

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented to: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
_____ Kentucky Commission on Human Rights _____ and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr. Ms. Mrs.) Ms. Lyndi Trischler		Home Phone (Incl. Area Code) [REDACTED]	
		Date of Birth [REDACTED]	
Street Address [REDACTED]		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name City of Florence		No. Employees, Members 15+	
		Phone No. (Include Area Code) 859-647-5420	
Street Address 8100 Ewing Blvd.		City, State and ZIP Code Florence, KY 41042	
Name		No. Employees, Members	
		Phone No. (Include Area Code)	
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest Earliest: On or about May 7, 2014 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)): Please see attached. Ms. Trischler is represented by counsel.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY – When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLANANT	
_____ Date		_____ Charging Party Signature	
		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

<p style="text-align: center;">CHARGE OF DISCRIMINATION</p> <p style="text-align: center;">ATTACHMENT</p>	<p>Charge Presented to: Agency(ies) Charge No(s):</p> <p><u> </u> FEPA</p> <p><u> X </u> EEOC</p>
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Attachment to EEOC Charge of Discrimination
Filed by Charging Party Lyndi Trischler against City of Florence

Charging Party Lyndi Trischler is Represented by:

Elizabeth Gedmark
Dina Bakst
A Better Balance
PO Box 60565
Nashville, TN 37206
(615) 915-2417

Declaration of Lyndi Trischler:

1. I am a pregnant woman.
2. I reside at [REDACTED].
3. I have been an Officer with the Florence Police Department in Florence, Kentucky ("FPD") since February, 2012.
4. During my tenure at the FPD, there have only been three female police officers employed by FPD out of approximately sixty officers: myself, [REDACTED], and [REDACTED], who is not currently working at FPD.
5. On or about November, 2012, when I was about 7 weeks pregnant with my first child, I informed John McDermond, then Captain, now Police Chief, of my pregnancy. My due date was July 9th, 2013.
6. On or about December, 2012, I requested, upon the advice of my doctor, a modified duty position. My supervisor, Sergeant [REDACTED], immediately took me off of full duty also known as "on the road," but it was not clear whether I would be permitted to continue working in a modified duty position. At the time, I did not understand why this was the case. For about one week afterward, each day, I had to ask

Tom Szurlinski, the Police Chief, whether I would be permitted to return to work the following day. Upon information and belief, the Police Chief met with Diane Whalen, the Mayor of Florence, KY regularly about my situation.

7. Upon information and belief, on or around December, 2012, the Mayor and Richard Lunnemann, City Coordinator, told Captain McDermond that they did not want me to receive modified duty, instead they thought that I should use up my saved paid vacation and sick days and then go on unpaid leave after those were exhausted.

8. Upon information and belief, the Police Chief advocated on my behalf and struck a deal with the Mayor and City Coordinator—I was permitted to work in a modified duty position starting the second week after I made my request, but only in exchange for a detective taking my place doing full duty.

9. I continued on modified duty until my maternity leave commenced on July 2nd, 2013.

10. Upon information and belief, on April 19, 2013, the City Coordinator, CCing the Mayor, issued a directive stating in part that: “The City has no policy or procedure that allows for temporary modified duty (light duty) for employees who become injured, contract an illness, or other conditions that is not work related. In place of non-work related light duty, the City offers a sick leave benefit and a voluntary long-term disability insurance program benefit.” The directive also states that: “Effective immediately moving forward, the City will no longer allow modified or light duty for non-work related injuries, illness, or other conditions. Employees must have a release to return to full duty within their authorized position without restriction, signed by their doctor, before return to work will be permitted. The city also reserves the right to require employees to have a ‘fit for duty’ evaluation as well.” (See attached as Exhibit A.)

11. Upon information and belief, the directive was issued in retaliation for my being granted modified duty during my pregnancy and to prevent me and similarly situated employees from obtaining modified duty for pregnancy-related conditions in the future.

12. I gave birth on July 4th, 2013 and returned to full duty on or about early September, 2014 after approximately 8 weeks of maternity leave.

