

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff)
and)
)
MARLA SEXSON,)
)
Plaintiff/Intervenor)
vs.)
)
)
NEWMAN UNIVERSITY,)
)
Defendant.)

Case No.:05-2404-KHV

FIRST AMENDED COMPLAINT IN INTERVENTION

Marla Sexson (“Sexson”), by her undersigned counsel, and for her First Amended Complaint against the Defendant alleges as follows:

Jurisdiction and Venue

1. This matter alleges gender discrimination and retaliation in employment and is brought pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e, et seq. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §2000e-5(f)(3). The Court has jurisdiction of Plaintiff’s state law claims pursuant to 42 U.S.C. § 1367. The Plaintiff has satisfied all conditions precedent to the filing of this lawsuit.

2. Venue is proper in this Court since all actions giving rise to the lawsuit occurred in this district and the Plaintiff and Defendant reside in the district.

Parties

3. The Equal Employment Opportunity Commission (“EEOC”) is the federal agency authorized by federal law to enforce Title VII.

4. Defendant Newman University (“Newman”) is an educational institution which has continuously been doing business in the State of Kansas and the City of Wichita, Kansas, and has continuously had at least 15 employees during all times relevant to this litigation. The President of Newman is Aidan O. Dunleavy (“Dunleavy”) who has been the President of Newman at all times relevant to this litigation.

5. Sexson is a female and was an administration employee at Newman for approximately 12 years and held various administrative positions. In 2004 she was the Dean of Admissions with management responsibility for financial aid as well.

Background Facts

6. In the late spring or early summer of 2004, Kim Miller Jacobs (“Miller”) resigned from Newman as the Vice President for Enrollment (“VPEM”). Sexson had reported to Miller. Miller resigned her position because she was upset that Newman had denied a promotion to Tara Morrow to the position of Dean of Students on the basis of her gender in the spring of 2004. After Morrow was denied a second position at Newman and the school terminated her employment, she filed a charge of discrimination with the EEOC. See Exhibit A attached hereto and incorporated herein which is a true and accurate copy of the Charge of Discrimination that Morrow filed on or about September 23, 2004. Lee Cooper, the Provost for Newman had told Miller that Dunleavy intended to fill the Dean of Students position with a male Catholic in his mid-40's.

7. Under Newman’s natural progression policy, Sexson was entitled to be given first

consideration for promotion to the position of Vice President for Enrollment Management.

Instead, Sexson was informed by Newman administrative personnel that President Dunleavy intended to hire a male for the position of VPEM. Nonetheless, Sexson applied for the position and discussed her interest with Dunleavy. Sexson was qualified for the position of VPEM.

8. Newman refused to promote Sexson to the position of VPEM and hired a male as the purported interim VPEM. Sexson complained to Dunleavy about his decision to hire a male for the VPEM position and complained to him that she was denied the position because of her gender.

9. Sexson filed a charge of discrimination against Newman based upon its unlawful refusal to promote her based upon her gender. See Exhibit B attached hereto and incorporated herein which is a true and accurate copy of the Charge of Discrimination that Sexson filed with the EEOC on or about September 22, 2004.

10. Within a few weeks of filing her Charge of Discrimination, Dunleavy informed Sexson that he determined that her job duties would be substantially modified, effectively stripping her of her position of Dean of Admissions. Shortly thereafter, Sexson separated from employment with Newman.

11. Sexson then filed an amended Charge of Discrimination against Newman alleging that she was the victim of retaliation for having complained about unlawful discrimination. See Exhibit C attached hereto and incorporated herein which is a true and accurate copy of the amended charge that Sexson filed on or about November 1, 2004.

12. After a several month long investigation into Sexson's charges of discrimination and retaliation, the EEOC issued a Determination in which it found that there was cause to believe

that Newman had discriminated against Sexson based upon her gender and also had retaliated against her when she complained about unlawful discrimination. See Exhibit D attached hereto and incorporated herein which is a true and accurate copy of the Determination concerning Sexson's charges of discrimination and retaliation. In addition, the EEOC issued a Determination concerning Morrow's charge of discrimination and found that there was cause to believe that she had been the victim of gender discrimination. See Exhibit E attached hereto and incorporated herein which is a true and accurate copy of the Determination concerning Morrow.

