

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
FILE NO: 1:10-CV-71**

CHERIE C. BYRD,)	
Plaintiff,)	
)	
v.)	VERIFIED COMPLAINT
)	(JURY TRIAL REQUESTED)
)	
CITY OF ASHEVILLE, ASHEVILLE)	
POLICE DEPARTMENT, ERIC LAUFFER,)	
individually and in his official capacity,)	
Defendants.)	

NOW COMES Plaintiff, Cherie C. Byrd (hereinafter "Ms. Byrd" or "Plaintiff"), and, pursuant to 42 U.S.C.S. § 2000e *et. seq.* and the common law of North Carolina, alleges and complains as follows:

JURISDICTION AND PARTIES

1. The United States has original jurisdiction over causes of action brought under 42 U.S.C.S. §§ 2000e *et seq.* The North Carolina causes of action are so related to the federal claims that they form part of the same case or controversy such that this Court may exercise supplemental jurisdiction over those claims.
2. Ms. Byrd filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on October 30, 2009, for discrimination because of her sex and retaliation.
3. On December 29, 2009, the EEOC mailed a notice of right to sue to Ms. Byrd. Said letter is attached as Exhibit A to this Complaint.
4. Ms. Byrd is a female resident and citizen of McDowell County, North Carolina. She is currently still employed by the City of Asheville.
5. Defendant City of Asheville ("the City") is a body politic of the State of North Carolina and is located in the Western District of North Carolina.
6. Defendant Asheville Police Department ("APD") is a division of the City.
7. Defendant Eric Lauffer ("Lauffer") is a Sergeant in the APD's Drug Suppression Unit ("DSU") and the immediate supervisor of Ms. Byrd from April 2008, to the present. He is being sued in his individual and official capacity.

8. The unlawful employment practice alleged below was committed in Buncombe County, North Carolina. The employment records relevant to the unlawful employment practice are maintained and administered in Buncombe County, North Carolina.

FACTS

9. Ms. Byrd joined the City as a Telecommunicator in 2002. In August 2004, she transferred to the position of Police Officer Trainee and attended Basic Law Enforcement Training.
10. In April, 2007, Ms. Byrd joined the DSU. Lauffer became Ms. Byrd's immediate supervisor in April 2008. Lieutenant Chris Young ("Lt. Young") is the head supervisor of the DSU. From April, 2007, to the present, Lt. Young was the supervisor of Ms. Byrd and Defendant Lauffer.
11. On May 17, 2007, a suspect shot at Ms. Byrd and another female officer from a distance of less than 10 feet.
12. The APD questioned whether Ms. Byrd and the other female officer were even involved in a shooting. Lt. Young, in fact, attempted to convince Ms. Byrd and the other female officer to not charge the assailant with assault on a law enforcement officer. Lt. Young also asked Ms. Byrd to write a "Critical Incident" report but told her not to make it too "dark and stormy."
13. Furthermore, the APD did not supply Ms. Byrd and the other female officer any mental health support after the May 17, 2007, shooting. For example, the APD did not offer Ms. Byrd or the other female officer a "Critical Stress Debriefing" to assess and address their mental health needs.
14. On May 6, 2008, Ms. Byrd was involved in another shooting incident. She and two other female officers initiated a traffic stop. They discovered a large sum of money in the vehicle. The vehicle attempted to drive off. The other female officer thought Ms. Byrd was being dragged with the vehicle so she fired her gun at the vehicle.
15. The APD also questioned the veracity of Ms. Byrd's and the other female officers' account of this shooting. For example, a senior officer, on the day of the incident and in front of a group of officers, stated that he did not believe Ms. Byrd's and the other female officers' account of the shooting.
16. The APD also required Ms. Byrd to take a gunshot residue test after this most recent shooting even though she stated that she did not fire a weapon. It was not common practice to require gunshot residue tests when officers are involved in a shooting when they did not discharge their firearm.
17. Like the May 17 shooting, the APD did not provide any mental health support to Ms. Byrd and the other female officers after the May 6, 2008, shooting.