13. On or about April, 2014, I informed my immediate supervisor, [REDACTED], a Corporal, that I was pregnant again.

14. On or about May 7th, 2014 or May 8th, 2014, I requested a meeting with [REDACTED], Patrol Captain, through our internal electronic messaging system stating in sum and substance that I wanted to discuss my pregnancy and upon information and belief, my impending need for modified duty as my pregnancy advanced, because I had not received any information up to that point about modified duty, maternity leave, etc. At the meeting, Captain [REDACTED] immediately took me to Human Resources where I met with him, Linda Chapman, Director of Finance and Human Resources, and Chief McDermond. I told Ms. Chapman that I was pregnant and would need modified duty again. Ms. Chapman told me that I would not be able to receive modified duty for my pregnancy because of the City directive. She then went over how much vacation and sick time I had remaining and told me that I would need to exhaust that time and then go on unpaid leave instead of receiving modified duty during my pregnancy and while recovering after childbirth. Ms. Chapman stated, in sum and substance, that the fact that I would be required to take unpaid leave was bad timing/planning on my part and that if I had waited until later to become pregnant again then I would have had enough paid time saved up for an extended leave.

15. Upon information and belief, and based on the city Directive and personnel policies, officers with on-the-job injuries are currently eligible for modified duty

assignments and have received modified duty assignments before and since the Directive was put into place.

16. Upon information and belief, there is modified duty work available in the department that I could do.

17. Upon information and belief, Officer [REDACTED] is also pregnant and was also told that she would not be permitted to take modified duty.

18. In a letter dated June 26, 2014, the non-profit organization A Better Balance (now my counsel) received a letter from City Coordinator Richard J. Lunnemann (See attached Exhibit C) responding to a letter from A Better Balance expressing concern about the legality of the City's policy (See attached Exhibit B). The letter states: "The City of Florence, Kentucky is in receipt of your letter dated June 18, 2013, which raised questions regarding a City policy as it related to employees who receive a non-work related injury, illness or other condition including city employees who are pregnant. Please be advised that Florence City Council took final action on June 24, 2014, on an amendment to the city of Florence Personnel Policy that provides employees access to a new short-term disability benefit...City employees are also provided with sick leave, annual paid leave and access to a long-term disability policy. These changes should eliminate your concerns about the policies of the City of Florence."

19. July 1st, 2014 was my last day at work. On July 2, 2014, I submitted a form to my employer completed by my doctor indicating my need for short-term disability because my employer would not permit me to continue working with modified duty. (See attached Exhibit E.) My doctor indicated that I had been having heart palpitations (sic) and had a symptom of "Fetus w/ Skeletal dysplasia." I was no longer physically able to continue working full duty, due to my pregnancy-related disability, which substantially limits one

or more major life activities. However, I was capable and remain capable of modified duty.

20. If my application for short-term disability insurance is approved, which is an open question since it has already been rejected once due to a minor error, then it is my understanding that I will be paid a wage replacement rate of 60% of my salary for 68 days (from July 22, 2014 to on or about September 28, 2014), after which I will be forced to use up my remaining saved vacation and sick days (approximately 40 hours), ending on or about October 5, 2014. Once I have used my saved paid time and short-term disability, I will have to go on unpaid leave and will lose my health benefits. My due date is October 25, 2014. My doctor has recommended that I will be able to return to work 6 weeks after delivery, on approximately December 6th, 2014.

21. On July 8, 2014, I sent an email to Ms. Chapman confirming our meeting and conversation of May 7th, 2014 or May 8th, 2014, stating that I understood that I would not be accommodated, despite my pregnancy-related conditions and asking them to contact me if there was any misunderstanding. She responded that "City policy specifies that light duty is not available for non-work related injury or illness." (See Attached Exhibit D).

22. The City discriminated against me on the basis of sex, pregnancy, and disability in violation of federal discrimination laws.

23. The City's written policies facially discriminated against myself and similarly situated employees with disabilities, including pregnancy-related disabilities, because they do not permit employees to obtain reasonable accommodations or engage in an interactive process as required by the Americans with Disabilities Act. Permitting me to work modified duty would have been a reasonable accommodation that would not have imposed an undue hardship on the City.