13. After conciliation efforts between Newman and Sexson failed, the EEOC issued a notice of failure, Exhibit F attached hereto and incorporated herein, and also issued a Notice of Right to Sue Letter to Sexson, dated August 18, 2005, exhibit G attached hereto and incorporated herein.

14. Acting through President, Dunleavy, Newman has a pattern and practice of discriminating against women in hiring and promotion decisions for senior administration and other positions at Newman. Dunleavy has reorganized several administrative departments with the purpose and effect that women were moved out of their positions and replaced by men.

15. Upon becoming President of Newman, Dunleavy eliminated the position of Director Human Resources for the purpose of being able to take control of all hiring decisions. Dunleavy either makes or is actively involved in virtually all hiring decisions at Newman.

16. During 2003 and 2004, Dunleavy made disparaging comments about pregnant women, including Sexson, and also made disparaging comments about women he did not believe were attractive enough to represent Newman. Dunleavy criticized Sexson for wanting to send a newly married Newman employee to Kansas City to work as recruiter because she could get

pregnant. Dunleavy referred to another female employee at Newman as a good argument for Planned Parenthood after the woman became pregnant with her second child. Both Morrow and Sexson were on maternity leave in the spring of 2004.

17. Dunleavy told Provost Cooper that he wanted to hire a male Catholic in his mid-40's for the position of Dean of Students. He also told Father Orr that he was glad that Miller resigned because he could fill the VPEM position with a man.

18. Newman has had a disproportionate number of women leave the school since Dunleavy became president and it has hired a disproportionate number of men into senior administration positions.

First Claim for Relief: Discrimination

19. Sexson incorporates paragraphs 1 through 18 above as if set forth fully here.

20. Newman discriminated against Sexson in violation of Title VII, causing her economic damages and emotional distress, embarrassment and humiliation. Newman's actions were intentional, malicious and in reckless disregard of Sexson's federal rights.

Wherefore, Sexson prays that the court award her damages, including punitive damages, costs and attorneys fees and such other legal and equitable relief as the court determines just.

Second Claim for Relief: Retaliation

21. Sexson incorporates paragraphs 1 through 20 above as if set forth fully here.

22. Newman retaliated against Sexson for engaging in protected activity in violation of Title VII, causing her economic damages and emotional distress, embarrassment and humiliation. Newman's actions were intentional, malicious and in reckless disregard of Sexson's federal rights.

Wherefore, Sexson prays that the court award her damages, including punitive damages, costs and attorneys fees and such other legal and equitable relief as the court determines just.

Third Claim for Relief: Constructive Discharge

23. Sexson incorporates paragraphs 1 through 22 above as if set forth fully here.

24. Newman's actions in discriminating and retaliating against Sexson resulted in her constructive discharge from Newman in violation of Title VII, causing her economic damages and emotional distress, embarrassment and humiliation. Newman's actions were intentional, malicious and in reckless disregard of Sexson's federal rights.

Wherefore, Sexson prays that the court award her damages, including punitive damages, costs and attorneys fees and such other legal and equitable relief as the court determines just.

Fourth Claim for Relief: Hostile Work Environment

25. Sexson incorporates paragraphs 1 through 24 above as if set forth fully here.

26. Sexson was subjected to a hostile work environment in which women were degraded, humiliated and embarrassed based upon their gender. The pattern and practice of gender based discrimination at Newman created an intimidating, hostile and offensive working environment that affected the terms and conditions of Sexson's employment.

27. Newman took official action in restructuring Sexson's job, which was the equivalent of a demotion, all based upon her gender. As a result of Newman's wrongful acts, Sexson was constructively discharged. As a result of Newman's actions, Sexson suffered emotional distress, embarrassment and humiliation, as well as economic damage.

Wherefore, Sexson prays that the court award her damages, including punitive damages, costs and attorneys fees and such other legal and equitable relief as the court determines just.

Fifth and Sixth Claims for Relief: Outrage and Invasion of Privacy

28. Sexson incorporates paragraphs 1 through 27 above as if set forth fully here.

29. After Sexson left Newman, the school kept Sexson's email account open for the purpose of obtaining personal and confidential information sent to her email address by persons who did not know she had left or who mistakenly sent her email at her Newman email address.

