

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

FILED
ROSA ISLAND, IL
2003 JUN 17 A 11:44

**DAVID A. JOHNSON, on his own behalf
and on behalf of all others similarly
situated,**

PLAINTIFF,

VS.

**UNIVERSITY OF IOWA, STATE BOARD
OF REGENTS, DAVID J. SKORTON, M.D.,
in his official capacity, DOUGLAS K. TRUE,
in his official capacity, and SUSAN C.
BUCKLEY, in her official capacity,**

DEFENDANTS.

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CIVIL ACTION No. 03CV10062

COMPLAINT

COMES NOW Plaintiff DAVID A. JOHNSON, (sometimes, hereinafter, "Mr. Johnson") by and through his attorney, James C. Larew, and for his causes of action against the above-named Defendants, states to the Court as follows:

I.
NATURE OF THE ACTION

1) This is a civil action in which Plaintiff, David A, Johnson, on his own behalf and on behalf of all others similarly situated, alleges that Defendant University of Iowa and Defendant State Board of Regents, the governing agency over the University of Iowa, in their respective capacities as his employers, violated Mr. Johnson's right to be free from discrimination based upon sex or gender, in the manner set forth below, in violation of the Civil Rights Act of 1964 and its subsequent amendments, including the Civil Rights Act of 1991,

codified in part at 42 U.S.C. Section 2000e *et seq.* (hereinafter "Title VII"). Mr. Johnson additionally asserts that Defendants David J. Skorton, M.D., Douglas K. True and Susan C. Buckley, in their respective official capacities, violated Mr. Johnson's right to be free from discrimination based upon sex or gender, in the manner set forth below, in violation of 42 U.S.C. Section 1983, guaranteeing equal protection under the law pursuant to the Fourteenth Amendment to the Constitution of the United States of America.

2) On December 9, 2002, Mr. Johnson filed a claim of unlawful sex-based discrimination with the Iowa Civil Rights Commission, which agency cross-filed said claim with the Federal Equal Employment Opportunity Commission. On April 14, 2003, the Equal Employment Opportunity Commission issued to Mr. Johnson a Notice of Right to Sue, granting him ninety (90) days in which to file suit in Federal court. A copy of the Plaintiff's "Notice of Right to Sue Within 90 Days" issued by the Equal Employment Opportunity Commission is attached hereto and is incorporated herein as Exhibit "A".

II. **THE PARTIES**

3) Mr. Johnson brings this action on behalf of himself and as a class action, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, and Local Rule 23.1, on behalf of all male persons who have been, who are, or who may in the future become biological fathers and who have been, who are, or who may in the future become subject to, as employees of the University of

Iowa, the institution's Parental Leave Policy, pursuant to Operations Manual Section 22.8.

4) There are common questions of law and fact affecting the rights of the members of this class who are, and continue to be, limited, classified and discriminated against in ways which violate Title VII and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America pursuant to 42 U.S.C. Section 1983.

5) These common questions predominate over any questions affecting only individual members of this class.

6) The interests of said class are adequately represented by Mr. Johnson and Mr. Johnson's claims are typical of those of the class as whole. Defendants may, in their answer and defense, act upon grounds generally applicable to the class.

7) Under the circumstances giving rise to this action, the common interest of the individual members of the class is completely outweighed by the desirability of concentrating the controversy in a single forum, and a class action is superior to any other available method for the fair and efficient adjudication of this controversy.

8) The action raises common issues of law and fact affecting the right of men who have been, who are, or who may become biological fathers to be free from gender-based discrimination in the provision of benefits and privileges of employment at the University of Iowa.

9) The interests of Mr. Johnson in this action do not conflict with the interests of any other member of the class. Furthermore, Mr. Johnson has retained counsel to represent the interests of the class in this action and has funds available to meet the litigation expenses that will be incurred as a result of this action. Mr. Johnson, as representative of the class, will therefore adequately and fairly protect the interests of the class.

10) At all times relevant hereto Mr. Johnson, as representative of the class, was a citizen of the United States of America and a resident of the State of Iowa.

11) Defendant University of Iowa, was, at all times relevant hereto, a public educational institution of the State of Iowa.

12) Defendant State Board of Regents was at all times relevant hereto, a state agency of the State of Iowa with responsibility for the governance of Defendant University of Iowa.

13) Defendants David J. Skorton, M.D., President of the University of Iowa, Douglas K. True, Vice President for Finance & Operations and Treasurer of the University of Iowa, and Susan C. Buckley, Associate Vice President, Department of Human Resources of the University of Iowa, each had responsibilities, at all relevant times hereto, as administrative officers of Defendant University of Iowa, to assure that the rules, procedures and policies governing employee benefits at Defendant University of Iowa were consistent and rational, were applied to all employees in a fair and rational manner, and

were in conformity with the laws of the State of Iowa and the laws of the United States of America.

