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7
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9
10 **IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

11 RYAN ANDERSON,

12 Plaintiff,

13 v.

14 THE CITY OF YAKIMA,
WASHINGTON,

15 Defendant.

NO. 1:15-CV-03191-LRS

AMENDED COMPLAINT AND
DEMAND FOR TRIAL BY JURY

16
17 Ryan Anderson, by and through his attorneys, now alleges:

18 **I. PARTIES AND JURISDICTION**

19 1. Defendant, YAKIMA, WASHINGTON (“City”) is a local
20 government municipality.

1 2. Plaintiff, RYAN ANDERSON (“Mr. Anderson”) was an employee of
2 the City at all times relevant. Mr. Anderson resides in this district.

3 3. All acts complained of occurred within the Eastern District of
4 Washington.

5 4. The Federal Court for the Eastern District of Washington has personal
6 jurisdiction over the parties and subject matter jurisdiction for the claims in this
7 complaint pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367(a), and, 29 U.S.C. §
8 2617(a)(2).

9 5. Venue is proper in the Eastern District of Washington under 28 U.S.C.
10 § 1391(b) because the acts and omissions complained herein occurred in the District
11 and the Defendant conducts business there.

12 **II. INTRADISTRICT ASSIGNMENT**

13 6. This action arose in Yakima County, Washington; therefore, pursuant
14 to local rules it should be assigned to the Yakima Division of the Eastern District
15 of Washington.

16 **III. FACTS**

17 7. Plaintiff re-alleges the above paragraphs.

18 8. Ryan Anderson worked in the City’s Wastewater Division as a Utility
19 Engineer from September 1, 2010, until June 2, 2014. Shelley Willson, who held
20 the title of Wastewater Division Manager, was Mr. Anderson’s supervisor

1 beginning in approximately August, 2013. Ms. Willson reported to Debbie Cook.
2 Ms. Cook was the Director for Utilities and Engineering for the City of Yakima.
3 Upon information and belief, Ms. Cook sought Yakima City attorney Jim Mitchell's
4 counsel with regard to actions taken against Mr. Anderson.

5 9. At all times material to this Complaint, Debbie Cook and Shelley
6 Willson are and were close friends. Ms. Cook and Jim Mitchell were also close
7 friends during the relevant time frame.

8 10. Mr. Anderson received performance evaluations during the time
9 period he worked for the City's Wastewater Division. Those evaluations reflect
10 workplace performance that "meets" or "exceeds" expectations. His evaluations
11 recognize accolades for the work he did on various projects, working well with
12 groups of people, and the grant monies he acquired on the City's behalf.

13 11. From September 1, 2010, until May 6, 2014, Mr. Anderson received
14 no oral or written performance warnings or reprimands. Mr. Anderson's March,
15 2014 performance evaluation, which covered the period of time from March, 2012
16 through March 2014, stated that his overall performance as Utility Engineer
17 "Exceeds Expectations," and that he "meets" all objectives. Shelley Willson wrote
18 in the March, 2014 evaluation: "Ryan's unique approaches to proving adaptive
19 implementation to improve water quality is beneficial to the community. His ability
20 to partner with a large number of organizations, agencies and volunteers to unite

1 them in a common goal is just short of amazing. I look forward to working with
2 him as he moves from completion of the outfall project to the storm water program.”

3 On March 13, 2014, Ms. Willson informed Mr. Anderson that he had “done
4 wonderful” in facilitating a report germane to the City’s involvement in a water
5 quality program.

6 12. In early March, 2014, Marc Cawley was promoted to Wastewater
7 Superintendent for the City of Yakima. Mr. Cawley previously held the job title
8 of Wastewater Collections Supervisor. Mr. Cawley was supervised by Shelley
9 Willson and he reported directly to her.

10 13. At the time of Mr. Cawley’s promotion to Wastewater Superintendent,
11 Ms. Cook knew that Ms. Willson and Mr. Cawley were in a romantic relationship.

12 14. On or about March 19, 2014, Debbie Cook announced to the
13 Wastewater Division employees that Marc Cawley had been promoted to
14 Wastewater Superintendent following a national search that considered many well
15 qualified candidates. Ms. Cook stated that the division was very fortunate to have
16 Mr. Cawley as the Wastewater Superintendent. Ms. Cook encouraged the group to
17 congratulate Mr. Cawley on his promotion.

18 15. At this same March 19th meeting, and a short time following
19 Ms. Cook’s announcement, City of Yakima employee Mian Tariq stood up and, in
20 essence, accused the City of violating the City’s anti-fraternization policy in its

1 promotion of Mr. Cawley because of the romantic relationship between Mr. Cawley
2 and Ms. Willson. Mr. Tariq stated it was clear how Mr. Cawley received this
3 promotion. Mr. Tariq likened Mr. Cawley's promotion to that of the corruption he
4 saw in Pakistan.

