLC files this Complaint against Sheetz, Inc. (“Defendant”) alleging the following:

I. Nature of the Action

1. This is an action for equitable relief as well as monetary damages, to redress Defendant’s unlawful employment practices against Plaintiff, including Defendant’s unlawful discrimination and harassment against Plaintiff because of his gender in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 USC §§2000e et seq. (“Title VII”) and the Pennsylvania Human Relations Act (“PHRA”) 43 P.S. § 951 et. seq.

2. Douglas Allego was an outstanding employee of Sheetz, Inc. who was selected to attend Sheetz University, putting him into a track for higher management. Despite his excellent work history, Mr. Allego was treated differently than similarly situated employees because he did not

fit into gender norms due to his sexual orientation. Management refused to provide the necessary additional training to Mr. Allego, which resulted in him not being eligible for promotions.

3. Defendant repeatedly denied Plaintiff promotions, excluded him from corporate meetings and events, did not investigate his claims, and was ultimately discharged due to discrimination on the part of his sex as the actions of Sheetz and its managers were motivated by their attitude about sex stereotypes and Plaintiff's gender non-conforming behavior as well as his sexual orientation.

II. Jurisdiction and Venue

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 1343 as this action involves federal questions regarding the violation of Plaintiff's rights protected by Title VII. The Court has supplemental jurisdiction over Plaintiff's related claims arising under the PHRA pursuant to 28 U.S.C. § 1367.

5. The amount in controversy in this case exceeds \$75,000.

6. The events or omissions giving rise to the claims occurred in Western Pennsylvania, and therefore, this action is within the jurisdiction of the United States District Court for the Western District of Pennsylvania and the venue is proper pursuant to 28 U.S.C. § 1391(b).

III. Parties

7. Plaintiff was a resident and citizen of Pennsylvania at all times relevant to this case.

8. Defendant is a corporation with a registered office address at 5700 Sixth Avenue, Altoona, PA 16602-1111.

IV. Facts

9. Plaintiff is an openly gay man and was such through the entirety of his employment with Defendant.

10. Plaintiff was hired by Defendant in 2008 and initially worked at Sheetz Store #133 located at 1329 Freedom Road, Cranberry Township, PA 16066.

11. While employed at Store #133, Plaintiff faced discrimination and harassment and was treated differently than similarly situated employees.

- a. Plaintiff's first manager, Glen [last name unknown] made comments about Plaintiff having sex with men, including stating how it must be nice "taking it up the ass."

12. Plaintiff was selected to attend Sheetz University despite being subjected to discrimination. Attendance at Sheetz University is one step into higher management, with more training necessary after the completion of University.

13. Plaintiff was denied the opportunity for extra training upon his completion of the program by then manager Joe Sandheer.

- a. Lynn Boughter was a straight female who completed the program at the same time as Plaintiff. Lynn was provided the extra training.
- b. As a result of the extra training Lynn received, she was properly prepared for her review with the district manager.
- c. As a result of receiving no additional training, Plaintiff received negative reviews from the district manager and was effectively denied a promotion.
- d. Additionally, Plaintiff was not given the proper training to be an assistant manager, including how to use the Turbo Chef.
- e. Plaintiff's complaints about not receiving additional training were dismissed by management.

14. When acting as an assistant manager, Plaintiff's decisions were given less deference and weight than other assistant managers.

- a. Plaintiff was given less leeway with his decision making options.
- b. Plaintiff was ignored when seeking assistance with any problems with his shift.
- c. Josh Vanderhoof, a fellow assistant manager, was regularly allowed to make employment decisions for the store while Plaintiff was not, despite the fact that making employment decisions was part of the assistant manager's job.
- d. Plaintiff was frequently excluded from events and meetings.
- e. Plaintiff was disproportionately excluded from offsite meetings while working as a shift manager.
- f. Plaintiff was denied the opportunity to participate in the "For the Kids" holiday event.

15. Plaintiff was transferred to Store #500, located at 1910 Mount Nebo Road, Sewickley, PA 15143 on November 7, 2012.

16. During his employment at Store #500, Plaintiff reported several violations of policy, including, but not limited to:

- a. Sexual relationships between managers/supervisors and their subordinates;
- b. Sexual photos being sent between employees at the store;
- c. Alcohol policy violations; and
- d. Managers/supervisors associating with subordinates outside of work.

17. None of the violations of company policy reported by Plaintiff resulted in an investigation or adverse employment action against those in violation.

18. Plaintiff faced harassment due to his failure to conform to gender norms:

- a. Plaintiff faced abusive comments from supervisors and co-workers due to his sexual orientation;

- b. Plaintiff's sexual orientation and behavior did not fit what his supervisors and co-workers believed to be 'normal for a man;'

19. After completing his shift on March 1, 2013, Plaintiff ordered a tuna wrap from Stacey Debee from the MTO department at Store #500.

- a. Ms. Debee stated that Plaintiff was a "nothing but a big pain in my ass" when Plaintiff asked Ms. Debee to heat the tuna wrap.
- b. Ms. Debee asked John [last name unknown] to get more tuna from the back of the store since there was not enough left to make the sandwich.
- c. Ms. Debee and John were having a sexual relationship in violation of Sheetz policy.
- d. Ms. Debee claimed that the tub of fish stunk when the tub was opened.
- e. Plaintiff responded that fish always smells.
- f. Ms. Debee falsely reported to the store manager, Dennis [last name unknown], that Plaintiff said she (Ms. Debee) smelled like tuna.
- g. An investigation was conducted by Darla Mendinco, the district manager. During the investigation, Ms. Mendinco instructed employees what to write for their statements, including the report by assistant manager Kerry Miles.