III.
VENUE

14) Plaintiff David A. Johnson, resides in Iowa City, Johnson County, Iowa.

15) All Defendants have offices in and transact business in Iowa City, Johnson County, Iowa.

16) Venue in Davenport, Iowa, within this District, is appropriate pursuant to Title 28 U.S.C. Section 1391 and Local Rule 3.1.

IV.
JURISDICTION

17) This Court has jurisdiction of this complaint pursuant to 28 U.S.C. Section 1331, vesting jurisdiction in Federal District Courts over actions brought to recover damages under any act of Congress providing for the protection of civil rights, and 28 U.S.C. 1441, vesting jurisdiction of Federal District Courts over actions brought under the Constitution and laws of the United States of America.

V.
THE FACTS

18) Mr. Johnson is a male, legally married, non-union, merit staff employee of the University of Iowa. He is a veteran of the United States Army, having honorably served in the Desert Storm conflict in his capacity as a Mission Specialist with a Hawk Missile Crew.

19) Mr. Johnson became employed with Defendant University of Iowa, on June 1, 2000. At all times material hereto he has served in its Office of Registrar, in the capacity as a Clerk IV. His terms of employment include his ability to accrue paid sick leave.

20) Defendant University of Iowa publishes in its Operations Manual certain policies and rules that define its obligations as an employer and the rights and duties of its employees. As a part of its Operations Manual, at Chapter 22, Defendant University of Iowa articulates its policies regarding the absences of all staff members whose employment contract terms are not subject to collective bargaining agreements. As a part of that overall policy, at Section 22.8, the institution has established what it describes as its "Parental Leave Policy" that includes, in relevant part, the following terms and conditions:

22.8 PARENTAL LEAVE POLICY

a. Purpose. *To permit parents who have care giving responsibilities to have time off to spend with a child newly added to the family and, to the extent permitted by state law, to be paid during such leave. To adapt an employee's work schedule and/or duties to help reduce conflict with parental obligations.*

b. *Entitlement to Leave.*

(1) Twelve-Month Faculty, Professional, Scientific, and Non-Organized Merit System Staff.

(a) *Biological mothers* are entitled to leave for any period of pregnancy-related temporary disability, *to be charged against sick leave.* Based on current medical practice, a leave of six weeks or less would not require the employee to provide disability documentation. If an employee's accumulated sick leave is insufficient to

cover the period of disability, the employee will, at the employee's request, be granted a leave of absence without pay. Any request for absence beyond the period of disability is considered as a leave of absence without pay or as vacation.

(b) A newly adoptive parent, including a domestic partner, is entitled to one week (5 days) of paid adoption leave to be charged against accrued sick leave. Departments are encouraged to arrange for additional leave as necessary. Departments should work with prospective adoptive parents seeking to adopt through an adoption agency with specific requirements for parental leave, to the extent the adoption leave is not sufficient to undertake an adoption. Time not charged to accrued sick leave may be charged to accrued vacation or taken as leave without pay.

(emphasis added).

21) By October, 2002, Mr. Johnson had accrued more than forty hours of paid sick leave. In that month, Mr. Johnson's spouse gave birth and the two of them became the parents of their first child.

22) In conjunction with the anticipated birth of his biological son, pursuant to the Parental Leave Policy, as set for in Defendant University of Iowa's Operations Manual, Mr. Johnson was denied the right to apply for paid parental leave, that is, as a parent-employee, to apply five days (equivalent to forty hours) of his accrued sick leave towards a parental leave of absence to assist his spouse in caring for their new child.

23) Defendant University of Iowa denied Mr. Johnson's eligibility for parental leave benefits under the Parental Leave Policy due to his status as his child's biological father. A benefits administrator with said Defendant, in an e-mail dated October 22, 2002, formally responded to Mr. Johnson's inquiries

and admitted that the employer *deliberately* denies biological fathers the benefit of any paid parental leave to care for a newborn child, paid or unpaid:

As you've noted, under the University policy adoptive parents or domestic partners (fathers and mothers) are entitled up [to] 5 days of paid adoption leave to be charged against sick leave. Biological mothers can use sick leave for up to six weeks (without disability documentation; perhaps more if there is documentation is [sic] provided and sick leave is available). **Biological fathers, however, are not entitled to use sick leave to care for a new child** (other than the emergency sick leave that can be used to transport mother, and mother and child, to and from the hospital). Subject to departmental scheduling and availability, biological fathers can of course use vacation leave during this period.

