

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Civil Action No.

CITY OF TAMPA, FLORIDA)

JURY TRIAL DEMANDED

Defendant.)

COMPLAINT

Plaintiff, United States of America, alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the action under 42 U.S.C. §§ 2000e-5(f) and 2000e-6(a), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Tampa Division of the United States District Court for the Middle District of Florida, pursuant to 28 U.S.C. § 1391, because defendant the City of Tampa, Florida, (“Tampa”) maintains a place of business in this judicial district and a substantial part of the events giving rise to this action took place in

this judicial district.

PARTIES & CHARGE OF DISCRIMINATION

4. Defendant Tampa is a corporate, governmental body, and a political subdivision of the State of Florida, established pursuant to the laws of the State of Florida.

5. Tampa is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).

6. Tampa employs more than 500 employees. It currently employs approximately 4,200 people.

7. Tampa employs Jeffrey Burger in its parking department, where he is a parking enforcement supervisor. In this role, he manages on-street parking owned by the city.

8. On April 25, 2018, Burger filed a timely charge (Charge No. 511-2018-01751) with the Equal Employment Opportunity Commission (“EEOC”), in which he alleged that Tampa had discriminated against him based on his sex (male) by denying him the parental leave he requested to care for his newborn child because he is a man. He also alleged that Tampa’s policy discriminated against the other male employees.

9. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated Burger’s charge of discrimination.

10. On June 18, 2021, the EEOC found cause on Burger's charge, concluding that Tampa had discriminated against him in violation of Title VII by denying him benefits under its parental leave policy based on his sex.
11. The EEOC also concluded that Tampa had discriminated against a class of male employees based on their sex.
12. The EEOC attempted unsuccessfully to achieve a voluntary resolution of the charge through conciliation, and subsequently referred the charge to the United States Department of Justice.
13. All conditions precedent to the filing of this Complaint have been performed or have occurred.

STATEMENT OF FACTS

A. Tampa Adopted A Facially Discriminatory Parental Leave Policy

14. On February 10, 2017, Tampa issued its first parental leave policy ("the policy"), which applied to all city employees.
15. Under the policy, leave for the care of a new child was available to both male and female employees following the birth of a child or the placement of a child for adoption or foster care.
16. The policy granted two types of leave for the care of a new child, each of different length: "primary care giver/maternity leave" (320 hours) and "secondary care giver/paternity leave" (80 hours).

17. By its terms, Tampa's parental leave policy made clear that primary caregiver leave was intended for women and secondary caregiver leave was intended for men.

18. Tampa's policy defined "primary care giver/maternity leave" differently than "secondary care giver/paternity leave" in the relevant policy language as follows:

The primary care giver/maternity leave status is the person who has primary responsibility for the care of a child immediately following the birth (and is typically also recovering from childbirth) or the coming of the child into the adoptive or initial foster care and control of the parent for the first time.

The secondary care giver/paternity leave status is the person who has a spouse or partner that is serving as the primary care giver, because there can only be one person designated as the primary care giver.

19. Under the language of Tampa's policy, women who gave birth were presumed to be primary caregivers, entitled to 320 hours leave, and their partners were presumed to be secondary caregivers, entitled to only 80 hours leave.

20. During the EEOC's investigation, Tampa confirmed this reading of the policy, explaining in writing that "[t]hose who deliver a child are primary caregivers. Birth parents who do not deliver a child are secondary caregivers."

B. Tampa Denied Burger Primary Caregiver Leave Because of Sex

21. Burger's wife, Lesly, became pregnant with their second child, who was due in November 2017.

22. During Lesly's pregnancy and due to complications, her doctor opined in writing that she would not be able to be the primary caregiver for the child for several weeks after the birth, and in fact, would need care herself.

23. The Burgers decided that it would be best for their family if Jeffrey Burger would become the primary caregiver to their new child after the birth.

24. Aware of Tampa's newly adopted parental leave policy, Burger sought clarification from Tampa's Human Resources as to whether he could qualify for primary caregiver leave. In a June 18, 2017 email to Amy Harrison-Hood, the payroll clerk assigned to his department, with the subject "Maternity leave," he asked, "Would you know by chance how the city assigns who is the primary caregiver for this leave?"