30. Dunleavy instructed the school to forward Sexson's email to him. Dunleavy read several personal emails sent to Sexson at her Newman email address. Newman has refused to turn over to Sexson all personal emails that were sent to her old Newman email address.

31. On information and belief, Sexson alleges that Newman also kept open the email accounts of Morrow and Brad Sexson, a former Newman employee and Sexson's husband, all for the purpose of obtaining confidential and personal information.

32. Newman's actions have caused Sexson extreme emotional distress and are outrageous, being beyond the bounds of civil society. Newman has violated Sexson's privacy rights by keeping her account open and by allowing Dunleavy to read personal and confidential emails sent to Sexson. Newman's practice of keeping Sexson's email account open for nearly a year after her departure lacks any legitimate business justification.

33. Newman's actions have caused Sexson extreme emotional distress, embarrassment and humiliation.

Wherefore, Sexson prays that the court award her damages, including punitive damages, costs and attorneys fees and such other legal and equitable relief as the court determines just.

Demand for Jury Trial

Sexson requests a jury trial on all matters triable to a jury.

Designation of Place of Trial

Sexson designates Kansas City, Kansas, as the place of trial.

s/ Michael M. Shultz

Michael M. Shultz Ks. Bar No. 18093
Law Firm of Michael M. Shultz
7270 West 98th Terrace, Suite 220
913-385-9955 phone
913-385-9977 facsimile
Shultz@shultzlawfirm.com

Certificate of Service

The undersigned certifies that he served the foregoing on all counsel of record on October 26, 2005, by filing same with the court's electronic case filing/case management system which will give notice to:

Robert Johnson
robert.johnson@eepc.gov

Donna Harper
donna.harper@eepc.gov

Andrea Barren
andrea.baran@eepc.gov

Stanley Davis
sddavis@shb.com

Kristen Aggeler Page
kpage@shb.com

s/ Michael M. Shultz

A

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

This form is effective 10/26/00. See Privacy Act Statement before completing this form.

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EEOC

State or local Agency, if any

and EEOC

NAME (Indicate Mr., Ms., Mrs.)
Tara Morrow

HOME TELEPHONE (Include Area Code)
316-721-4404

STREET ADDRESS CITY, STATE AND ZIP CODE
10621 Taft Court Wichita KS 67209

DATE OF BIRTH
9/23/72

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME
Newman University

NUMBER OF EMPLOYEES, MEMBERS
200 +

TELEPHONE (Include Area Code)
(316) 942-4291

STREET ADDRESS CITY, STATE AND ZIP CODE
3100 McCormick Avenue Wichita KS 67213

COUNTY
Sedgwick

NAME
Attn: Mark Dresselhaus, VP of Finance

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))
 RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE EARLY
May 2004
 CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):
I was employed at Newman University from July 7, 1997, through June 4, 2004. In May of 2004, I was told that my job as Director of Transition Programs would be eliminated and the duties folded into several other positions, including the Dean of Students and a new position of Assistant Director of Campus Activities. Although I wanted to apply for the Dean position and would have had the necessary qualifications, I was told by a university official that the President of the university (Aidan O. Dunleavy) wanted to hire a male for the position. In July 2004, President Dunleavy hired a male for the Dean of Students position. Written notes from the provost state that the President said that he wanted to hire a male Catholic 40-45. I was discriminated against based upon my gender. There is direct evidence that the president intended to discriminate against women and to hire a man. In addition, I wanted to apply for the new position for Campus Activities for which I was qualified, but it had a requirement that the person hired must live on campus. I was told that this was done to keep me from applying. A male was hired for the position and he is not required to actually live on campus though he does keep an apartment on campus. This is one of several instances where the president has discriminated against women in senior positions at the university. He also has made disparaging remarks about pregnant women in the presence of several witnesses.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge with their procedures.