18. It is normal procedure for Lt. Young, not junior officers, to write "Critical Incident" reports. The APD also typically offers "Critical Stress Debriefings" to officers involved in a shooting. These steps and other supportive responses are commonly offered to male officers who experience similar life threatening situations.
19. The APD treated Ms. Byrd and the other female officers differently from their male counterparts by not adequately responding to the mental health needs of Ms. Byrd and the other female officers or by otherwise not adequately responding to these two shootings.
20. In February, 2008, Ms. Byrd learned that her supervisors, particularly Lauffer, would discuss her alleged personal relationships. They would commonly talk about a rumored, sexual relationship with a fellow officer. This rumor was false.
21. Also in February, 2008, Ms. Byrd learned that her supervisors, in their official supervisor meetings, inappropriately discussed her separation from her husband.
22. In March, 2008, Ms. Byrd confronted Lauffer about these discussions. She told him to stop these discussions. He apologized.
23. Upon information and belief, a male officer's separation from his wife had never before been discussed at a supervisor's meeting.
24. In May, 2008, Ms. Byrd met with APD Chief William Hogan ("Chief Hogan") regarding the rumors being discussed by her supervisors and the supervisors' discussion about her separation from her husband. Chief Hogan took no apparent remedial action to address Ms. Byrd's complaints.
25. Starting in the summer of 2008, Lauffer began making regular non-work related phone calls to Ms. Byrd and sending her sexually explicit text messages. Many of these calls and texts were sent after 10:00 p.m. Ms. Byrd initially answered and responded to the calls and texts but eventually stopped answering and responding as they become more pervasive.
26. Such non-work related calls and text messages were consistent and pervasive from the summer of 2008 into 2009. Over this time, the texts in particular became more sexually explicit.
27. By way of example, and not limitation, one text featured a cartoon character "humping" the floor with the caption, "I'd hit it like this." Lauffer added the following text to the message: "You have just been phone fucked! P.S. you can not fuck me back no matter how bad you may wanna." Other texts contained messages such as "I must licky you" and "I am just a man. Never satisfied always wanting more." He also texted her a picture of the back side of a naked man and implied in another message that she was a "ho."
28. Lauffer also sent text messages to Ms. Byrd derogative of the African American race and highly offensive to Ms. Byrd. For example, in November, 2008, he said that "the election is making me sick" because he had the "Obama flu" and that "due to recent events: grape

soda, red kool-aid, fried chicken, malt liquor, menthol cigarettes and gold teeth will be tax exempt. □

29. Ms. Byrd told Lauffer to stop sending her the text messages, but he continued to send her sexually explicit text messages.
30. On September 5, 2008, Lauffer obtained Ms. Byrd's work and personal cell phones when she had to leave her phones in Lauffer's patrol car when responding to a call. He looked at everything on her phones including her text messages. When she returned to retrieve her phones, Lauffer stated, "you know you should not have left your phones in my car. You knew I would go through them." Lauffer then told her that he erased all the text messages that he had previously sent her.
31. Ms. Byrd notified Lt. Young about Lauffer obtaining her phones and deleting her text messages. She told Lt. Young that Lauffer had deleted the text messages because he knew they were inappropriate. Lt. Young agreed that Lauffer acted inappropriately.
32. Lt. Young took no apparent remedial action to address Ms. Byrd's complaints about Lauffer going through her phone, deleting text messages or sending her inappropriate text messages.
33. In addition to the phone calls and text messages, Lauffer also made sexually explicit remarks in the workplace. For example, he once told her that she "smelled like a ho" in front of other officers. He also bragged to Ms. Byrd about having sex at work while on duty and in uniform. He would also commonly display sexually explicit material to her and other officers.
34. Lauffer made further inappropriate remarks about Ms. Byrd outside the workplace. For example, he would announce to those at a bar late at night that he was "going to call Cherie." He has also commented that he would date Ms. Byrd if he were not her supervisor.
35. In late October, 2008, Ms. Byrd attended the Officer Safety Readiness School. She was volunteered to serve as the suspect during a role-playing exercise. Officers took turns handcuffing her and standing her up as if arresting her. It soon became Lauffer's turn to "arrest" her. Unlike the other officers, however, he did not immediately handcuff her. Instead, he grabbed her by the hair with one hand and placed his other hand under her chin. He then dragged her by the hair in a sexually suggestive and aggressive manner before handcuffing her. His "arrest" of her was not part of the training scenario.
36. Lauffer later bragged in front of Ms. Byrd and Lt. Young about the "arrest." Lt. Young stated that he "did not want to know about it" and walked away from the conversation into his office.
37. Upon information and belief, other officers complained to Lt. Young about the inappropriate "arrest" of Ms. Byrd.