(emphasis added)

24) Thus, as his child's biological father, Mr. Johnson—as well as all other biological fathers who are employed by Defendant University of Iowa and whose employment terms are subject to Section 22.8 of the Operations Manual—was denied the right to apply his accrued paid sick leave to a five-day parental leave under the Parental Leave Policy although all other employee who are subject to the Policy, such as biological mothers, adoptive parents and domestic partners, are allowed such a right.

25) Mr. Johnson, believing that such a Policy, as interpreted, conflicted with the stated intentions of the Defendant University of Iowa's Parental Leave Policy as well as his contract of employment and Federal and State law, initiated further contacts with the administrators of the University of Iowa, only to find that they confirmed that the benefit administrator's interpretation and conclusions regarding the status of biological fathers under the policy correctly set forth the Defendant University of Iowa's official position.

26) Thus, Defendant University of Iowa, via its agents, expressly and intentionally denied to Mr. Johnson the opportunity to apply his accrued sick leave towards paid parental leave to care for his newborn child on account of his status as the biological father of his child.

27) Under Defendant University of Iowa's Parental Leave Policy, all female parent-employees of the University of Iowa, without regard to their reproductive status--that is, whether biological or adoptive, whether married or unmarried or domestic partners--as well as all adoptive father-employees, are allowed by their employer to apply accrued sick leave towards paid parental leave to care for a new child.

28) By contrast, only those males who are adoptive parents are allowed by their employer to apply their accrued sick leave towards paid parental leave to care for a new child. All biological fathers are expressly precluded from applying their accrued sick leave towards paid parental leave to care for a new child.

29) Acknowledging that adoptive fathers are also men does not alter the fact that only men are excluded from receiving benefits under Defendant University of Iowa's Parental Leave Policy, nor does it mitigate the discriminatory intent evidenced by the inescapable conclusion resulting from the policy: that Mr. Johnson, but for his sex, would be entitled to use of his accrued sick leave to care for his child.

30) The policy, by its own definite terms, is not a *maternity* leave policy dependent upon the medical disability of a biological mother resulting from

childbirth, but, by its very name, a *Parental* Leave Policy that grants *parents* who have care giving responsibilities time off to spend with a child newly added to the family, and provides for this leave to be paid. The policy, as self-defined, establishes a means by which *parents* may balance their new family and work related responsibilities.

31) Furthermore, the Family Leave Policy does not require a showing of medical disability in order to qualify for accrued sick leave benefits to care for a new child. As a result, the benefits of the policy extend to those, except for biological fathers, who do not give birth.

32) Even as it describes parental leave as a gender-neutral activity, the Parental Leave Policy, in operation, undermines, rather than effectuates, its purported and articulated purpose. For example, the terms--and telling omissions--of the Policy, specifically, the ostensible exclusion of a biological father from the definition of a "parent" under the policy, imply that biological fathers are superfluous to the care-giving responsibilities attendant to a new child. Such an exclusion tends to further the stereotypes about the roles of men and women in family life, namely that men do not take substantial part in domestic work, including childcare. These stereotypes have the effect of denying men the responsibilities and joys of parenthood and the opportunity to participate in their children's lives, while such stereotyping also prevents women from fully realizing their potential in the workplace by disadvantaging the biological fathers of their children who desire to take on the work and time involved in childrearing, especially in the first days of a child's life. The

cumulative effects of policies such as the Parental Leave Policy adopted by Defendant University of Iowa result in the perpetuation of women's role as the primary caretakers of children and sustain the injustice of women's double burden.

33) Furthermore, this Policy is not tailored to assure that paid leave is available to all families. The absurd--and retrograde--consequences of the policy are clearly evidenced by its complete implosion as applied to possible non-traditional families. For example, if a male employee, as a part of a committed domestic partnership, became a biological parent through surrogacy, he would be *prohibited* from applying his accrued sick leave towards a paid parental leave benefit upon the birth of his biological child. But, his domestic partner, if an adoptive parent, and if a University of Iowa employee subject to the Parental Leave Policy, would be *allowed* such use of his accrued sick leave to obtain a paid parental leave. Alternatively, if his partner were not a University of Iowa employee subject to the Parental Leave Policy, this non-traditional family, which, ostensibly, is to benefit from the Policy, would be left with no access to accrued sick leave at all to care for the new child, in stark contrast to the benefits afforded new female parents in domestic partnership with a new child born to one of them biologically.