5 16. Following Mr. Tariq's disclosure at the May 19th meeting,
6 Mr. Anderson was approached by Wastewater division employees about
7 Ms. Willson's and Mr. Cawley's relationship and Mr. Cawley's recent promotion.
8 Those complaints/concerns began interfering with Mr. Anderson's work, and
9 likewise detracting from overall office productivity.

10 17. On March 20, 2014, Mr. Anderson spoke with Ms. Willson about
11 Mr. Tariq's allegation and the effect it was having on the staff.
12 Ms. Willson admitted to Mr. Anderson that "the entire plant is coming unraveled."
13 Mr. Anderson explained to Ms. Willson that individuals were coming to him
14 wanting to talk about Mr. Cawley's hire and the romantic relationship between her
15 and Mr. Cawley. Ms. Willson assured Mr. Anderson that there was nothing going
16 on between her and Mr. Cawley, and that the two of them were just friends. Ms.
17 Willson stated that Mr. Cawley was a highly qualified candidate for the Wastewater
18 Superintendent position. She also said: "Marc and I work really well together
19 because we are both so rational." Mr. Anderson asked Ms. Willson if there was
20 something he could do to address the morale situation and talk to the employees.

1 She told Mr. Anderson to tell people to “talk to Marc” because “he is amazing at
2 dealing with this kind of thing.”

3 18. After the March 20th meeting with Ms. Willson, individuals continued
4 to approach Mr. Anderson about the Cawley/Willson romantic relationship.
5 Employees expressed to Mr. Anderson their worries about their job security and
6 also concerns about Mr. Cawley’s competence. Mr. Anderson shared with his co-
7 workers that it was Ms. Willson’s preference that individuals go directly to Mr.
8 Cawley with any concerns. That suggestion was either mocked or received as an
9 insult. It was in this late March, 2014 time frame that Mr. Anderson began
10 experiencing stress induced disability because of the stress and tension at work.

11 19. On April 11, 2014, an employee supervised by Mr. Anderson
12 approached him with concerns that Shelley Willson and Marc Cawley were trying
13 to “burn out” his hours. The employee disclosed to Mr. Anderson that he felt like
14 he was being pushed out due to his friendship with Shelley’s husband, Roy Willson.

15 20. On April 17, 2014, Mr. Anderson had a conversation with Scott
16 Schafer, City of Yakima Public Works Director. Mr. Schafer was Mr. Anderson’s
17 previous supervisor when he was Wastewater Division manager. Towards the end
18 of their meeting, Mr. Anderson told Mr. Schafer that he may need a letter of
19 recommendation from him as it was becoming increasingly difficult for him to work
20 in the Wastewater division because of workplace stress and tension. Mr. Anderson

1 explained that there was lots of stress in his department because of Mr. Cawley's
2 promotion and the alleged relationship between him and Ms. Willson.
3 Mr. Anderson told Mr. Schafer that people were on edge and did not know what to
4 do about it. Mr. Schafer urged Mr. Anderson to approach Ms. Willson about it and
5 explain how it was affecting employee morale, the office environment generally,
6 and posed a serious work distraction.

7 21. On or about April 18th, Mr. Anderson met with Ms. Willson as
8 Mr. Schafer has suggested. Mr. Anderson explained that there continued to be talk
9 in the division about the circumstances surrounding Mr. Cawley's hiring which was
10 lowering workplace morale and distracting him from his own work. People were
11 also scared about their job security and were uncomfortable talking to Mr. Cawley
12 about it. Mr. Anderson said that he was also worried about his own job security
13 and was having a hard time dealing with the stress and tension in the division. Mr.
14 Anderson asked what he should do to address these issues because people were
15 uncomfortable. Mr. Anderson suggested to Ms. Willson that she come to the group
16 and tell them directly that the Cawley/Willson allegation/rumor is untrue.

17 22. Ms. Willson told Mr. Anderson that she appreciated him coming to her
18 and speaking about this matter. She said that his job is secure and that he should
19 not worry. Ms. Willson said that she was not concerned about the situation at all.

1 Ms. Willson also quite randomly stated that her fate and Ms. Cook's fate were
2 intertwined and that "If I go down, Debbie [Cook] goes down."

3 23. Following his meeting with Ms. Willson, Mr. Anderson was
4 approached by Ms. Cook. Ms. Cook asked: "Why do you want to leave us?"
5 Mr. Anderson was taken aback by the question and said that he did not want to leave
6 and that he loved his job. Ms. Cook then offered that Mr. Anderson may be happier
7 somewhere else like a "think tank." This comment from Ms. Cook was very
8 unsettling and distressing to Mr. Anderson. Mr. Anderson asked Ms. Cook if she
9 had any problems with his performance. Ms. Cook said, "No."

10 24. In late April, 2014, while dropping some paperwork off at Human
11 Resources, Mr. Anderson asked to speak to someone about workplace stress.
12 Cheryl Ann Mattia from Human Resources spoke to Mr. Anderson that day.
13 Mr. Anderson explained to Ms. Mattia that he was dealing with workplace stress in
14 the wastewater division and that he wanted to talk about it. Mr. Anderson requested
15 assistance to manage his stress and address communication issues. Ms. Mattia
16 responded that it would be best to first pursue EAP as way to address that stress.