NOTARY - (When necessary for State and Local Requirements)
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Tara Morrow
Date 9/23/04 Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

B

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

This form is affected by the Privacy Act of 1974. See Privacy Act Statement on back of form.
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FEPA
 EEOC

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and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)

Marla Sexson

HOME TELEPHONE (Include Area Code)

620-488-3199

STREET ADDRESS CITY, STATE AND ZIP CODE

654 N. Rock Road Belle Plaine, KS 67013

DATE OF BIRTH

3/21/67

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

Newman University

NUMBER OF EMPLOYEES, MEMBERS

200+

TELEPHONE (Include Area Code)

316-942-4291

STREET ADDRESS CITY, STATE AND ZIP CODE

3100 McCormick Ave. Wichita KS 67213

COUNTY

Sedgwick

NAME

Attn: Mark Dresselhaus

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE (Earliest)

September 2004

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I am the Dean of Admissions at Newman University. I have worked at Newman for 12 years and received several promotions under a former female president. In 2000, the school hired a new president Aidan O. Dunleavy who has a hostile attitude toward females, especially pregnant females. I recently applied for the position of Vice President of Enrollment Management which had been held by a female. I was told by a person who heard it directly that the President planned to hire a man for the position. I was well qualified for the position and this was a natural promotion for me since Newman has a policy of promoting from within. I served as a de facto acting VP of Enrollment Management for 2 months. However, the President announced that he did not find anyone he felt was qualified in the selection group and announced that he would bring in a male consultant to hold the position until it could be filled. This male "consultant" was a member of the selection pool and says that he is an interim Vice President. I was discriminated against in the hiring for the position based upon my gender and there is direct evidence that the President intended to hire a man. The President has stated to me that I should not fill a position for the University with a pregnant woman.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

Sept 22, 2004

Marla S. Sexson

Date

Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

This form is affected by the Privacy Act of 1974. See Privacy Act Statement before completing this form.

before FEPA EEOC
 Filed 10/26/2005

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and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)

Marla Sexson

HOME TELEPHONE (Include Area Code)

620-488-3199

STREET ADDRESS

CITY, STATE AND ZIP CODE

654 N. Rock Road, Belle Plaine, KS 67013

DATE OF BIRTH

3/21/67

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

Newman University

NUMBER OF EMPLOYEES, MEMBERS

200+

TELEPHONE (Include Area Code)

316-942-4291

STREET ADDRESS

CITY, STATE AND ZIP CODE

3100 McCormick Avenue, Wichita KS 67213

COUNTY

Sedgwick

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE

October 2004

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

After I complained to the President of the University about gender discrimination at the school and in my application for the position of Vice President of Enrollment Management, the President began reorganizing the area where I work (Dean of Admissions) and took away many of my responsibilities and greatly reduced the number of employees who report to me. As a result, I was constructively discharged. These actions were taken against me based upon my gender and in retaliation for my engaging in protected activity under Title VII.

NOV 01 2004

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

10/20/04

Marla S. Sexson

Date

Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Kansas City Area Office

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400 State Avenue, Suite 905
Kansas City, KS 66101
(913) 551-5655
TTY (913) 551-5657
FAX (913) 551-6956

Charge No. 281-2004-07761

Marla Sexson
654 N. Rock Road
Belle Plain, KS 67013

Charging Party

Newman University
3100 McCormick Avenue
Wichita, KS 67213

Respondent

DETERMINATION

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. Deferral, timeliness, and all other requirements for coverage have been met.

Charging Party alleges Respondent failed to promote her to the position of Vice President of Enrollment Management in September 2004 based on her gender, female. Charging Party also alleges she was demoted in retaliation for her complaint of gender discrimination and she was forced to resign due to the intolerable working conditions.

Respondent contends that Charging Party was not promoted to the position of Vice President of Enrollment Management ("VPEM"), either in an interim status or permanent status, because she was not the most qualified candidate for the position. Respondent contends that Charging Party was not demoted because the position she held prior to her complaint was the same position she held after her complaint.

In August 2004, Respondent sought candidates to fill the job of Vice President of Enrollment Management while Charging Party worked as interim VPEM. Charging Party applied. Respondent decided not to fill the VPEM position and created a new interim position that it filled with a male VPEM applicant. Evidence establishes that Respondent decided to hire a male as its interim VPEM instead of allowing Charging Party to continue in her role as interim VPEM because of her gender in violation of Title VII.

