

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LOIS M. DAVIS

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Case No. 4:12-CV-131

v.

JURY TRIAL DEMANDED

FORT BEND COUNTY

**PLAINTIFF'S FIRST AMENDED COMPLAINT
AND JURY DEMAND**

NOW COMES Lois Davis, hereinafter called Plaintiff, complaining of and about Fort Bend County, hereinafter called Defendant, and for cause of action shows unto the Court the following:

PARTIES AND SERVICE

1. Plaintiff Lois M. Davis, is a citizen of the United States and the State of Texas and resides in Harris County, Texas.
2. Defendant Fort Bend County may be served by serving its Chief Executive Officer with process at the following address: 301 Jackson Street, Richmond Texas 77469.

JURISDICTION

3. This Court has federal question jurisdiction because the action arises under the Civil Rights Act of 1964, Title VII § 701, 42 U.S.C § 2000e, et. seq, as amended by the Civil Rights act of 1991, Title I, §§ 104, 109(a).

NATURE OF ACTION

4. This is a religious discrimination case arising under Title VII. The district court previously granted summary judgment to Fort Bend County on all of Ms. Davis's claims. That decision was reversed, in part, by the United States Court of Appeals for the Fifth Circuit. *See Davis v. Fort Bend County*, 765 F.3d 480 (5th Cir. 2014). This Amended Complaint conforms the active pleadings in this case to those remanded by the decision of the Fifth Circuit. Specifically, Ms. Davis hereby abandons those claims that the Fifth Circuit found were not properly pleaded—specifically, her claims for Intentional Infliction of Emotional Distress under Texas law and Retaliation under Title VII, and she reasserts her remaining claims for religious discrimination under Title 42 U.S.C. § 2000e *et. seq.*

CONDITIONS PRECEDENT

5. All conditions precedent to jurisdiction have occurred or have been complied with in the Equal Employment Opportunity Commission (EEOC). A charge of discrimination was filed with the EEOC within three hundred days of the acts complained of herein and Plaintiff's Original Complaint was filed within ninety days of Plaintiff's receipt of the EEOC's issuance of a right to sue letter.

FACTS

6. Fort Bend County hired Lois M. Davis in December 2007 as a Desktop Support Supervisor responsible for supervising about fifteen information technology ("IT") technicians. Charles Cook was Fort Bend's IT Director at the time.

7. On or about November 2009, Defendant and Cook hired Kenneth Ford as Plaintiff's

new manager. Ford was a personal friend and fellow church member of Cook prior to his employment with Fort Bend County. Cook was personally involved and influenced the Defendant to employ Ford. Cook and Ford remained friends and co-workers throughout Cook's employment at Fort Bend County.

Cook sexually harasses Ms. Davis throughout 2008 and 2009.

8. Cook began to sexually harass Ms. Davis almost immediately after she began work at Fort Bend. This harassment occurred repeatedly over a period of three years. Cook's sexual advances included numerous sexual innuendos, inappropriate touching, and inappropriate comments of a sexual nature. Those sexual advances and comments included the following:

- a. **In 2008:** Mr. Cook approached Plaintiff while she was in a meeting with a co-worker and stated to the co-worker, "She has two pair." The co-worker responded, "What two pair?" Mr. Cook replied "spray on jeans." Mr. Cook then walked away.
- b. During a meeting, Plaintiff replied to a comment and stated, "Understand, I'm not a little girl." Mr. Cook responded by looking at Plaintiff's buttocks and stating, "No, you are not."
- c. During a meeting, Mr. Cook stated he "likes dark chocolate, like [the Plaintiff]."
- d. While standing in Mr. Cook's office, Plaintiff unconsciously adjusted a latch on her skirt and Mr. Cook made the comment, "No thanks, I've already eaten."
- e. **In 2009:** During a meeting, Mr. Cook blew a kiss at Plaintiff.
- f. During an informal conversation between co-workers, Plaintiff made the comment, "Mr. Cook used to wear a pocket-protector," Mr. Cook responded, "Yeah, but she didn't wear a training bra." He also made reference to Plaintiff's buttocks.