17 25. EAP is the Employee Assistance Program. It is a counseling program
18 that City of Yakima employees can pursue to help with their emotional health and
19 well-being.

1 26. On April 28th, and consistent with Ms. Mattia’s recommendation,
2 Mr. Anderson attended an EAP session. Mr. Anderson hoped that the EAP would
3 help him manage his stress and stay focused on work.

4 27. On April 28, 2014, at 9:24 AM Ms. Willson, in an email, stated that
5 the City’s water outfall project “has been pulled together in an amazing way by
6 Ryan Anderson.”

7 28. On April 28, 2014, at 7:57 PM Mr. Anderson informed Ms. Willson,
8 in writing, that he started using the City’s Employee Assistance Program (EAP) “to
9 manage stress and help...stay focused on work and stay healthy.”

10 29. From that point all laudatory comments regarding Mr. Anderson’s
11 work performance ceased and the City, led by the management team of Shelley
12 Willson, Debbie Cook and Jim Mitchell, embarked on a course of conduct designed
13 to drive Mr. Anderson out of the workplace.

14 30. In late April, 2014, Yakima City Councilman, Bill Lover, lodged a
15 complaint to the City legal department about the relationship between Shelley
16 Willson and Marc Cawley. When Debbie Cook was made aware of the
17 investigation surrounding Mr. Lover’s complaint and the Willson/Cawley
18 relationship, she reported that she already had the situation under control.

1 31. On May 6, 2014, Shelley Willson forwarded, to Debbie Cook, “a draft
2 of Ryan’s pre-disciplinary paper” in which Ms. Willson recommended that
3 Mr. Anderson receive a three day suspension.

4 32. On May 7, 2014, Debbie Cook entered Mr. Anderson’s office and
5 closed the door. At the beginning of that conversation, there was a quick discussion
6 of certain projects upon which Mr. Anderson was working. Ms. Cook then asked
7 him what proof he had that Marc and Shelley were are having a sexual relationship.
8 She told Mr. Anderson: “If you don’t have pictures of them having sex, then it’s
9 not true. They aren’t in a relationship. Do you understand?” Ms. Cook accused
10 Mr. Anderson of defamation and singled him out as the source of statements being
11 spread about a sexual relationship between Ms. Willson and Mr. Cawley. Ms. Cook
12 asked if Mr. Anderson had gone to Councilman Bill Lover with this issue. Mr.
13 Anderson said that he had not. Ms. Cook told him not to discuss this issue with
14 anyone, including Scott Schafer. Ms. Cook threatened that Mr. Anderson’s
15 behavior and actions were defamation which would ruin his career, cause great
16 financial loss to his family due to civil lawsuits, bankrupt him, put him in the
17 newspaper, and possibly lead to criminal charges. She said: “Do you want that?”
18 She further said: “Do you know that Shelley and I are very good friends? Shelley
19 and I drink wine together. Does that mean we are fucking?” She ended the
20 conversation with Mr. Anderson by telling him: “No more EAPing.” When Mr.

1 Anderson asked her to clarify what she meant by that, she said: “You are not a
2 counselor. You don’t decide who utilizes EAP. Knock it off!”

3 33. Ms. Cook’s intimidation and confrontation with Mr. Anderson,
4 including her strict order barring him from EAP counseling, exacerbated his
5 anxiety. Mr. Anderson felt threatened and helpless. City of Yakima Human
6 Resources had recommended that Mr. Anderson pursue EAP to manage his stress.
7 That accommodation option was now taken away by Ms. Cook. Further, Ms. Cook
8 was emphatic in telling Mr. Anderson not to discuss the Willson/Cawley situation
9 with anyone. Overwhelmed, distraught, and with mounting stress, Mr. Anderson
10 sought treatment the next morning from his medical provider to address his anxiety.

11 34. Immediately after Ms. Cook’s May 7, 2014 confrontation with Mr.
12 Anderson, she approached Mike Blankenbaker, a temporary City of Yakima
13 employee, and asked Mr. Blakenbaker if he knew of an inappropriate
14 Willson/Cawley relationship. Mr. Blakenbaker told Ms. Cook that Shelley
15 Willson’s husband, Roy, had information proving that Mr. Cawley and Ms. Willson
16 were in an intimate relationship. Ms. Cook did not follow up with Mr. Willson to
17 confirm or deny that information.

18 35. On May 8, 2014, Mr. Anderson requested, and the City of Yakima
19 would later authorize, workplace medical leave from May 8, 2014 to May 12, 2014
20 with a May 13 return to work date. Mr. Anderson’s treating physician, Dr. Katina

1 Rue, prescribed medical leave. Mr. Anderson supplied Dr. Rue's prescription/note
2 to the City of Yakima.

3 36. On May 8, 2014, Shelley Willson informed Debbie Cook, in writing,
4 that Mr. Anderson had taken sick leave from work.