24. The City's written policies, and written confirmation of such policies, do not treat pregnant workers the same as workers who are similar in their ability or inability to work, such as, for example, workers who have on-the-job injuries that require accommodation, in violation of the Pregnancy Discrimination Act.

25. The City has engaged in systemic sex discrimination against myself and similarly situated individuals because the City has a pattern or practice of failing to accommodate pregnant employees and of failing to treat pregnant women the same as other individuals who are similar in their ability or inability to work, specifically those with on-the-job injuries.

26. The City's written policies of not allowing modified duty for workers with non work-related injuries, illnesses, or conditions disparately impacts women and has likely adversely impacted many women in the City over the years and continuing today.

27. This discrimination has caused me economic harm as well as severe emotional distress, exacerbating my physical disorders.

I swear or affirm that I have read the foregoing Charge and know the contents thereof; the same is true to the best of my knowledge, except as to the matters therein stated to be on information and belief, and as to those matters, I believe them to be true.

Date

Lyndi Trischler

EXHIBIT A

Memo

To: Department Heads
CC: Mayor Diane E. Whalen
From: Rick Lunnemann / City Coordinator *RL*
Date: April 19, 2013
Re: Non Work Related Injuries, Illnesses, and Other Conditions

As you are aware, Section VI.7 g. of the City of Florence Personnel Policies outlines the policies and procedures for when an employee becomes injured or contracts an illness in the line of duty and a temporary modified duty assignment may be appropriate.

These provisions are not applicable to employees who become injured, contract an illness, or other condition that occurs in a non-work setting (non-work related). The City has no policy or procedure that allows for temporary modified duty (light duty) for employees who become injured, contract an illness, or other condition that is not work related. In place of non-work related light duty, the City offers a sick leave benefit and a voluntary long-term disability insurance program benefit.

However, over the last few years, various non-work related light duty (modified duty) situations have arisen within our organization where exceptions have been permitted. Effective immediately moving forward, the City will no longer allow modified or light duty for non-work related injuries, illness, or other conditions. Employees must have a release to return to full duty within their authorized position without restriction, signed by their doctor, before return to work will be permitted. The city also reserves the right to require employees to have a "fit for duty" evaluation as well.

If you have any questions regarding this issue please let me know.

EXHIBIT B



the work and family legal center

P.O. Box 60565, Nashville, TN 37206 | 615.915.2417 | info@abetterbalance.org | abetterbalance.org

June 18, 2014

VIA ELECTRONIC AND FIRST CLASS MAIL

Richard J. Lunnemann
City Coordinator
Florence Government Center
8100 Ewing Boulevard
Florence, KY 41042
Richard.Lunnemann@florence-ky.gov

Dear Mr. Lunnemann,

A Better Balance is a non-profit legal organization that advocates for the rights of pregnant workers and caregivers in the workplace. We are writing because it has come to our attention that the city of Florence, Kentucky (“the city”), has in place a policy affecting its city employees that implicates the Americans with Disabilities Act Amendments Act (“ADAAA”) and the Pregnancy Discrimination Act (“PDA”). A Better Balance is a nationally recognized leader in the fight to end pregnancy discrimination in the workplace. Our efforts and investigations have led to changes at major national corporations¹ and justice for individuals wronged by this pernicious form of sex discrimination.²

We call on the city to update their policies and practices with respect to pregnant and disabled workers to ensure fair treatment and compliance with the law.

On April 19, 2013, the Florence City Coordinator issued a Directive, CCing the Mayor, stating that “the City will no longer allow modified or light duty for non-work related injuries, illness, or other conditions” effective for all city employees. It further states that “[e]mployees must have a release to return to full duty within their authorized position without restriction, signed by their doctor, before return to work will be permitted.” This new policy effectively excludes from employment all pregnant workers and city employees with disabilities who are in need of some modification to their duties (except those injured on the job). This means that a pregnant city employee who needed a modest accommodation to stay healthy and earning a paycheck (e.g., temporary relief from heavy lifting), would not be permitted to stay employed, even if work were available. Without modified duty, such an employee would be forced to

¹ Lydia Depillis, “Under Pressure, Wal-Mart Upgrades Its Policy for Helping Pregnant Workers,” The Washington Post, (April 5, 2014), available at: <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/04/05/under-pressure-walmart-upgrades-its-policy-for-helping-pregnant-workers/>.

