

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,</b>	)	
	)	<b>ECF Case</b>
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO.</b>
<b>v.</b>	)	<b>07-CV-2587 (SAS)</b>
	)	
<b>NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES,</b>	)	<b><u>COMPLAINT</u></b>
	)	<b>JURY TRIAL DEMAND</b>
<b>Defendant.</b>	)	
	)	

**NATURE OF THE ACTION**

This is an action under the Equal Pay Act of 1963 (“EPA”), as amended, to restrain the unlawful provision of benefits to employees of one sex (male) but not to comparable employees of the opposite sex (female), and to collect back pay, including, but not limited to, fringe benefits or the value thereof, and liquidated damages, due to female employees as a result of such unlawful disparity. As alleged with further particularity in paragraph 8 below, the New York State Department of Correctional Services violated the EPA by transferring pregnant female employees only at Sing Sing Correctional Facility from workers’ compensation leave to a less lucrative maternity leave on or before the birth of their children, without determining whether the underlying work-related injuries leading to the workers’ compensation leave were ongoing. Thus, the New York State Department of Correctional Services provided less valuable benefits to female employees at Sing Sing Correctional Facility than it did to male employees performing substantially equal work.

**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 Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as Section 6(d) of the FLSA, 29 U.S.C. § 206(d).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Southern District of New York.

### **PARTIES**

3. Plaintiff, the Equal Employment Opportunity Commission ("EEOC" or "the Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of the Equal Pay Act and is expressly authorized to bring this action by Sections 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant, the New York State Department of Correctional Services ("Department of Corrections"), has continuously been an Agency of the State of New York.

5. At all relevant times, Defendant Department of Corrections has continuously been a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. § 203(x).

6. At all relevant times, Defendant Department of Corrections has acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and Section 262(a) of the EPA.

7. At all relevant times, Defendant Department of Corrections has continuously been

an enterprise engaged in commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§ 203(r) and (s), in that said enterprise has continuously been a public agency.

### **STATEMENT OF CLAIMS**

8. Since at least December 2000, Defendant Department of Corrections has violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by maintaining a policy and practice of transferring pregnant female employees at Sing Sing Correctional Facility from workers' compensation leave to maternity leave on or before the birth of their children without determining whether the underlying work-related injuries that led to the workers' compensation leave were ongoing. Male employees who go on workers' compensation leave are not subject to this policy and practice because Defendant's policy and practice applies only to women who become pregnant. Defendant's discriminatory policy and practice is based on the "Disability" section of Defendant's Directive entitled "Maternity and Child-Rearing Leave," which requires female employees to immediately use accrued sick leave with pay, then, if approved, sick leave with half pay, then sick leave without pay when they are out on leave due to childbirth; and Defendant's Workers' Compensation Benefits Directive, which provides for six months of paid leave without using vacation or sick time when an employee suffers a work-related injury. Thus, Defendant provides less valuable benefits to female employees than it does to male employees in the same establishment for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Defendant's discriminatory actions include, but are not limited to:

- a. Defendant intentionally switched Lisa Dennison Ayers, a female employee at Sing

Sing Correctional Facility, from workers' compensation leave to maternity leave.

- b. Defendant intentionally switched Elsa Harris, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- c. Defendant intentionally switched Monique Horton, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- d. Defendant intentionally switched Eugenia Kirkland, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- e. Defendant intentionally switched Diane Peters, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- f. Defendant intentionally switched Hollie Rathgeber, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- g. Defendant intentionally switched Wanda Rosado, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- h. Defendant intentionally switched Gina Shibah, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- i. Defendant intentionally switched Tashonna Shivers, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- j. Defendant intentionally switched Natasha Wallace-Behlin, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- k. Defendant intentionally switched Sharon Waring, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- l. Defendant intentionally switched Patricia Young, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- m. Defendant intentionally switched Arlene O'Cana, a female employee at Sing Sing Correctional Facility, from workers' compensation leave to maternity leave.
- n. In a memo dated April 16, 2001, a personnel administrator from Defendant's central location in Albany, New York confirmed that employees on workers' compensation leave who give birth should be taken off workers' compensation and put on maternity leave.

9. As a result of the acts complained of above, Defendant Department of Corrections unlawfully has withheld and is continuing to withhold pay and/or the provision of proper fringe benefits due to, and/or has improperly calculated fringe benefits such that other employment terms have been unlawfully affected for: Lisa Dennison Ayers, Elsa Harris, Monique Horton, Eugenia Kirkland, Diane Peters, Hollie Rathgeber, Wanda Rosado, Gina Shibah, Tashonna Shivers, Natasha Wallace-Behlin, Sharon Waring, Patricia Young, Arlene O’Cana, and a class of other female employees of Sing Sing Correctional facility who were switched from workers’ compensation leave to maternity leave.

10. The unlawful practices complained of above in paragraphs 8(a)-8(n) are and were willful.

#### **PRAYER FOR RELIEF**

Wherefore, the Commission requests that this Court:

A. Grant a permanent injunction enjoining Defendant Department of Corrections, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating between employees on the basis of sex, by providing different benefits to employees of one sex than it does to employees of the opposite sex for substantially equal work on jobs the performance of which require equal skill, effort, and responsibility, and which are performed under similar working conditions.

B. Order Defendant Department of Corrections to institute and carry out policies, practices, and programs, which provide equal employment opportunities for women and which eradicate the effects of its past and present unlawful employment practices.

C. Grant a judgment requiring Defendant Department of Corrections to provide appropriate back pay and/or back fringe benefits (including but not limited to restoration of leave for current employees) in amounts to be determined at trial; an equal sum as liquidated damages; prejudgment interest; and appropriate relief regarding any other terms, conditions or privileges of employment adversely affected by Defendant's discriminatory practices, to employees whose pay, benefits and/or terms, conditions and/or privileges of employment have been unlawfully withheld or affected as a result of the acts complained of above, including but not limited to: Lisa Dennison Ayers, Elsa Harris, Monique Horton, Eugenia Kirkland, Diane Peters, Hollie Rathgeber, Wanda Rosado, Gina Shibah, Tashonna Shivers, Natasha Wallace-Behlin, Sharon Waring, Patricia Young, Arlene O'Can, and a class of other female employees of Sing Sing Correctional facility who were switched from workers' compensation leave to maternity leave.

D. Grant a judgment requiring Defendant Department of Corrections to reinstate female employees who were switched from workers' compensation leave to maternity leave such that the calculation of leave taken resulted in or hastened the termination of their employment.

E. Grant such further relief as this 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.

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

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