5 37. On May 9th, Mr. Anderson emailed Cheryl Ann Mattia in Human
6 Resources. In that email, he wrote:

7 The workplace environment is in rapid decline. I am fearful that
8 progress forward on projects is being affected by this environment.
9 Furthermore, workplace stress is manifesting itself in serious way
regarding my health. My doctor has recommended, that for now, I stay
home until Tuesday the 13th.

10 On Wednesday, Debbie Cook came to my office and was very
11 concerned about rumors of a romantic relationship between two people
at wwtp [wastewater treatment plant]. She behaved rude and
12 accusatory. This rumor has surfaced in many conversations and has
created an environment where people feel uncomfortable addressing it.
13 Many people have told me that speaking with their supervisors would
put them in a bad position. I am very concerned about the approach
and tone Debbie took with me. I fear I will be retaliated against because
14 of a persistent rumor and actions taken by others.

15 I have been very afraid to speak up because I have overheard negative
16 talk from supervisors about employees who have raised questions in the
past about important matters such as plant staffing levels. That is why
17 I asked you the other day for a recommendation to manage stress and
communicate better. I know that I only have control over my actions
18 and have been trying to get the resources I need to keep my work on
track and stay healthy.

19 38. On or about May 13, 2014, Dr. Rue extended Mr. Anderson's
20 workplace leave due to his serious medical condition. In the *Certification of Health*

1 *Care Provider for Employee's Serious Health Condition*, Dr. Rue wrote that Mr.
2 Anderson "reports decreased focus, concentration with increasing situational
3 anxiety – related to hostile work environment. Decreased sleep, extreme fatigue."
4 Dr. Rue prescribed anti-anxiety medication to address his anxiety disorder. Dr. Rue
5 reported that Mr. Anderson's medical condition prevented him from performing all
6 job functions, and will incapacitate him from work from May 8 through May 26,
7 2014. The City received Dr. Rue's *Certification* document on May 14, 2014.

8 39. On May 14, 2014, Mr. Anderson filed his Family Medical Leave Act
9 (FMLA) application and supported the FMLA application with Dr. Rue's May 13th
10 *Certification of Health Care Provider for Employee's Serious Health Condition*.
11 On the same date, the City approved Mr. Anderson's FMLA leave request.

12 40. On May 14, 2014, Ms. Cook - - via a May 14, 2014 3:00:09 PM email
13 to Ms. Willson and City HR representative Cheryl Ann Mattia - - transmitted a letter
14 of reprimand, also called a "pre-disciplinary letter," regarding Mr. Anderson.

15 41. On or about May 19, 2014, Mr. Anderson received the City's letter of
16 reprimand titled "Notice of Pre-Disciplinary Hearing and Anticipated Disciplinary
17 Action." The May 19, 2014 letter accused Mr. Anderson of the following:

- 18 a. Violating Washington's Dig Law, RCW 19.122 et seq.
- 19 b. Allowing Sports Commission officials to dig without
20 complying with the Washington Dig Law on April 30, 2014.
- c. Failing to supervise the Sport's Commission's excavation
operations on April 30, 2014.

1 d. Inattentiveness.

2 42. The May 19, 2014 letter also accused Mr. Anderson of insubordination
3 and defamation. Ms. Cook wrote:

4 You have been insubordinate in that you recently approached a Director
5 from another department with unfounded “concerns” about your
6 supervisor and another WWTP [Waste Water Treatment Plant]
7 manager which amounted to defamation of character and
8 insubordination. You had previously been counseled to focus on your
9 own tasks and not to engage in gossip or try to mediate the concerns of
10 your co-workers. Yet you repeatedly gossip and potentially did
11 irreparable damage to the reputation of two City managers.

12 43. The May 19, 2014 letter required Mr. Anderson to attend a May 28,
13 2014 pre-disciplinary hearing. At no time before May 19, 2014, was Mr. Anderson
14 ever placed on written or oral notice regarding Dig Law, excavation, or
15 inattentiveness allegations as set forth in the May 19th letter.

16 44. On or about May 23, 2014, Dr. Rue sent the City a note. That note
17 stated that “all future job duties and assignments be given to [Ryan] in writing.
18 When these duties or assignments are changed, the written documents should reflect
19 the changes.” Without dispute, Dr. Rue’s letter constitutes a request for a workplace
20 accommodation regarding Mr. Anderson. Following the City’s receipt of that note,
21 the City failed to engage in any interactive process to implement or otherwise
22 consider the viability of Dr. Rue’s accommodation recommendation.

1 45. On May 28, 2014, the Office of City Manager for the City of Yakima
2 received an anonymous postcard stating as follows:

3 DEAR MR O'ROURKE

4 SHELLY WILSON AND MARC CAWLEY ARE ENGAGED IN A
5 RELATIONSHIP THAT IS IN VIOLATION OF THE CITY
6 ADMINISTRATIVE CODE THAT YOU CREATED #1-100 –
7 FRATERNIZATION.