20. Plaintiff was terminated following Ms. Mendinco's investigation allegedly on the basis of Ms. Debee's false statement.

21. Plaintiff had been a loyal employee of Defendant for five and a half years at the time of his termination.

COUNT I

TITLE VII, 42 U.S.C. §2000e et seq. – Discrimination and Harassment

22. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

23. Based on the foregoing, Defendant has engaged in unlawful practices in violation of Title VII. The said unlawful practices for which Defendant is liable to Plaintiff include, but are not limited to:

- a. fostering and perpetuating a hostile and offensive work environment;
- b. denying Plaintiff the opportunity for promotion due to him not fitting into gender norms;
- c. unlawful sexual harassment; and
- d. termination of Plaintiff's employment.

24. The harassment was so frequent and severe that it created a hostile and offensive work environment. Furthermore, Defendant discriminated against Plaintiff by refusing to provide necessary training for promotion.

25. Furthermore, Defendant failed to promptly investigate claims made by Plaintiff about violations of company policy.

26. Additionally, Defendant improperly investigated a claim made against Plaintiff and used the results of this improperly conducted investigation to terminate Plaintiff.

27. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of Title VII, Plaintiff Allego has sustained a loss of earnings, and loss of future earning power.

COUNT II

PHRA, 43 P.S. § 951 et. seq. - Sexual Harassment and Gender Discrimination

28. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

29. Based on the foregoing, Defendant has engaged in unlawful practices in violation of the PHRA. The said unlawful practices for which Defendant is liable to Plaintiff include, but are not limited to:

- a. fostering and perpetuating a hostile and offensive work environment;
- b. denying Plaintiff the opportunity for promotion due to him not fitting into gender norms;
- c. unlawful sexual harassment; and
- d. termination of Plaintiff's employment.

30. The harassment was so frequent and severe that it created a hostile and offensive work environment. Furthermore, Defendant discriminated against Plaintiff by refusing to provide necessary training for promotion.

31. Furthermore, Defendant failed to promptly investigate claims made by Plaintiff about violations of company policy.

32. Additionally, Defendant improperly investigated a claim made against Plaintiff and used the results of this improperly conducted investigation to terminate Plaintiff.

33. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of the PHRA, Plaintiff Allego has sustained a loss of earnings, and loss of future earning power.

COUNT III

Allegheny County, Ch. 215, Title V, §215.30 et seq. – Discrimination on the Basis of Sexual Orientation

34. The above paragraphs are incorporated here by reference as though fully set forth at length herein.
35. Based on the foregoing, Defendant has engaged in unlawful practices in violation of the Allegheny County Ordinance. The said unlawful practices for which Defendant is liable to Plaintiff include, but are not limited to:
- a. fostering and perpetuating a hostile and offensive work environment;
 - b. denying Plaintiff the opportunity for promotion due to his sexual orientation;
 - c. unlawful sexual harassment; and
 - d. termination of Plaintiff's employment.
36. The harassment was so frequent and severe that it created a hostile and offensive work environment. Furthermore, Defendant discriminated against Plaintiff by refusing to provide necessary training for promotion.
37. Furthermore, Defendant failed to promptly investigate claims made by Plaintiff about violations of company policy.
38. Additionally, Defendant improperly investigated a claim made against Plaintiff and used the results of this improperly conducted investigation to terminate Plaintiff.
39. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of the Allegheny County Ordinance, Plaintiff Allego has sustained a loss of earnings, and loss of future earning power.

COUNT IV

Pittsburgh City Code §651.01 et seq. – Discrimination on the basis of Sexual Orientation

40. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

41. Based on the foregoing, Defendant has engaged in unlawful practices in violation of the Pittsburgh City Code. The said unlawful practices for which Defendant is liable to Plaintiff include, but are not limited to:

- e. fostering and perpetuating a hostile and offensive work environment;
- f. denying Plaintiff the opportunity for promotion due to his sexual orientation;
- g. unlawful sexual harassment; and
- h. termination of Plaintiff's employment.

42. The harassment was so frequent and severe that it created a hostile and offensive work environment. Furthermore, Defendant discriminated against Plaintiff by refusing to provide necessary training for promotion.

43. Furthermore, Defendant failed to promptly investigate claims made by Plaintiff about violations of company policy.

44. Additionally, Defendant improperly investigated a claim made against Plaintiff and used the results of this improperly conducted investigation to terminate Plaintiff.

45. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of the Pittsburgh City Code, Plaintiff Allego has sustained a loss of earnings, and loss of future earning power.

Request for Relief

WHEREFORE, Plaintiff respectfully requests for this Court to grant the following relief in excess of \$75,000:

- a. Award Plaintiff with a rate of pay and other benefits of employment, to which he would have been entitled, had he not been subjected to unlawful discrimination;
- b. Award Plaintiff front pay, if appropriate;

- c. Award Plaintiff wages and other benefits of employment lost, because of Defendants's unlawful conduct;
- d. Award Plaintiff punitive damages, pre and post judgment interest, costs of suit and attorney and expert witness fees as allowed by law;
- e. Declare Defendant's conduct to be in violation of the Plaintiffs' rights under Title VII of the Civil Rights Act of 1964 and the PHRC;
- f. Award Plaintiff compensatory damages for lost wages, benefits, interest, and other remuneration, and for embarrassment, humiliation, emotional distress, and damage to reputation as well as punitive damages.
- g. Such equitable relief as may be appropriate under the circumstances; and
- h. Award such further relief as this Court deems necessary and proper.

JURY TRIAL DEMANDED.

Respectfully submitted,

Dated: December 3, 2014

/s/ Elizabeth L. Pollock-Avery
Elizabeth L. Pollock-Avery, Esq.
Pa. ID No. 314841

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