38. Lauffer's behavior continued, if not worsened, after Lauffer "arrested" Ms. Byrd. His text messages in particular became more pervasive.
39. On February 20, 2009, the APD gave Ms. Byrd a written reprimand for not correctly storing property. The other male officer who did not correctly store property was not disciplined until immediately after Ms. Byrd met with Chief Hogan in March, 2009.
40. On February 24, 2009, despite Ms. Byrd's complaints to Lt. Young and Chief Hogan regarding Lauffer, the City and the APD recognized Lauffer as one of the two APD Officers of the Year for 2008.
41. On March 12, 2009, Ms. Byrd met with Chief Hogan again regarding Lauffer's inappropriate behavior. Chief Hogan told Ms. Byrd that they would conduct a prompt investigation into Lauffer that should take no longer than thirty days. Ms. Byrd expressed concern about retaliation to Chief Hogan for filing a complaint against Lauffer. Chief Hogan told Ms. Byrd that Human Resources would be notified.
42. Ms. Byrd remained under Lauffer's direct and active supervision until March 17, 2009, when she went on light duty to accommodate her pregnancy.
43. Ms. Byrd met with APD Internal Affairs on March 13 and 17, 2009, regarding her complaints. She explained Lauffer's sexually harassing behavior. She also provided Internal Affairs copies of the text messages from Lauffer. After these meetings, she did not hear anything about the investigation until June 12, 2009, when she emailed Chief Hogan asking for a status update.
44. Chief Hogan told Ms. Byrd that the investigation had been completed and only some charges substantiated. He also claimed that "corrective action was taken." Chief Hogan did not explain what corrective action had been taken. He told Ms. Byrd that he could provide no further details of the investigation.
45. Neither the City nor the APD took any apparent remedial action against Lauffer over his sexual harassment of Ms. Byrd after they completed the investigation into Ms. Byrd's complaints.
46. In August 2009, while Ms. Byrd was on light duty at the Police Information Desk, Lauffer walked by Ms. Byrd and intentionally and overtly glared at her in order to intimidate her. He then intentionally turned around and passed the desk a second time with the same intimidating glare. Ms. Byrd was intimidated by these actions.
47. Ms. Byrd went on maternity leave in August, 2009. On or about October 20, 2009, she called the APD to ask about her return to duty. Captain Sarah Benson told her that she would have to return to Lauffer's supervision to retain her position with the DSU.
48. Lauffer, after Captain Benson told Ms. Byrd that she would return to Lauffer's supervision, told multiple officers that he would never work with Ms. Byrd again.

49. In addition to not responding to her complaints of sexual harassment by Lauffer and informing her that she would have to remain under the supervision of Lauffer in order to maintain her position within the DSU, Ms. Byrd learned in October, 2009, that the APD attempted to assign her newer patrol vehicle to a more junior male officer. Within the APD, the possession of a newer patrol vehicle is seen as a matter of status and a favorable employment action. The attempted reassignment of her newer vehicle was viewed as an adverse employment action by Ms. Byrd and other officers.
50. Having received no adequate response from the APD concerning her complaints of harassment by Lauffer and having been told that she would have to remain under Lauffer's direct supervision, on November 10, 2009, Ms. Byrd met with the Assistant City Manager Jeff Richardson regarding her complaints about Lauffer and the lack of response from the APD. Richardson told her that the Director of Human Resources, Lisa Roth (Roth), would contact her.
51. On November 12, 2009, Ms. Byrd met with Roth and the Assistant City Attorney. Roth told her that the City would conduct an investigation, which would be completed by November 16, 2009. She was placed on paid administrative leave pending the conclusion of the investigation. She was later placed on paid sick leave where, upon information and belief, she remains.
52. Ms. Byrd has never received notice that the investigation had been completed or the result of such an investigation.
53. The City and the APD did not follow their own policy regarding the procedure for responding to complaints of sexual harassment.
54. By Lauffer's sexual harassment of Ms. Byrd, the APD's and the City's failure to adequately respond to this harassment, forcing her to remain under the direct supervision of Lauffer in order to maintain her position within the DSU, reassigning her newer vehicle to a less senior male officer after she complained about the harassment, and further treating her in a manner that was both adverse and different from the manner in which male officers are treated as more fully alleged herein, Lauffer, the Asheville Police Department and the City of Asheville have engaged in sexually discriminatory actions against Ms. Byrd based on her gender.
55. Ms. Byrd now suffers from Post-Traumatic Stress Disorder because of the APD's response to the shootings on May 17, 2007, and May 6, 2008, Lauffer's behavior towards Ms. Byrd and the APD's and the City's inadequate response and retaliatory actions to her complaints about Lauffer.
56. Ms. Byrd, because of her severe mental and emotional distress, can no longer work as a law enforcement officer with the City. Her ability to pursue a career in law enforcement elsewhere is also in jeopardy.