8 THIS MATTER HAS BEEN BROUGHT TO HER SUPERVISOR,
9 DEBBY COOK'S ATTENTION, AND SHE HAS DONE NOTHING
10 BUT USE FEAR AND RETALIATION EFFORTS AGAINST STAFF
11 TO COVER WHAT HAS BEEN GOING ON FOR SEVERAL
12 MONTHS NOW. I QUESTION IF THIS IS BECAUSE THE NAMES
13 OF THE INDIVIDUALS INVOLVED OR IF SHE SIMPLY HAS
14 LOST HER ABILITY TO BE OBJECTIVE. REGARDLESS, THE
15 MORALE OF THIS DIVISION HAS NEVER BEEN LOWER THAN
16 UNDER ITS CURRENT LEADERSHIP.

17 IT IS SUSPECTED THAT SHELLY WILSON PUSHED OUT A
18 LONG STANDING CITY EMPLOYEE, STEVE BROWN, IN
19 ORDER FOR HER TO CREATE THE NEWLY CREATED
20 POSITION THAT MARC CAWLEY WAS APPOINTED TO
21 RECENTLY.

22 IT IS MY HOPE THAT YOU WILL NOT ALLOW THIS MATTER
TO CONTINUE BUT RATHER THAT YOU WOULD
IMMEDIATELY ORDER AN EXTERNAL AND IMPARTIAL
INVESTIGATION INTO ALL ALLEGATIONS SURROUNDING
THE CURRENT MANAGEMENT OF THE WASTEWATER
DIVISION. SINCE HUMAN RESOURCES HAS ALSO BEEN
PARTY TO THE MISMANAGEMENT OF THIS DIVISION, THEY
ARE NOT CONSIDERED IMPARTIAL.

5/21/14

1 46. On May 28, 2014, Mr. Anderson, who had not been in the office since
2 Ms. Cook threatened him on May 7th, attended the mandatory disciplinary hearing.
3 In attendance were Ms. Cook, Mr. Anderson, Mrs. Mattia, and Mark Norman, one
4 of Mr. Anderson's neighbors. At the start of the hearing, Ms. Cook questioned
5 whether or not Mr. Anderson "had what it takes" to continue as a project manager.
6 At the hearing, Mr. Anderson challenged each of the City's allegations contained
7 in Ms. Cook's May 19th letter:

- 8 a. Mr. Anderson asked Ms. Cook to specify which provision of the
9 Dig Law he allegedly violated. Ms. Cook could not specify any
10 provision.
11 b. Mr. Anderson asked Ms. Cook to identify the Sports
12 Commission employee Mr. Anderson allegedly failed to inform
13 about the utility lines. Ms. Cook was not able to identify the
14 employee.
15 c. Mr. Anderson asked Ms. Cook to explain specifically how he
16 allegedly failed to supervise excavation operations. Ms. Cook
17 charged Mr. Anderson with overseeing excavation operations
18 regardless of whether Mr. Anderson was physically present
19 during such excavation. Mr. Anderson informed Ms. Cook that
20 he disclosed to the heavy equipment operator, Tony Andreas, of
21 the utility line locations.
22 d. Ms. Cook's May 19, 2014, letter states that Mr. Anderson had
23 been "counseled several times." City policy No. 1-100 requires
24 a supervisor, like Ms. Cook, to maintain "individual records of
25 oral reprimands." Ms. Cook stated that no such records existed.
26 e. Ms. Cook's May 19, 2014, letter accuses Mr. Anderson of
27 defamation. At the May 28th hearing, Ms. Cook defined Mr.
28 Anderson's defamation as Mr. Anderson making false
29 statements about Shelley Willson "fraternizing" and "having a
30 relationship." Ms. Cook provided no evidentiary support of when
31 Mr. Anderson allegedly made those statements or the source who
32 provided those quotations.

1 f. Ms. Cook's May 19, 2014 letter accuses Mr. Anderson of
2 insubordination. At the meeting, Ms. Cook could not identify a
3 single instance of Mr. Anderson's insubordination nor the
"Director from another department" whom she alleged that Mr.
Anderson had communicated defamatory statements.

4 47. During the May 28th hearing, Mr. Anderson addressed Dr. Rue's May
5 23rd letter and the request for workplace accommodation. Ms. Cook rejected the
6 request outright stating that the City "cannot accommodate giving all instruction in
7 writing." The City provided no evidence or testimony to show that Mr. Anderson's
8 accommodation would impose any undue hardship on the City.

9 48. At the conclusion of the disciplinary hearing, Mr. Anderson stated that
10 the City was retaliating against him on account of his sick leave related to his
11 workplace stress and anxiety, and was also fabricating all allegations related to the
12 Dig Law violations.