25. Harrison-Hood responded, "Generally the primary caregiver is the mother when she has just given birth. If it so [sic] an adoption or foster care situation, that would be determined by who would be staying at home with the child(ren)."

26. Under the impression that his circumstances qualified him as a primary caregiver because he, not his wife, would be caring for his child during this period, Burger submitted a request for primary caregiver leave on July 19, 2017.

27. Burger submitted the form prescribed by Tampa for this purpose, along with a note from his wife's doctor explaining that she would be unable to provide primary care to the couple's child for some time after the birth.

28. On the form, Burger checked the box next to the statement “I certify that I am the PRIMARY CARE GIVER or will be on maternity leave status. This is the person that has primary responsibility for the care of the child.”

29. When Burger dropped the form off at Tampa’s Human Resources office, the receptionist told him that he was not going to get the leave because primary caregiver leave was only given to mothers.

30. The next day, Burger e-mailed Harrison-Hood again, noting that he had submitted a request for primary caregiver leave along with the supporting doctor’s note regarding his wife’s expected incapacitation. He also stated that his wife was receiving medical care far away from Tampa and expected to give birth there, and that therefore he could not provide any care for his newborn while also commuting to work. Burger asked in his email that, if the request was not approved, Harrison-Hood let him know why.

31. Harrison-Hood forwarded Burger’s email to Laura Deriso, the individual in Human Resources who reportedly handled parental leave. Burger never received a response.

32. Shortly after he submitted his leave request, Burger received a phone call from Kimberly Crum, Tampa’s Director of Human Resources. She informed Burger that he would not be getting primary caregiver leave, as the purpose of that leave was for the mother to bond with her baby.

33. Crum told Burger that he would be given only two weeks (80 hours) of leave and encouraged him to “drop” his request and not push it any further, as the policy was not intended to provide additional leave to individuals in Burger’s situation. Burger declined to withdraw his request, and he never received a written response indicating whether his request for “primary care giver/maternity” leave had been granted or denied.

34. Burger’s son was born on November 3, 2017.

35. As anticipated, Burger needed to serve as the primary caregiver for his newborn son because his wife’s movement was significantly limited after the birth.

36. Burger’s immediate supervisors were supportive of his situation, and they allowed him to take a month of his other accrued leave time. But had he been approved for primary caregiver leave, or been assured that he would be approved, Burger would have stayed out longer to care for his son.

37. Instead, when Burger returned to work, the family hired someone to care for Burger’s son, and he did not see his son again until his wife was well enough to travel to Tampa with their baby.

38. Without approved primary caregiver leave or certainty that he would be approved, Burger feared that he could lose his job and felt compelled to return to work.

39. When he returned to work on December 13, 2017, Burger inquired once

again with Human Resources as to whether he would be approved for primary caregiver leave for the time he had been providing primary care for his son.

40. Deriso informed him, by e-mail, that Crum had “approved [him] as Secondary” and that he could also utilize his twelve weeks of unpaid leave under the Family and Medical Leave Act to care for his baby. Burger asked again for the reason why he was not approved for primary caregiver leave; he received no response.

41. Tampa ultimately granted Burger 80 hours of secondary caregiver parental leave, and permitted him to use his accrued leave to supplement that time. Burger used 71 hours of accrued leave in addition to the 80 hours of secondary caregiver leave.

42. Had Burger been granted primary caregiver parental leave, he would not have needed to use any of his accrued leave to care for his newborn son. The lack of approval of primary caregiver leave and lack of certainty about his leave status caused significant stress to Burger and his wife as she recuperated from childbirth and they adjusted to life with a second child. It also deprived Burger of the chance to use the additional leave that he would have been entitled to as the primary caregiver to spend more time with his newborn son in the first weeks of his life.

C. Tampa Denied Primary Caregiver Leave to Other Men

43. Under the policy, between February 2017 and December 2018, Tampa

approved about 150 male employees for “secondary care giver” parental leave of 80 hours.

44. During the same time period, Tampa routinely granted to female employees the more generous 320 hours of “primary care giver” parental leave.

45. Ten male employees (including Burger) formally requested “primary care giver” leave, but Tampa denied their requests and instead granted them “secondary care giver” leave because of their sex.

