

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO  
ALBUQUERQUE DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v. Civil Action No.

UNIVERSITY OF NEW MEXICO,

Defendant.

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COMPLAINT

Plaintiff, United States of America, alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII").
2. This Court has jurisdiction over the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.
3. Defendant University of New Mexico ("UNM") is a corporate, governmental body and a political subdivision of the State of New Mexico, established pursuant to the laws of the State of New Mexico. The Health Sciences Center is a component of UNM.
4. Defendant UNM is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).
5. Defendant UNM, through its Health Sciences Center, has discriminated against Sandra Martinez and Mary Swisher, who were employed as Mental Health Technicians at UNM Health Sciences Center's Childrens' Psychiatric Hospital, on the basis of their sex, female, and pregnancy, in violation of § 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), among other ways, by:
  - (a) denying Ms. Martinez and Ms. Swisher modified-duty positions during their pregnancies, while permitting similarly-situated, non-pregnant employees to obtain modified-duty positions; and
  - (b) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Ms. Martinez and Ms. Swisher.
6. The Equal Employment Opportunity Commission ("EEOC") received timely charges filed by Ms. Martinez (Charge No. 390A00820) and Ms. Swisher (Charge No. 390A00832) in which each alleged that she had been discriminated against in employment because of her sex, female, and pregnancy by UNM. Pursuant to §706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, the EEOC investigated the charges, found reasonable cause to believe that the allegations of sex discrimination in employment were true, attempted unsuccessfully to achieve through conciliation a

voluntary resolution of the matters, and subsequently referred the charges to the United States Department of Justice.

All conditions precedent to the filing of suit have been performed or have occurred.

7. Defendant UNM, through its Health Sciences Center, has discriminated against Jenifer Brito, who was employed as a Mental Health Technician at UNM Health Sciences Center's Childrens' Psychiatric Hospital, on the basis of her sex, female, and pregnancy, in violation of

§ 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), among other ways, by:

- (a) denying her a modified-duty position during her pregnancy, while permitting similarly-situated, non-pregnant employees to obtain modified-duty positions;
- (b) terminating Ms. Brito's employment after she notified her supervisors that she was pregnant; and
- (c) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Ms. Brito.

8. The EEOC received a timely charge filed by Ms. Brito (Charge No. 390A10897) in which she alleged that she had been discriminated against in employment because of her sex, female, and pregnancy by UNM. Pursuant to §706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, the EEOC investigated the charge, found reasonable cause to believe that the allegations of sex discrimination in employment were true, attempted unsuccessfully to achieve through conciliation a voluntary resolution of the matter, and subsequently referred the charge to the United States Department of Justice.

All conditions precedent to the filing of suit have been performed or have occurred.

9. WHEREFORE, plaintiff United States prays that this Court grant the following relief:

(a) Enjoin defendant UNM from failing and refusing to:

(1) provide sufficient remedial relief, including back pay with interest, to charging parties, Sandra Martinez, Mary Swisher and Jenifer Brito, to make each of them whole for the loss she has suffered as a result of the discrimination against her as alleged in this Complaint; and

(2) take other appropriate nondiscriminatory measures to overcome the effects of the discrimination; and

(b) Order defendant UNM to provide sufficient compensatory damages to charging parties, Sandra Martinez, Mary Swisher and Jenifer Brito, to fully compensate each of them for the pain and suffering caused by defendant UNM's discriminatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C.

§ 1981a.

Plaintiff United States prays for such additional relief as justice may require, together with its costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

JOHN ASHCROFT  
Attorney General

R. ALEXANDER ACOSTA  
Assistant Attorney General  
Civil Rights Division

By: \_\_\_\_\_  
DAVID J. PALMER  
Chief  
Employment Litigation Section  
Civil Rights Division

\_\_\_\_\_  
JOHN M. GADZICHOWSKI  
Deputy Chief  
KATHLEEN T. TOOMEY  
ANAT EHRLICH  
Attorneys  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
PHB, Fourth Floor  
Washington, D.C. 20530  
(202) 616-9504 - phone  
(202) 514-1005 - fax

DAVID C. IGLESIAS  
United States Attorney  
District of New Mexico

By: \_\_\_\_\_  
JAN ELIZABETH MITCHELL  
Assistant United States Attorney  
P.O. Box 607  
Albuquerque, NM 87103  
(505) 346-7274 - phone  
(505) 346-7296 - fax