- g. Plaintiff pulled a grey hair out of her head. Mr. Cook, made the comment, “Don’t worry about the gray, unless it’s hanging from your thong.”
- h. After Plaintiff completed a conversation on her mobile telephone, she tried to place the phone in her pocket. Mr. Cook made the comment, “It won’t fit, your butt is too big.”
- i. During a staff meeting, Mr. Cook inappropriately touched the Plaintiff’s leg twice.

9. Ms. Davis repeatedly asked Cook to stop. However the inappropriate sexual advances, comments, and physical touching did not cease. The vulgarity of the sexual advances increased until Ms. Davis was no longer able or willing to tolerate Cook’s attacks.

Ms. Davis complains about the sexual harassment by Cook. Cook is investigated and resigns.

10. On or about April 1, 2010, Davis filed a complaint with Fort Bend County’s Human Resources Department, alleging that Cook subjected her to constant sexual harassment and assaults soon after her employment began. Fort Bend County placed Davis on Family Medical Leave Act (“FMLA”) leave during its investigation of her complaint. The investigation substantiated Davis’s allegations against Cook and ultimately led to Cook’s resignation on April 22, 2010.

11. Kenneth Ford was Ms. Davis’s supervisor after Cook’s resignation.

Ms. Davis returns to work and is retaliated against by Ford.

12. On or about May 12, 2010, Plaintiff met with Kenneth Ford and Human Resources and advised them of her intent to return to work. After Ms. Davis returned to work, Ford immediately began retaliating against her for having caused the termination of his friend, Cook. Ford effectively demoted Plaintiff by reducing the number of her direct

reports from fifteen to four; removed her from projects she had previously managed; superseded her authority by giving orders and assigning different projects and tasks directly to Davis's staff; removed her administrative rights from the computer server; and assigned her tasks that other similarly situated employees were not required to perform.

13. For example, on or about May 21, 2010, Ford called Ms. Davis into his office to reprimand her. Ford reprimanded Ms. Davis for taking an extended lunch break even though she took her break at her desk the majority of the time. Ford was aware that Ms. Davis was an exempt employee and he was reminded by Human Resources that exempt employees do not have a lunch break policy.

14. Additionally, Ford required Ms. Davis to meet with him every morning for thirty minutes to discuss ongoing projects. This demand was not made of any other supervisor. Ford also superseded Ms. Davis's authority by giving direct orders to, and assigning different projects and tasks to her staff. Ford's retaliation tactics against Ms. Davis caused discord and conflict amongst the IT employees including, Ms. Davis's personal staff.

15. Moreover, on or about September 21, 2010, Ford called Ms. Davis into his office to give her a written warning for failing to complete an assigned task. However, the task at issue was never assigned to Ms. Davis. Moreover, Ford knew this task was not assigned to Ms. Davis, but nonetheless insisted on reprimanding her. Ms. Davis contacted Ford's supervisor and Human Resources about the incident. After Ms. Davis complained to Human Resources, the reprimand was removed from her file.

16. Ford intentionally reduced Ms. Davis's responsibilities without explanation.

Prior to the sexual harassment complaint, for instance, Ms. Davis had initiated, designed, and managed the procurement and implementation of a new Help Desk System. After her return from FMLA and therapy, she was removed from the project and all of her administrative rights¹ were removed.

Ms. Davis seeks a religious accommodation for a few hours on Sunday, July 3, 2011, and is terminated for practicing her religion.

17. Ms. Davis is a devout Christian. She is an active member of the Church Without Walls, a thriving Christian community in the Houston area. Ms. Davis expresses her religious beliefs, in part, by attending services at the Church. Ms. Davis attends both the 8:00 am and 10:00 am church services at the Church Without Walls every Sunday. In addition, Ms. Davis attends Tuesday night Bible studies, and is involved in many other religious activities affiliated with the Church. For example, Ms. Davis has an important role in Church administration. All of those actions are directly motivated and required by Ms. Davis's personal religious faith.

18. In March 2011, Fort Bend told its staff that it was embarking on a major project to install personal computers, network components, and audiovisual equipment into the newly built Fort Bend County Justice Center. The Justice Center was ultimately scheduled to open on July 4, 2011, which was a Monday.

19. Davis worked tirelessly on the Justice Center project beginning in March 2011. Ms. Davis worked more than sixty hours a week, including up to six days a week

¹ Each employee involved with the new Help Desk System was given network and computer access to the system. Plaintiff originally had full access to the system, and could modify, add, or delete parameters on the electronic system. However, the ability to work on that system was removed prior to her return, on Ford's directive.