13 49. Ms. Cook concluded the hearing by accusing Mr. Anderson of being
14 the anonymous author of a letter/postcard that was sent to the city manager. That
15 letter, according to Ms. Cook, stated that Shelley Willson and Marc Cawley were
16 involved in a romantic affair, and that Human Resources could not be trusted to
17 deal with the situation. Mr. Anderson denied any involvement with said letter.

18 50. On or about May 28, 2014, Ms. Cook telephoned Tony Andreas.
19 Mr. Andreas is the heavy equipment operator whom Ms. Cook alleged that
20 Mr. Anderson had failed to convey information regarding the location of

1 underground utility lines. Mr. Andreas informed Ms. Cook that Mr. Anderson
2 repeatedly notified him of the underground utility lines. Not liking Mr. Andreas’
3 answer, Ms. Cook angrily demanded that Mr. Andreas alter his story. Mr. Andreas
4 refused.

5 51. In written communications about Mr. Anderson, Ms. Cook informed
6 Ms. Mattia that she was going to go ahead with the disciplinary action because of,
7 amongst other things, “his attitude during the hearing.”

8 52. On May 29th, during the weekly wastewater staff meeting, Ms. Willson
9 informed Mr. Anderson that Debbie Cook would finish the Wastewater Facility
10 Plan project herself; that someone else would be in charge of the Yakima River
11 Temperature Receiving Water study that Mr. Anderson had been overseeing for the
12 past two years; and that the “Outfall Relocation Project” – a project Mr. Anderson
13 had been working on since September 1, 2010 – would be assigned to the new
14 Utility Engineer. Effectively, Mr. Anderson had been stripped of most of his
15 projects and responsibilities.

16 53. On June 2, 2014, Ms. Willson tossed the disciplinary decision
17 paperwork onto Mr. Anderson’s desk from the doorway of his office.
18 Notwithstanding the statement of Mr. Andreas exculpating Mr. Anderson of any
19 violation or breach of Washington’s Dig laws, the disciplinary notice stated that Mr.

1 Anderson was suspended for five (5) days without pay. This five (5) day suspension
2 was two (2) more days than the disciplinary action proposed on May 6th.

3 54. On June 2, 2014, Mr. Anderson resigned from the City's employment
4 with an effective resignation date of June 16, 2014.

5 55. The City's discriminatory and retaliatory treatment of Mr. Anderson
6 caused Mr. Anderson to resign from the City and take a lower paying job.

7 56. Mr. Anderson did, however, appeal the City's discipline decision as
8 allowed under City policy. City attorney Mitchell did not allow the appeal because
9 of Mr. Anderson's resignation.

10 57. Mr. Mitchell wrote in a June 13, 2014 email to Debbie Cook: "[N]ow
11 go away RA."

12 58. On June 17, 2014, Shelley Willson was interviewed by Carol Tresca,
13 City of Yakima HR Specialist, related to the investigation of Mr. Anderson's May
14 9th complaint. Ms. Willson stated that she was not engaged in a relationship with
15 Marc Cawley, and that they are "friends." Ms. Willson stated that she had never
16 had any "away from work contact with someone" she supervised.

17 59. Marc Cawley was not interviewed as a part of the investigation of
18 Mr. Anderson's complaint, nor was anyone else beyond Ms. Willson and
19 Mr. Anderson.

20 60. Ms. Tresca wrote the following in her investigative report:

1 While unsubstantiated, the perception among employees that these
2 things are occurring has the potential to foster destructive conflict, and
3 it is recommended that management devise a strategy for effectively
4 communicating with employees in way that will specifically address
5 the issues note above.

6 Those issues, identified, by Ms. Tresca were:

- 7 • That there is fraternization in the Department that violates the
8 City's Administrative Code
- 9 • That Debbie Cook uses "fear and retaliation" against staff
- 10 • That the morale of the Department has "never been lower"

11 Ms. Tresca further wrote that there is "some evidence that an 'undercurrent' of
12 negativity may exist within the Department of Utilities and Engineering."

13 61. On October 24, 2014, Shelley Willson resigned from her position as
14 Wastewater Division Manager because stress was interfering with her ability to
15 perform her work.

16 62. On March 3, 2015, in sworn testimony, Ms. Willson admitted that she
17 assisted Marc Cawley in getting the position of Wastewater Superintendent.
18 During the hiring phase for the Wastewater Superintendent position, Ms. Willson
19 admitted that she expressed the opinion that Mr. Cawley was qualified for this
20 position and that he should get the job. Ms. Willson further admitted that she
21 communicated to Debbie Cook that she wanted someone with Mr. Cawley's
22 characteristics to get the job.

1 in good faith; (iii) analyzes the job duties and the employee's specific limitations;
2 and, (iv) identifies potential accommodations. *Humphrey v. Mem'l Hospitals Ass'n*,
3 239 F.3d 1128, 1137 (9th Cir. 2001).