On October 20, 2004, Charging Party filed a second charge of discrimination with the Commission alleging gender discrimination, retaliation and constructive discharge. The investigation revealed that Respondent reduced Charging Party's duties and responsibilities after she complained that Respondent's decision not to hire her for the VPEM position was gender discrimination. The evidence also supports Charging Party's allegation of retaliation in violation of Title VII.

As to the claim of constructive discharge, however, the Commission is unable to conclude that the information obtained establishes a violation of Title VII.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission

6/6/2005

Date


Lynn Y. Bruner
District Director



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Kansas City Area Office

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Gateway Tower II
400 State Avenue, Suite 905
Kansas City, KS 66101
(913) 551-5655
TTY (913) 551-5657
FAX (913) 551-6956

Charge No. 281-2004-07762

Tara Morrow
10621 Taft Court
Wichita, KS 67209

Charging Party

Newman University
3100 McCormick Avenue
Wichita, KS 67213

Respondent

DETERMINATION

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. Deferral, timeliness, and all other requirements for coverage have been met.

Charging Party alleges she was discharged by Respondent because her job was eliminated, and Respondent failed to rehire her for either of the newly created jobs for which she was qualified, due to her gender, female.

Respondent agrees that Charging Party's job was eliminated, but asserts that Charging Party was encouraged to apply for the two new jobs which were being developed and failed to do so therefore she was not hired.

In May 2004, Charging Party was informed that her job of Director of Student Life/Transition was being eliminated and her job duties would be incorporated into two new positions, Director of Campus Activities and Dean of Students, effective July 1, 2004. The Director of Campus Activities position contains the same job description as Charging Party's Director of Student Life/Transition position with one exception, that the Director of Campus Activities must live on campus. Respondent selected a male for the Director of Campus Activities position and evidence reveals that the male selectee does not live on campus.

The Dean of Students position was also available after Charging Party's position was allegedly eliminated. Evidence demonstrated that Charging Party was discouraged from applying for this position because she learned Respondent was seeking a male for the position. The successful candidate was a male.

The evidence obtained during the investigation establishes that Charging Party was discharged and Respondent failed to rehire her based on her gender, female, in violation of Title VII.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission

6/6/2005
Date

Lynn Y. Bruner
Lynn Y. Bruner
District Director



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Kansas City Area Office

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Gateway Tower II
400 State Avenue, Suite 905
Kansas City, KS 66101
(913) 551-5635
TTY (913) 551-5657
FAX (913) 551-6956

Charge No. 281-2004-07761

In The Matter Of:

Marla Sexson
654 N. Rock Road
Belle Plaine, Kansas 67013

Charging Party

vs.

Newman University
3100 McCormick Avenue
Wichita, Kansas 67213

Respondent

EEOC has determined that efforts to conciliate this charge as required by Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended, have been unsuccessful. This letter constitutes the notice required by 1601.25 of the Commission's Regulations, which provides that the Commission shall notify a Respondent in writing when it determines that further conciliation efforts would be futile or non-productive.

No further efforts to conciliate this case will be made by EEOC. Accordingly, we are at this time forwarding the case to the Legal Unit within the St. Louis District Office for a determination regarding EEOC initiated litigation.

Sincerely,

Date

8/18/2005

Lynn Bruner
Lynn Bruner, District Director

cc: Alexander B. Mitchell, II, Attorney for Respondent
Michael Shultz, Attorney for Charging Party

B

NOTICE OF RIGHT TO SUE
(CONCILIATION FAILURE)

To: **Marla Sexson**
654 N. Rock Road
Belle Plaine, KS 67013

From: **Kansas City Area Office**
Gateway Tower II
400 State Avenue
Kansas City, KS 66101



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
281-2004-07761	Tezzie S. Wells, Investigator	(913) 551-5699

TO THE PERSON AGGRIEVED:

This Notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosure(s)


 Lynn Y. Bruner,
 Director

8/19/2005
(Date Mailed)

cc: **NEWMAN UNIVERSITY**
3100 McCormick Ave.
Wichita, KS 67213

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
or the Age Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: backpay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit **before 7/1/02 -- not 12/1/02** -- in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA backpay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.