34) The only plausible explanation for this policy is an insidiously predatory one: that, for budgetary reasons, Defendant University of Iowa is attempting to deny male employees who are biological fathers from utilizing

sick leave benefits that they have already earned. Such an explanation, if true, is as unfair as it is unlawful.

35) Defendant University of Iowa has targeted one sex-based group—biological fathers—for systemic disparate treatment by excluding them from benefits to which they would otherwise be entitled but for unlawful discrimination and which are conferred upon all similarly situated employees.

36) Consequently, Defendant University of Iowa has arbitrarily, capriciously and facially excluded biological fathers from a benefit--the use of accrued sick leave towards a five day paid leave to care for a new child--provided to all other employee parents of new children.

37) As a proximate cause of Defendant University of Iowa's discriminatory policy, Mr. Johnson suffered a substantial loss in employment benefits in the form of lost paid leave following the birth of his child in October 2002 for which he would have otherwise qualified if not for the unlawful discrimination of the Defendants University of Iowa, State Board of Regents, David J. Skorton, M.D., Douglas K. True and Susan C. Buckley, and has suffered and will continue to suffer mental and emotional pain as a result of the University of Iowa's unlawful discrimination against him and all others similarly situated.

38) As a proximate cause of the discriminatory Parental Leave Policy, all male employees of Defendant University of Iowa who are or who may become biological fathers will be denied the benefits of their employment under the

Parental Leave Policy, to which, but for their sex, they would otherwise be entitled.

39) Defendant University of Iowa, unless enjoined by this court from denying to biological fathers who are subject to the Parental Leave Policy the use of accrued sick leave for paid parental leave for the care and support of new children, is likely to continue to cause Mr. Johnson, should he choose to have another child, and his family, and all other employees of Defendant University of Iowa who are subject to Operations Manual Section 22.8, and who are or may become biological fathers, and their respective family units, serious and irreparable injury and harm for which they have no plain, adequate, or complete remedy other than a suit for injunctive relief. The denial of this remedy would preclude substantial relief, and would cause Plaintiff further irreparable injury and occasion damage, vexation and inconvenience.

40) Plaintiff has attempted by all other means short of filing this lawsuit and claim for injunctive relief, to cause and allow Defendant University of Iowa and State Board of Regents, to rectify the objected-to employment policy, but without success. Only judicial intervention can assure that Mr. Johnson and others in his position—and their families—will enjoy the accrued benefits that they have earned, in a manner that will help to strengthen families and make the University of Iowa a better place to work.

VII.
CAUSES OF ACTION

Count I:
Sex Discrimination in Violation of Title VII--Systemic Disparate Treatment

41) 42 U.S.C. Section 2000e-2(a), states, in relevant part, as follows:

(a) Employer Practices. It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . . ; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or other wise adversely affect his status as an employee, because of such individual's . . . sex

42) Plaintiff David A. Johnson restates paragraphs 1 through 40 as if fully set forth herein.

43) Mr. Johnson is a man and was an employee of Defendant University of Iowa at the time of the birth of his child, and, therefore, is a member of a protected category of person under the statute.

44) Mr. Johnson was subject to discrimination on the basis of his sex as a result of the facial and intentional exclusion of biological fathers from benefits provided to all other employees who are parents of new children.

45) The discrimination affected and/or altered a term, condition, or privilege of his employment by denying Mr. Johnson benefits to which he was otherwise entitled.

46) Defendants University of Iowa and State Board of Regents, through their agents, intended to exclude male employees who are parents from benefits provided to all parents of children newly added to a family and therefore knew or should have known of the discrimination and failed to take the proper remedial action.

WHEREFORE, Plaintiff David A. Johnson, individually, and on behalf of all others similarly situated as defined above, prays for declaratory, injunctive and compensatory relief against Defendants University of Iowa and State Board of Regents and demands the following:

A) that the Court declare the policy articulated in the University of Iowa Operations Manual, Section 22.8, unlawful under 42 U.S.C. 2000e *et seq.* and all subsequent amendments, prohibiting discrimination in employment on the basis of sex;

B) that the Court enjoin the Defendant University of Iowa and the State Board of Regents, and their agents, from continuing to discriminate on the basis of sex or in any other unlawful manner in their allowance of the use of accrued sick leave by an employee for the purpose of taking paid parental leave to care for a new child. To effectuate this injunction, Mr. Johnson prays that the Court order said Defendants to rectify its Parental Leave Policy to conform

with the law and provide a non-discriminatory Parental Leave Policy for employees of the University of Iowa.

C) that the Court award compensatory damages adequate to redress the lost wages and emotional injury suffered by Mr. Johnson and all others members of the class to the extent allowed by law, together with pre-judgment interest, attorney's fees and costs related to this action, as available under law, and any other additional or alternative relief that the court deems equitable and just under the circumstances.