4 66. Ms. Cook's outright rejection of Mr. Anderson's request for
5 accommodation on May 28th violates the standards set out in *Humphrey*. During
6 the May 28th disciplinary meeting Mr. Anderson asked for tasks to be put in writing.
7 Ms. Cook flat-out rejected that request which, in turn, is not a meaningful
8 interactive good faith dialogue geared toward identifying potential
9 accommodations. In fact, Ms. Cook's conduct throughout this case violated state
10 law by *removing* potential reasonable workplace accommodations.

11 67. For example, Ms. Cook told Mr. Anderson (on May 7th) that he was
12 barred from utilizing EAP.

13 68. Additionally, the City disregarded Mr. Anderson and his physician's
14 May 23, 2014 workplace accommodation request for written instructions regarding
15 work-related tasks and less stress by not entering into the interactive process *and*
16 by *increasing* Mr. Anderson's workplace stress by falsely accusing Mr. Anderson
17 of violating state law and defaming Ms. Willson.

18 69. A disability discrimination claim under the WLAD requires the
19 plaintiff show he was: (a) disabled; (b) subject to an adverse employment action;
20 (c) doing satisfactory work; and (d) harmed under circumstances that raise a

1 reasonable inference of unlawful discrimination. *Callahan v. Walla Walla Hous.*
2 *Auth.*, 126 Wn. App. 812, 819-20 (2005).

3 70. Mr. Anderson is disabled.

4 71. Mr. Anderson has anxiety and was being treated by Dr. Rue for the
5 same.

6 72. Mr. Anderson was subject to multiple adverse employment actions
7 including but not limited to being barred from using the EAP and his five day
8 suspension without pay.

9 73. Mr. Anderson's March, 2014 performance evaluation reflects
10 satisfactory work.

11 74. Mr. Anderson was harmed under circumstances that raise a reasonable
12 inference of unlawful discrimination. A reasonable inference of unlawful
13 discrimination may be summarized as set forth below.

14 75. First, an employer's different treatment of similarly situated
15 employees gives rise to an inference of discrimination. Mr. Tariq, in March, 2014,
16 made allegations about Mr. Cawley's promotion being the product of favoritism
17 arising from an inappropriate workplace relationship between Mr. Cawley and Ms.
18 Willson. Mr. Tariq, who has no known disabilities, was not disciplined for making
19 the above-referenced March, 2014 Willson-Cawley allegation. Mr. Anderson, who

1 has a disability, was disciplined for allegedly speaking about the exact same
2 relationship.

3 76. Second, courts hold that proximity in time between the protected
4 activity and the adverse action, standing alone, is enough to establish causation in
5 a discrimination case. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 (9th
6 Cir.2002). Here, Mr. Anderson informed Ms. Willson of his EAP participation on
7 April 28^h. On May 6, 2014, Ms. Willson, who eight days earlier praised Mr.
8 Anderson's work, took disciplinary action against Mr. Anderson. On May 7th, Ms.
9 Cook barred Ryan from attending EAP.

10 77. Third, discriminatory animus can be inferred by pretext i.e. the
11 employer making inconsistent statements or allegations that lack believability.
12 Here, the City accused Mr. Anderson of violating Washington's Dig Law.
13 However, the City, through its agent, Ms. Cook, could point to no provision of the
14 statute that Mr. Anderson allegedly violated. The City further accused
15 Mr. Anderson of defamation by allegedly making false statements about an
16 inappropriate relationship between Ms. Willson and Mr. Cawley even though the
17 City knew, or had reason to know, that Ms. Willson and Mr. Cawley were engaged
18 in an inappropriate relationship.

19 78. The City's violations of the WLAD caused intolerable working
20 conditions forcing Mr. Anderson to leave his job. On June 2nd, Mr. Anderson

1 resigned and accepted a lower paying job. The City's WLAD violations also caused
2 Mr. Anderson general and special damages an amount of which will be proven at
3 trial.

4 79. In order to prove a WLAD retaliation claim an employee must
5 establish that he or she (a) reasonably opposed workplace discrimination, and (b)
6 experience an adverse employment action.

7 80. On May 28, 2014, Mr. Anderson accused Ms. Cook and Ms. Willson
8 of retaliating against him for taking sick leave.

9 81. The City increased Mr. Anderson's suspension, which was slated for
10 three days as of May 6, 2014, to five days and demoted him from the majority of
11 his workplace projects.

12 **(CAUSES OF ACTION NO. 4 & NO. 5 – VIOLATION OF THE**
13 **FAMILY MEDICAL LEAVE ACT – 29 U.S.C. § 2615 –**
14 **INTERFERENCE AND RETALIATION)**

15 82. In order to prove FMLA interference and retaliation claims, an
16 employee must prove that: (1) he took or requested protected leave; (2) the
17 employer subjected him to an adverse employment action; and (3) the taking of or
18 requesting protected leave was a “negative factor” in the adverse employment
19 decision. *See McCauley v. ASML US, Inc.*, 917 F.Supp.2d 1143, 1152 (D.Or.2013);
20 29 C.F.R. § 825.220(c). A plaintiff may prove an interference claim “by using either

1 direct or circumstantial evidence, or both.” *Schultz v. Wells Fargo Bank, Nat. Ass'n*,
2 970 F. Supp. 2d 1039, 1052-53 (D. Or. 2013).