(without overtime or comp-time),² often on weekends and well into many evenings. Ms. Davis was not compensated for her comp-time hours, despite the fact that she was an exempt employee, but was deducted time if she left early due to sickness or family emergencies. Ms. Davis attended church throughout this time of intense work. No representative of Fort Bend County stated at any time that she (or any other employee) would be punished if she took a few hours off to fulfill her religious obligations.

20. In June 2011, Ford informed his staff that they would be required to be available to work during the weekend July 2-3, 2011. On June 28, 2011, Ms. Davis informed Ford that she would not be available to work the morning of Sunday, July 3, 2011 due to a religious obligation at her church. This obligation consisted not only of a church service, which Ms. Davis was required to attend under her understanding of her religious faith, but also included a special service about which Ms. Davis felt a special religious obligation to attend. July 3, 2011 was the date her church had planned the groundbreaking of a new church building and a meal served to the community to celebrate that solemn occasion, in addition to a traditional church service. Ms. Davis made clear to Fort Bend County that she would arrange for a substitute to take on her job responsibilities during her absence that day, as she normally did in similar circumstances.

21. Ford initially indicated to Ms. Davis that she could attend the July 3rd church service. However, Ford later changed course and told Ms. Davis that she would be disciplined if she fulfilled her religious obligations rather than coming to work the morning

² Fort Bend County's policies permit exempt employees to accrue comp-time when their hours exceed forty (40) or more per week. Comp-time may be used by employees for time off, in lieu of using their accrued vacation time or sick time.

of July 3rd. Ford told Ms. Davis that her offers to find a substitute and to return to work immediately after the service was completed were inadequate, and that she would face discipline no matter what alternatives she gave to Ford. As a result, Ford intentionally placed Ms. Davis in a position forcing her to choose between her religious beliefs, obligations, and commitment on the one hand, and her employment on the other. Ms. Davis chose to honor her personal religious beliefs and commitment.

22. Ms. Davis did not go to work on July 3, 2011. True to Ford's threats, Ms. Davis was terminated from employment with Fort Bend County immediately as a result. Ms. Davis's computer access and access to her workplace were disabled on Sunday. She was subsequently "officially" terminated on July 6, 2011.

23. The Fort Bend County Justice Center opened on time and without incident on Monday, July 4, 2011. In fact, Fort Bend County's employees were dismissed early on Sunday, July 3rd because they were not needed to complete any remaining work.

RESPONDEAT SUPERIOR AND RATIFICATION

24. Whenever in this complaint it is alleged that the Defendant, Fort Bend County, did any act or thing, it is meant that the Defendant's officers, agents, servants, employees or representatives did such act and that, at that time such act was done, it was done with the full authorization or ratification of the Defendant or was done in the normal and routine course and scope of employment of Defendant's officers, agents, servants, employees, or representatives.

RELIGIOUS DISCRIMINATION

25. Ms. Davis hereby re-alleges paragraphs 1-24 of this Amended Complaint.

26. Ms. Davis possessed a sincere religious belief that she was obligated to attend church, by her own personal view of her religious faith, on July 3, 2011.

27. On June 28, 2011, Ms. Davis told Ford about her religious obligation and need to attend the church service, and made clear that this need was motivated and required by her religious faith. Specifically, Ms. Davis stated that she was required to attend a special church service on that date at which her congregation would break ground on a new church and feed the community. At that time, neither Ford, nor any other representative of Fort Bend County, disputed the sincerity of Ms. Davis's religious beliefs, or dispute that her request was motivated by religion.

28. Ms. Davis told Ford that her church service was likely only going to take a few hours, and that she was willing to return to work that Sunday immediately after the church service in order to continue her work. Ms. Davis also arranged for a replacement during her absence, Ms. JoAnn Cosbey.

29. Although Ford initially gave Ms. Davis his approval—Ford gave her a “thumb’s up” sign and told Ms. Davis that she had “really stepped up”—he ultimately rejected Ms. Davis’s request for a few hours off to attend the church service. Ford offered no accommodation for Ms. Davis’s request, and he rejected her proposal that she come to work immediately after the church service.

