

Personnel Department and has ultimate responsibility and supervisory authority with respect to enforcement of all Defendant City personnel policies.

3. Defendant Maria Xiarhos was, at all times relevant hereto, employed by the Defendant City as the Employee Benefits Coordinator, and is sued individually and in her official capacity.

4. Defendant George L. Kelley, III, alias was, at all times relevant hereto, employed by the Defendant City as Chief of Police and is sued individually and in his official capacity. Defendant Kelly was Plaintiff's ultimate supervisor and superior within the City Police Department.

5. At all times relevant hereto, Defendants Garcia, Xiarhos, and Kelley, acting as agents for the employer, the Defendant City, requested, required and/or subjected the Plaintiff to the challenged urine test at issue herein.

III. Jurisdiction

6. The monetary amount claimed herein is sufficient to establish the jurisdiction of this Court pursuant to R.I.G.L. §8-2-14. This Court also has jurisdiction under R.I.G.L. §8-2-13 insofar as declaratory and injunctive relief is also sought.

IV. Venue

7. Venue is proper in this Court in accordance with R.I.G.L. §9-4-3 insofar as the Plaintiff resides in the County of Providence, State of Rhode Island, and because the unlawful employment practice alleged herein occurred in the County of Providence, State of Rhode Island.

V. Material Facts

8. At all times relevant hereto, the Plaintiff was employed by the Defendant City as a police matron/court interpreter within the City police department.

9. The Plaintiff had been employed by the Defendant City for over seventeen (17) years.

10. At no time was the Plaintiff employed by the City as a driver regulated under 49 C.F.R. §§40.1, *et seq.* and 49 C.F.R. part 382.

11. On or about April 6, 2010, the Plaintiff received a phone call from Defendant Xiarhos who stated that the Plaintiff must immediately submit to a random urine drug screen test.

12. When Plaintiff notified Defendant Xiarhos that she was not going to submit to the test because it was a violation of her rights, she was told by Defendant Xiarhos that she was going to record Plaintiff as having a positive test.

13. When Plaintiff continued to refuse, Defendant Xiarhos stated, “We will see about that.”

14. Approximately one hour later, Plaintiff was called into a meeting with the City Chief of Police, Defendant George L. Kelley, III, and Major Paul King, who advised her that, per the City Solicitor, if she refused to submit to the test, she would be immediately suspended for thirty (30) days without pay and escorted from the building.

15. Plaintiff advised Chief Kelley and Major King that she would submit to the test because she felt she had no choice, but that forcing her to take the test was against the law.

16. Accordingly, faced with the choice of either an immediate suspension without pay or submitting to the test, Plaintiff submitted to the test.

17. Plaintiff immediately submitted to a breathalyzer test and urine drug screen test as mandated by the Defendants.

18. Both tests were negative.

VI. Claim for Relief

19. To comply with the UBTCEA, a blood or urine test requested or required by an employer as a condition to continued employment must conform to all of the requirements set forth in R.I.G.L. §28-6.5-1, including:

- a. Administered pursuant to and in accordance with a drug abuse prevention policy promulgated by the employer which complies with the statute;
- b. Requested or required only when the employer has reasonable grounds to believe, based on specific aspects of the *employee's job performance* and specific *contemporaneous observations*, capable of being articulated, concerning the employee's *appearance, behavior or speech*, that the employee's use of controlled substances is *impairing his or her ability to perform his or her job*;
- c. Allow the employee to supply the sample in private, outside the presence of any person;
- d. Provide for confirmation of the test result by a federally certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate;
- e. Provide the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by an independent testing facility and so advise the employee;
- f. Provide the employee with the opportunity to rebut or explain the results; and,
- g. Must not impose a penalty of termination for a first violation of an employer drug test.

20. R.I.G.L. §28-6.5-1(b) also makes it a criminal offense under Rhode Island law for any employer to directly or indirectly subject or cause an employee to be subjected to a urine or blood test which does not comply with the requirements of the UBTCEA.

21. Defendants requested, required and/or subjected Plaintiff to a urine test as a condition of continued employment with the Defendant City that failed to comply with the statutory requirements of the UBTCEA.

22. Specifically, Defendants subjected Plaintiff to a *random* urine test and otherwise lacked reasonable grounds to believe that Plaintiff was using a controlled substance and/or that any such purported use was impairing her ability to perform her job.

23. In addition, on information and belief, the test to which the Plaintiff was subjected was not administered pursuant to and in accordance with a drug abuse prevention policy promulgated by the Defendant City which complies with the requirements of the UBTCEA, as set forth in paragraph 19 above.

24. The Defendants' wrongful and unlawful acts and/or omissions, including, but not limited to, those described herein were motivated by malice and ill will toward the Plaintiff and/or were akin to criminality and/or were otherwise taken in bad-faith and/or with reckless indifference to the statutorily protected rights of the Plaintiff.

25. As a proximate result of the Defendants' wrongful and unlawful acts and/or omissions, including, but not limited to, those described herein, the Plaintiff has suffered and will continue to suffer emotional distress and has incurred and will continue to incur expenses for legal services, and other great harm.

26. Defendants, by their individual and/or concerted acts and/or omissions, including, but not limited to, those described herein, violated the Plaintiff's statutory rights in violation of the UBTCEA, causing the Plaintiff to suffer damages as aforesaid, and thereby deprived the Plaintiff of rights secured under the UBTCEA.

VII. Prayers for Relief

WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

1. A declaratory judgment declaring the acts and/or omissions of the Defendants complained of herein are in violation of the UBTCEA.

2. A preliminary and permanent injunction restraining the Defendants from violating the UBTCEA.
3. An award of compensatory damages.
4. An award of punitive damages.
5. An award of reasonable attorney's fees, expert witness fees, and costs of litigation pursuant to R.I.G.L. §28-6.5-1(c)(2) and/or other applicable law.
6. An award of such other and further relief as this Honorable Court deems just and proper.

VIII. Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all counts so triable.

IX. Designation of Trial Counsel

Plaintiff hereby designates Richard A. Sinapi, Esquire, as trial counsel.

PLAINTIFF,
ROMANA H. RAMOS
By her attorneys,

Date: July __, 2010

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VERIFICATION OF COMPLAINT

Now comes the Plaintiff, **Romana H. Ramos**, being duly sworn, and does hereby depose and say as follows:

1. That I am the Plaintiff in the within matter.
2. That I have read the above Complaint and acknowledge the factual allegations alleged therein to be true and accurate to the best of my knowledge, information, and belief.
3. That I have made this **Verification of Complaint** in support of my prayers therein for judgment and relief against the Defendants.

Romana H. Ramos

Subscribed and sworn to before me in **Cranston** on this ____ day of **July, 2010**.

(name)

NOTARY PUBLIC

My Commission Expires: _____