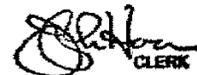


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

**FILED**  
DEC 28 2004

  
CLERK

Civil Action No.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

01104-4215

v.

SIOUXLAND ORAL MAXILLOFACIAL SURGERY ASSOCIATES, L.L.P.

Defendant.

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**COMPLAINT AND JURY TRIAL DEMAND**

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**NATURE OF THE ACTION**

This is an action under Title VII of the Civil Rights Act of 1964 to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Richelle Dooley ("Dooley") and Angie Gacke ("Gacke"), who were adversely affected by such practices. As alleged with greater particularity below, the United States Equal Employment Opportunity Commission ("Plaintiff" of the "Commission") alleges that Siouxland Oral Maxillofacial Surgery Associates ("Defendant") unlawfully terminated Dooley's employment after she advised her superiors that she was pregnant. Furthermore, the Commission alleges that the Defendant unlawfully refused to hire Gacke after she disclosed her pregnancy during the interview process.

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981A.

2. The employment practices were committed within the jurisdiction of the United States District Court for the District of South Dakota

**PARTIES**

3. Plaintiff is an agency of the United States government charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(F)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant was a South Dakota corporation doing business in the State of South Dakota, the City of Sioux Falls, and has continuously had at least fifteen employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

**GENERAL ALLEGATIONS**

6. More than thirty days prior to the institution of this lawsuit, Dooley filed a charge with the Commission alleging violations of Title VII by Defendant.

7. More than thirty days prior to the institution of this lawsuit, Gacke filed a charge with the Commission alleging violations of Title VII by Defendant.

8. All conditions precedent to the institution of this lawsuit have been fulfilled.

***Ms. Dooley:***

9. Defendant interviewed Dooley for a reception/scheduling position on or about October 22, 2001.

10. On or about October 25, 2001, Defendant notified Dooley in writing that the position was filled and her resume would be kept on file for future employment opportunities.

11. On or about December 28, 2001, Defendant contacted Dooley in writing advising her of another reception/scheduling position and offered her immediate hire.

12. Dooley contacted Shelley Hofer ("Hofer"), Defendant's Administrative Coordinator, on or about December 29, 2001.

13. Hofer hired Dooley immediately and agreed to a January 2, 2002, start date.

14. On January 3, 2002, Dooley advised Hofer that she was pregnant.

15. On January 3, 2002, Kathleen Fjellstad, Defendant's Business Manager, told Dooley that her employment was terminated.

16. Fjellstad advised Dooley that Defendant would not have hired her if she had previously disclosed her pregnancy.

***Ms. Gacke***

17. On or about March 11, 2002, Gacke submitted to Defendant an application for a Central Sterilization and Post-Operative Recovery position.

18. On March 12, 2002, Defendant's Surgical Administrator Sherena Kost ("Kost") and Central Sterilization and Post-Operative Recovery employees Sharon McConnell and Jenny DeVries interviewed Gacke for the position.

19. At the end of the interview, Kost provided Gacke with a copy of Defendant's benefit package.

20. Gacke advised Kost that she was four-months pregnant and asked Kost if her pregnancy would be a pre-existing condition for the purpose of receiving benefits.

21. Kost advised Gacke that her pregnancy was a problem because maternity leave would create more work for the other employees.

22. Kost immediately grabbed the benefit package back from Gacke.

23. Later that day, Kost contacted Gacke by telephone and told her she did not get the job.

**FIRST CLAIM FOR RELIEF  
(Title VII - Wrongful Discharge - Dooley)**

24. The effect of the practices complained of in the paragraphs above, has been to deprive Ms. Dooley of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex, female and due to her pregnancy.

25. The unlawful employment practices complained of in the paragraphs above were intentional.

26. The unlawful employment practices complained of in the paragraphs above were done with malice or with reckless indifference to the federally protected rights of Dooley.

**SECOND CLAIM FOR RELIEF**

**(Title VII - Failure to Hire- Gacke)**

27. The effect of the practices complained of in the paragraphs above, has been to deprive Ms. Gacke of equal employment opportunities because of her sex, female and due to her pregnancy.

28. Defendant refused to hire Gacke because of her sex, female, and due to her pregnancy.

29. The unlawful employment practices complained of above were and are intentional.

30. The unlawful employment practices complained of above were and are done with malice or with reckless indifference to the federally protected rights of Gacke.

**PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from refusing to hire and engaging in the discharge of female employees based on their pregnant condition and any other employment practice which discriminates on the basis of sex.

B. Order Defendant Employer, to make whole Dooley and Gacke by providing appropriate backpay with prejudgment interest, in an amount to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Dooley and hiring Gacke.

C. Order Defendant Employer to make whole Dooley and Gacke by providing compensatory damages in amounts to be proved at trial, and other affirmative and equitable relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant Employer to pay punitive damages for their malicious and reckless conduct described above, in an amount to be determined at trial.

E. Grant such further relief as the Court deems necessary and proper in the public interest.

F. Award the Commission its costs of this action.

#### JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated: December 27, 2004

Respectfully Submitted,

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NOTE: It is sufficient for service on the EEOC that pleadings, notices, and any other court documents be served on the Trial Attorneys. Duplicate service is not required on the General Counsel in Washington, D.C.