

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TROY UNIVERSITY,

Defendant.

Civil Action No. 2:10-cv-342-MEF

COMPLAINT

Plaintiff, United States of America (“United States”), by the undersigned attorneys, makes the following averments:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 – 4333 (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(1) because defendant, Troy University (“Troy”), is a public university operated by the State of Alabama, and is located in, and does business within, this judicial district. Additionally, the Court has jurisdiction under 28 U.S.C. § 1391(b) because events giving rise to this lawsuit occurred in this judicial district.

CLAIMS FOR RELIEF

4. Beginning in 2003, Cleopatra Jones (“Jones”) was employed by Troy in the human resources department at Troy’s Montgomery Campus in Montgomery, Alabama.

5. Since 2001, Jones has served in the United States Army Reserves (“Army”) as a Staff Sergeant.

6. In August 2008, Jones was involved in an automobile accident. She also was pregnant at the time. As a result of the accident and her pregnancy, Jones took leave from Troy pursuant to the Family and Medical Leave Act (“FLMA”).

7. While Jones was on FMLA leave, she missed Army reserve duty. Accordingly, the Army informed Jones that she would have to perform makeup duty. Jones scheduled her makeup duty for November and December 2008.

8. In October 2008, while Jones was still on FMLA leave, Troy notified her that she was expected to return to work on November 11, 2008. In response, on November 4, 2008, Jones notified Troy that she was required to perform military duty on November 7 through 10, 2008, November 12 through 25, 2008, and December 1 through 24, 2008. Jones submitted a written memorandum from her commanding officer, dated November 5, 2008, verifying that Jones would be on military duty on these dates. Troy refused to recognize Jones’ November and December 2008 military service obligation.

9. Jones began her military duty as scheduled on November 7, 2008.

10. On November 17, 2008, Troy’s Senior Director of Human Resources, Lee Vardman (“Vardman”), wrote Jones a letter informing her that, pursuant to Troy’s staff handbook, Troy employees who were members of the military reserves were required to perform their military duty on weekends in the absence of official written military orders. Because Jones had not scheduled her military duty on weekends and had not returned to work on November 11, 2008 following her FMLA leave, Troy considered Jones to have resigned. Jones already was on military leave when Vardman’s letter issued.

11. On December 23, 2008, Jones completed her military duty with the Army. She notified Troy that she was ready to return to work on January 2, 2009 and requested reemployment. Troy directed Jones to Vardman's November 17, 2008 letter, and refused to reemploy Jones.

12. On January 30, 2009, Jones filed a complaint under USERRA with the United States Department of Labor.

13. The United States Department of Labor's Veterans' Employment and Training Service conducted an investigation, and found that Jones' claim had merit.

14. Troy violated Section 4311 of USERRA by, among other ways, terminating Jones' employment while Jones was performing military service.

15. Troy also violated Sections 4312 and 4313 of USERRA by, among other ways, failing to promptly reemploy Jones upon her return from military service in either the position she would have held had her employment not been interrupted by military service, or a position of like seniority, status and pay.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter judgment against Troy and, further, that the Court:

a. declare that Troy's termination of Jones' employment was in violation of Section 4311 of USERRA;

b. declare that Troy's failure to reemploy Jones was in violation of Sections 4312 and 4313 of USERRA;

c. require that Troy comply with the provisions of USERRA by offering to employ Jones in a position of like seniority, status, pay and benefits to the position she would have held had she remained continuously employed by Troy and not served in the Army;

d. require that Troy comply with the provisions of USERRA by paying Jones all amounts due to her for her loss of wages, benefits and opportunities caused by Troy's failure or refusal to comply with the provisions of USERRA;

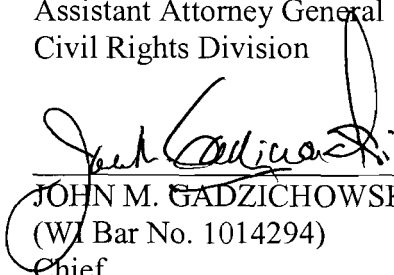
e. enjoin Troy from taking any action against Jones or any other service member that fails to comply with the provisions of USERRA, including the implementation or enforcement of any policy or practice that, in violation of 38 U.S.C. § 4302, places unlawful prerequisites on the right to take military leave and obtain reemployment;

f. award Jones prejudgment interest on the amount of lost wages and benefits found due; and


g. grant such other and further relief as may be just and proper.

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