**Count II:
Sex Discrimination in Violation of Equal Protection Pursuant to 42 U.S.C
1983**

47) The Constitution of The United States of America prohibits the denial of "equal protection of the laws" to any person. Section 1 of the Fourteenth Amendment provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

48) 42 U.S.C. Section 1983 provides an enforcement mechanism for the rights secured under the Constitution and laws of the United States and states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

49) Plaintiff David A. Johnson restates paragraphs 1 through 40 as if fully set forth herein.

50) Mr. Johnson is a citizen of the United States and, therefore, is a member of a protected category of person under the statute.

51) Mr. Johnson is a man and was an employee of Defendant University of Iowa, at the time of the birth of his child, who has accrued sick leave the equivalent of five days wages.

52) Mr. Johnson may become the biological parent of other children in the future.

53) Mr. Johnson, as a parent, is similarly situated with persons who are employees of the Defendants University of Iowa and State Board of Regents, namely all other parents of new children subject to Operation Manual Section 22.8.

54) Mr. Johnson was denied benefits which others similarly situated received.

55) Mr. Johnson has been treated differently because of his classification as a biological father under a Parental Leave Policy that denies biological fathers paid parental leave and classifies all non-recipients of paid parental leave as male, thereby facially discriminating on the basis of sex.

56) Officials of the University of Iowa knew or should have known that this discrimination violated equal protection guarantees under the law.

57) This classification scheme does not serve an important governmental objective and therefore violates Mr. Johnson's right to equal protection under the law pursuant the Constitution of the United States.

58) To the extent that an important governmental objective may be found for the classification scheme, the discriminatory means employed by Defendants University of Iowa and State Board of Regents is not substantially related to the achievement of that objective and therefore violate Mr. Johnson's right to equal protection under the law pursuant to the Fourteenth Amendment of the Constitution of the United States of America.

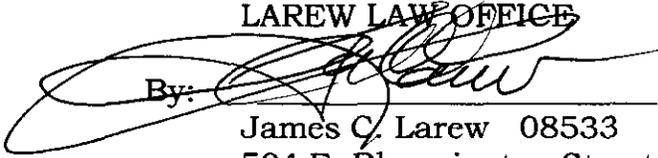
59) To the extent the policy does not discriminate on the basis of sex, the classification scheme is, in any event, not rationally related to a legitimate governmental purpose, is arbitrary and capricious, and therefore violates Mr. Johnson's right to equal protection under the law pursuant to the Constitution of the United States of America.

60) Defendants David J. Skorton, M.D., Douglas K. True and Susan C. Buckley, acting under color of state law in their capacities as officials of the University of Iowa, violated Mr. Johnson's equal protection under the law by denying him, as a new parent, the use of employment benefits in the form of accrued paid sick leave, a benefit he had already earned, for the purpose of receiving a paid period of parental leave, while providing other similarly situated employees--parents of new children--the use of their accrued sick leave for the purpose of receiving a paid period of parental leave, thereby

Dated this 17th day of June, 2003.

Respectfully submitted

LAREW LAW OFFICE

By: 

James C. Larew 08533
504 E. Bloomington Street
Iowa City, Iowa 52245
Phone: 319/337-7079
Fax: 319/337-7082
Larewlaw@aol.com

ATTORNEY FOR PLAINTIFF

Attached: Exhibit "A" (Equal Employment Opportunity Commission Right to Sue Letter)
Original: Filed



U.S. Department of Justice

Civil Rights Division

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

CERTIFIED MAIL
3509 0941

950 Pennsylvania Avenue, N.W.
Karen Ferguson, EMP, PHB, Room 4239
Washington, DC 20530

April 14, 2003

Mr. David A. Johnson
c/o James C. Larew, Esquire
Larew Law Office
Attorneys at Law
504 E. Bloomington St.
Iowa City, IA 52245

Re: EEOC Charge Against University of Iowa, et al.
No. 26AA300452

Dear Mr. Johnson:

Because you filed the above charge with the Equal Employment Opportunity Commission, and the Commission has determined that it will not be able to investigate and conciliate that charge within 180 days of the date the Commission assumed jurisdiction over the charge and the Department has determined that it will not file any lawsuit(s) based thereon within that time, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
~~Civil Rights Division~~

by

A handwritten signature in cursive script that reads "Karen L. Ferguson".

Karen L. Ferguson
Civil Rights Analyst
Employment Litigation Section

cc: Milwaukee District Office, EEOC
University of Iowa, et al.

PLAINTIFF'S
EXHIBIT

A