3 83. Mr. Anderson has a serious health condition for which he took
4 protected leave.

5 84. Upon taking leave, Mr. Anderson was subject to adverse employment
6 action which included, but is not limited to, a factually baseless disciplinary hearing,
7 and a post-FMLA leave demotion as evidenced by management removing Mr.
8 Anderson from his primary job duties during the May 29, 2014 meeting. Mr.
9 Anderson’s taking of FMLA leave was a negative factor in the adverse employment
10 decisions.

11 85. The direct and circumstantial evidence set out above is, without
12 limitation, proof of Mr. Anderson’s FMLA interference claim. Under the FMLA,
13 an employee returning from FMLA is to be treated as if he or she never went on
14 leave. The City’s May 29th demotion of Mr. Anderson constitutes such interference.

15 86. Mr. Anderson also opposed what he believed were discriminatory
16 practices when, during the May 28, 2014, disciplinary hearing, he complained that
17 the discipline hearing was scheduled in retaliation for his taking sick leave.

18 87. Shortly after Mr. Anderson’s May 8th 2014 approval for taking sick
19 leave, the City increased Mr. Anderson’s suspension from the originally planned
20 three days (see May 6, 2014 email referenced above) to five days (see June 2, 2014,

1 email referenced above). Courts have found analogous conduct tantamount to
2 FMLA interference. *Schuett v. Eli Lilly & Co.*, No. 3:10-cv-784-HZ, 2011 WL
3 5865950, at *11-12 (D. Or. Nov. 22, 2011) (denying summary judgment on FMLA
4 interference claim because a reasonable juror could conclude that after the plaintiff
5 announced her need for future FMLA leave she received more negative treatment
6 from her manager and that her need for FMLA leave was a negative factor in her
7 termination).

8 **(CAUSE OF ACTION NO. 6 – INVASION OF PRIVACY)**

9 88. A party asserting a privacy claim must prove that the City’s public
10 disclosure of an employee’s disability “(a) would be highly offensive to a
11 reasonable person, and; (b) is not of legitimate concern to the public.” *White v. Twp.*
12 *of Winthrop*, 128 Wn. App. 588, 594 (2005) (holding employee stated claim against
13 his former public employer for employer’s disclosure of employee’s seizure
14 disorder).

15 89. Here, the City disclosed confidential information regarding
16 Mr. Anderson’s anxiety disorder as part of Public Record Request No. 212. The
17 City’s disclosure occurred on December 19, 2014. The City made its disclosure to
18 Paul Peitsch, who had made “Request No. 212” (and possibly others). The
19 disclosure consists of a June 2, 2014, email from Mr. Anderson to Ms. Willson and
20 HR in which Mr. Anderson discusses his anxiety. At the time the City was

1 publishing all public disclosure requests and responses on line. Ms. Cook's and
2 Mr. Mitchell's "sexting" scandal was uncovered, in part, due to request #212.
3 Ms. Cook's scandal was reported nationwide via the Associated Press, and thus,
4 incidentally published private information about Mr. Anderson's anxiety disorder
5 in media outlets nationwide.

6 90. The City's disclosure of Mr. Anderson's private affairs has caused
7 Mr. Anderson harm, embarrassment, and anguish in an amount that will be proven
8 at trial.

9 91. By way of comparison, the City took extra steps to ensure personal
10 communication between Ms. Cook and Mr. Mitchell, sought as part of other Public
11 Record Requests, was redacted.

12 **V. PRAYER FOR RELIEF**

13 Plaintiff respectfully prays for:

14 A. Compensation for all injury and damages suffered by Mr. Anderson
15 including, but not limited to, both economic and non-economic damages, in the
16 amount to be proven at trial including back pay, front pay, pre and post judgment
17 interest, lost benefits of employment, adverse tax consequences of any award for
18 economic damages pursuant to Chapter RCW 49.60 et seq., liquidated damages
19 under both federal and Washington law for willful violations of the FMLA, and

1 general damages relating to emotional distress and mental anguish damages as
2 provided by law.

3 B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to 29
4 U.S.C. § 2617(a)(3), and as otherwise provided by law under RCW 49.48.030 and
5 49.60.030(2), as well as the *private attorney general* theory of recovery of
6 reasonable attorney fees and costs in employment related cases.

7 C. For such other and further relief as this Court deems just and equitable.

8 Respectfully submitted this 21st day of March 2016.

9 /s Matthew Crotty

10 MATTHEW Z. CROTTY

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16 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on March 21, 2016 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties, if any, shall be served in accordance with the Federal Rules of Civil Procedure.

Dated this March 21, 2016.

/s Matthew Crotty
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