² Rachel L. Swarns, “A Pregnant Worker, Forced to Go on Unpaid Leave, Is Back on the Job,” The New York Times, (February 26, 2014), available at: http://cityroom.blogs.nytimes.com/2014/02/26/a-pregnant-worker-forced-to-go-on-unpaid-leave-is-back-on-the-job/?_php=true&_type=blogs&_r=0.



the work and family legal center

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choose between risking her health while continuing work or losing her job and critical income and benefits.

The city's policy of requiring that employees have no restrictions in order to work is strongly suggestive of a *per se* violation of the ADAAA because workers with disabilities are not afforded reasonable accommodations to permit them to continue working with medical restrictions. Workers with disabilities, including pregnancy-related disabilities, are denied even an interactive process to determine what reasonable accommodation would allow them to continue working within their medical restrictions. This flies in the face of the mandate of the ADAAA which requires an individualized assessment.

The policy also appears to violate the federal Pregnancy Discrimination Act (PDA), which requires that: "women affected by pregnancy, childbirth, or related medical conditions shall be *treated the same* for all employment-related purposes...as other persons not so affected but similar in their ability or inability to work." See 42 U.S.C. § 2000e(k) (emphasis added). For example, the city's policy treats pregnant workers in need of modified duty worse than similarly situated workers who are injured-on-the-job, violating the PDA. Furthermore, a policy that is so lacking in merit could be considered pretext for discrimination.

Based on these serious legal concerns, we request that you call Elizabeth Gedmark at 615-915-2417 **by July 3rd, 2014** to discuss this matter further. We look forward to your response.

Sincerely,

Elizabeth Gedmark
Director of the Southern Office/Staff Attorney
A Better Balance

Dina Bakst
Co-Founder & Co-President
A Better Balance

EXHIBIT C

June 26, 2014

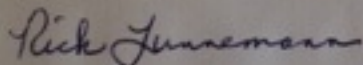
Ms. Elizabeth Gedmark
Director Southern Office/Staff Attorney
A Better Balance
P.O. Box 60565
Nashville, TN 37206

Dear Ms. Gedmark,

The City of Florence, Kentucky is in receipt of your letter dated June 18, 2014, which raised questions regarding a City policy as it relates to employees who receive a non-work related injury, illness or other condition including city employees who are pregnant.

Please be advised that Florence City Council took final action on June 24, 2014, on an amendment to the City of Florence Personnel Policy that provides employees access to a new short-term disability benefit that becomes effective on July 1, 2014. In addition to the new short-term disability policy (which has no pre-existing condition provision) City employees are also provided with sick leave, annual paid leave and access to a long-term disability policy. These changes should eliminate your concerns about the policies of the City of Florence.

Sincerely,



Richard J. Lunnemann
City Coordinator

EXHIBIT D

From: "Linda Chapman" <Linda.Chapman@Florence-KY.gov>
Date: July 9, 2014, 2:44:01 PM EDT
To: "Lyndi" [REDACTED]
Subject: RE:

Lyndi,

City policy specifies that light duty is not available for non-work related injury or illness.

—Original Message—

From: Lyndi [REDACTED]
Sent: Tuesday, July 08, 2014 9:08 PM
To: Linda Chapman
Subject:

As a follow up to our meeting of May 7th, 2014 or May 8th, 2014, while I would like an accommodation of my pregnancy issues (heart palpitations & fetus with lethal skeletal dysplasia) through an assignment to light duty, it's my understanding that the city will not grant that accommodation. Based on that understanding, I've initiated the process for taking short term disability leave. Please notify me immediately if I am incorrect and an accommodation can be discussed.

Lyndi Trischler

Sent from my iPhone

EXHIBIT E