30. Ford told Ms. Davis that she should not come to work at all on July 3rd if she did not report to work first thing that morning, and Ford told her that she would be subject to discipline if she did not do so.

31. Ford gave no specific reason why Ms. Davis’s request for accommodation was

denied, despite the fact that other employees had been given time off for personal, non-religious, reasons (such as to attend a July 4th parade).

32. When Ms. Davis chose to attend church rather than report to work the morning of July 3rd, Ford immediately acted to terminate her employment by cutting off her access to the Fort Bend County campus and by terminating her e-mail account. She was later “officially” terminated on July 6, 2011.

33. The Fort Bend County Justice Center opened on time and without incident on July 4, 2011. Fort Bend County suffered no hardship by Ms. Davis’s absence, much less any “undue” hardship; nor would it have suffered any hardship had it simply accommodated Ms. Davis’s request for several hours off from work.

34. Defendant, Fort Bend County, by and through Defendant’s agents, intentionally engaged in unlawful employment practices involving Plaintiff because she is a devoted Christian. Fort Bend’s decision to terminate Ms. Davis, in addition to being a violation of Title VII, was consistent with the campaign of retaliation undertaken by Fort Bend against Ms. Davis from the time she returned from FMLA leave.

35. Defendant, Fort Bend County, by and through Defendant’s agents, discriminated against Plaintiff in connection with the compensation, terms, conditions, and privileges of her employment in violation of 42 U.S.C. § 2000e (2)(a). The effect of these practices has been to deprive Plaintiff of equal employment opportunities and otherwise adversely affect her status as an employee because of her religion.

36. The unlawful employment practices of Defendant, Fort Bend County by and through Defendant’s agents, had a disparate and adverse impact on Plaintiff because of

her religious observances, practices, or beliefs.

37. Plaintiff alleges that Defendant, Fort Bend County by and through Defendant's agents, discriminated against Plaintiff on the basis of religion with malice or with reckless indifference to the protected rights of Plaintiff.

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
BY FORT BEND COUNTY (ABANDONED)**

38. Fort Bend County intentionally and recklessly caused Plaintiff to suffer physical and emotional damage. Defendant was aware of its Agent's ongoing sexual harassment and retaliation acts against Plaintiff. Defendant remedied the situation by wrongfully terminating Plaintiff based on religion. Defendant's conduct was extreme and outrageous and proximately caused Plaintiff severe emotional distress. Plaintiff suffered damages for which Plaintiff herein sues.

39. Davis is no longer pursuing this Count of the original Complaint, pursuant to the Fifth Circuit's opinion in *Davis v. Fort Bend*, 765 F.3d 480 (5th Cir. 2014).

RETALIATION BY FORT BEND COUNTY (ABANDONED)

40. Plaintiff alleges that Fort Bend County instituted a campaign of retaliation which included:

- * demoting and removing Plaintiff from projects she managed,
- * intentionally reprimanding Plaintiff for acts she did not commit,

- * docking her pay, even though she is an exempt employee,

- * requiring her perform task that no other manager in her position were required to perform

This retaliation was and is due to Plaintiff exercising her rights by reporting sexual

assault charges to human resources. Plaintiff suffered damages for which Plaintiff herein sues.

41. Davis is no longer pursuing this Count of the original Complaint, pursuant to the Fifth Circuit's opinion in *Davis v. Fort Bend*, 765 F.3d 480 (5th Cir. 2014).

DAMAGES

42. Plaintiff has sustained and will continue to sustain the following damages as a direct result of the actions and or omissions of Defendant described hereinabove:

- a. Front pay and back pay in an amount deemed equitable and just to make Plaintiff whole;
- b. Mental anguish, emotional pain, and humiliation;
- c. Physical discomfort;
- d. Exemplary damages;
- e. All reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff;
- f. All reasonable and necessary costs incurred in pursuit of this suit, including expert witness fees;
- g. Taxable court costs, and pre- and post-judgment interest;
- h. All other damages to which Ms. Davis may be entitled.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Lois Davis, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for

damages in an amount within the jurisdictional limits of the Court, together with interest as allowed by law and costs of court. Plaintiff further requests any and all such other relief to which the Plaintiff may be entitled at law or in equity.

Dated: September 16, 2015

Respectfully submitted,
WRIGHT & CLOSE LLP

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