46. At least fifteen other male employees, who informally sought guidance or clarification from either Human Resources or their supervisors about Tampa’s discriminatory policy, applied for secondary caregiver leave specifically because they were told that they only qualified for secondary parental leave because they were male.

47. As the experiences of these twenty-five men demonstrate, Tampa’s policy was systematically applied in a discriminatory manner, as men were routinely denied primary caregiver leave and also steered towards applying for secondary caregiver benefits, regardless of their individual circumstances.

48. At least twenty other male employees wanted the opportunity to qualify for primary caregiver leave but did not apply for it based on either their coworkers’ statements that the City would only approve it for women or their own reading of

the parental leave policy.

49. Some of these male employees (like Burger) wanted primary caregiver leave because their partners were not able to function as the primary caregiver due to medical complications associated with the pregnancy, or because they were otherwise more physically able to provide care to a child. Others wanted primary caregiver leave to allow their partner to return to work, including because the partner could produce more income. Some had other reasons for choosing to become the primary caregiver for their new child.

50. Tampa's discriminatory policy and conduct prevented its male employees' families from making their own decisions about who should be a newborn's primary caregiver. Rather, Tampa substituted its own judgment, based on stereotypes about caregiving and sex, for that of its employees, and thereby limited families' choices regarding workplace participation and caregiving based on sex.

COUNT I

(Tampa Discriminated against Burger and Similarly-Situated Employees)

51. Tampa discriminated against Burger in violation of Title VII, 42 U.S.C. § 2000e-3(a), by denying him "primary care giver" parental leave because of his sex.

52. Tampa discriminated against Burger and similarly-situated male employees in violation of Title VII, 42 U.S.C. § 2000e-3(a), among other ways, by:

- a. denying male employees' applications for "primary care giver" parental

leave because of their sex;

- b. discouraging male employees from applying for “primary care giver” parental leave by informing them that they were not qualified for that type of leave because of their sex; and
- c. subjecting male employees to a facially discriminatory policy that denied them the opportunity to qualify for the same types of parental leave as their female counterparts due to their sex.

COUNT II

(Tampa Engaged in a Pattern or Practice of Disparate Treatment)

53. The acts, policies, and practices of Tampa described above constitute a pattern or practice of depriving male employees of the full enjoyment of equal employment benefits because of their sex. Under both Sections 706 and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f) and § 2000e-6(a), the United States has authority to bring a civil action requesting relief.

54. Tampa engaged in a pattern or practice of discrimination against male employees in violation of Title VII, 42 U.S.C. § 2000e-3(a), among other ways, by:

- a. denying male employees’ applications for “primary care giver” parental leave because of their sex;
- b. discouraging male employees from applying for “primary care giver” parental leave by informing them that they were not qualified for that type of leave because of their sex; and

- c. subjecting male employees to a facially discriminatory policy that denied them the opportunity to qualify for the same types of parental leave as their female counterparts due to their sex.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court grant the following relief:

- A. Enjoin Tampa from further discriminating against Burger and other similarly-situated male employees who seek parental leave;
- B. Require Tampa to adopt a parental leave policy that complies with Title VII;
- C. Order Tampa to restore up to 240 hours of leave to each of the men who sought parental leave under the policy and were awarded the fewer hours of “secondary care giver” leave because of their sex;
- D. Award any backpay or other appropriate monetary relief to Burger and other similarly-situated male employees in an amount to be determined at trial to make them whole for the loss they suffered as a result of the discriminatory conduct alleged in this Complaint;
- E. Award compensatory damages to Burger and other similarly-situated male employees for mental and physical injuries caused by Tampa’s discriminatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;

- F. Award Burger and other similarly-situated male employees any prejudgment interest on the amount of lost wages and benefits, including lost leave time, determined to be due;
- G. Order Tampa to institute policies, practices, and procedures to ensure a non-discriminatory workplace, including but not limited to implementing appropriate parental leave policies, and providing adequate training to all employees and officials regarding discrimination;
- H. The United States prays for such additional relief as justice may require, together with its costs and disbursements in this action.

JURY DEMAND

Plaintiff United States hereby demands a jury trial of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

Dated: December 21, 2023

Respectfully submitted,

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