**FIRST CAUSE OF ACTION –
VIOLATION OF TITLE VII**

57. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 56 above.
58. Defendant Lauffer's above-alleged actions towards Ms. Byrd were unwelcome and offensive and constitute sexual harassment.
59. Defendant Lauffer's actions towards Ms. Byrd were so severe and pervasive that they unreasonably interfered with Ms. Byrd's work performance or otherwise created an intimidating, hostile or offensive work environment.
60. The City and the APD knew about Defendant Lauffer's sexually harassing behavior but failed to take prompt, corrective action.
61. Defendants treated Ms. Byrd different than similarly situated male employees because of her sex.
62. Defendants discriminated against Ms. Byrd because of her sex.
63. Defendants retaliated against Ms. Byrd because she complained about sexual harassment by her supervisor.
64. Defendants' actions as alleged herein violate the provisions of Title VII, 42 U.S.C.S. § 2000e *et. seq.*
65. As a further proximate result of Defendants' actions as alleged herein, Ms. Byrd has suffered severe emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, humiliation and other non-pecuniary losses.

**SECOND CAUSE OF ACTION –
NEGLIGENT RETENTION**

66. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 65 above.
67. Defendant Lauffer engaged in tortious acts against Ms. Byrd by sexual harassing Ms. Byrd, intentionally inflicting emotional distress and acting as otherwise alleged herein.
68. The APD and the City knew about Defendant Lauffer's sexual harassment of Ms. Byrd, his intentional infliction of emotional distress and his other actions alleged herein.
69. Despite knowing about Defendant's Lauffer's sexual harassment, his intentional infliction of emotional distress and his other actions alleged herein, the APD and the City negligently retained the employment of Defendant Lauffer.

70. Because the APD and the City negligently retained the employment of Defendant Lauffer, Ms. Byrd has suffered damages.

**THIRD CAUSE OF ACTION –
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

71. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 70 above.

72. Defendants Lauffer acted extremely and outrageously and beyond all possible bounds of decency by sexually harassing Ms. Byrd, intentionally inflicting emotional distress and acting as otherwise alleged herein.

73. Defendants the City and the APD acted extremely and outrageously and beyond all possible bounds of decency by not adequately supporting Ms. Byrd after the shootings on May 17, 2007, and May 6, 2008, and inadequately responding to her complaints about Lauffer.

74. Defendants intended for Ms. Byrd to suffer severe emotional distress.

75. Ms. Byrd did in fact suffer severe emotional distress because of Defendants' actions as alleged herein.

**FOURTH CAUSE OF ACTION –
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

76. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 75 above.

77. Defendants negligently engaged in conduct.

78. It was reasonably foreseeable that their conduct would cause Ms. Byrd to experience extreme emotional distress.

79. Ms. Byrd did in fact suffer severe emotional distress as a proximate result of Defendants' negligence.

PUNITIVE DAMAGES

80. Plaintiff re-alleges and incorporates herein all allegations set out in paragraphs 1 through 79 above.

81. Defendant Lauffer maliciously, willfully, wantonly and intentionally sexually harassed Ms. Byrd, inflicted emotional distress and otherwise acted as alleged herein.

82. Defendant Lauffer acted with a reckless or callous indifference to Ms. Byrd's federal and state protected rights when Defendant Lauffer sexually harassed Ms. Byrd, intentionally inflicting emotional distress and acted as otherwise alleged herein.

83. Because of the above alleged wrongful acts, Ms. Byrd is entitled to punitive damages pursuant to 42 U.S.C. 2000e *et seq.* and N.C. Gen. Stat. § 1D-15.

PLAINTIFF REQUESTS A TRIAL BY JURY

WHEREFORE, the plaintiff prays this Court for the following relief:

1. That the Court award sufficient damages to compensate plaintiff for her severe emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, humiliation and other non-pecuniary losses;
2. That this Court award Plaintiff's lost leave time, sick time, wages or other privileges of employment caused by Defendant's actions;
3. That this Court award Plaintiff front pay in an amount sufficient to compensate her for her inability to continue employment with the APD;
4. That this Court award any other compensatory damages;
5. That this Court award Plaintiff reasonable attorney fees and costs incurred in this action;
6. That this Court award punitive damages;
7. That this Court award interest on any awarded damages from the date of breach;
8. For such other or further relief as this court shall deem just and appropriate.

This the 26th day of March, 2010.

THE JOHN C. HUNTER LAW FIRM, P.L.L.C.

s/ John C Hunter

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