

IN THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, IN AND FOR
ALACHUA COUNTY, FLORIDA.

CASE NO.: 01-09-CA-3721
DIVISION:

J

WILLIE WASHINGTON,

Plaintiff,

v.

CITY OF GAINESVILLE, AND
GAINESVILLE POLICE DEPARTMENT,

Defendants.

2009 AUG 18 PM 2:52

SUMMONS

THE STATE OF FLORIDA:
To all and singular the sheriffs of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint or Petition
in this action on the Defendant(s):

City of Gainesville
c/o The Honorable Mayor Pegeen Hanrahan
200 East University Avenue
Gainesville, FL 32601

Each defendant is required to serve written defenses to the Complaint or Petition on Plaintiff's attorney, whose name and address is David B. Sacks, Esquire, or Rachel A. Compton, Esquire, 1017 Lasalle Street, Jacksonville, Florida 32207 (904) 634-1122 within ~~20~~³⁰ days after service of this summons on that Defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint or Petition.

WITNESS my hand and the seal of this Court on *July 22, 2009*

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Persons with a disability who need any accommodation in order to participate should call Jan Phillips, ADA Coordinator, Alachua County Courthouse, 201 E. University Ave., Gainesville, FL 32601 at (352) 337-6237 within two (2) working days of your receipt of this notice; if you are hearing impaired call (800) 955-8771; if you are voice impaired, call (800) 955-8770.

J.K. IRBY
As Clerk of the Court

By: *Mary Kaye Caruso*
As Deputy Clerk

8/18/09 at 2:00p

COPY

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COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiff, WILLIE WASHINGTON (hereinafter Plaintiff) sues Defendants, GAINESVILLE POLICE DEPARTMENT and THE CITY OF GAINESVILLE, (collectively Defendants), and states:

1. This is an action for damages which exceeds the amount of fifteen thousand dollars (\$15,000.00), exclusive of interest, costs and attorney's fees.
2. At all times material hereto, the Plaintiff was and is a resident of Gainesville, Alachua County, Florida.
3. At all times material hereto Defendants were public agencies operating in Gainesville, Alachua County, Florida.

GENERAL ALLEGATIONS

4. Plaintiff was hired by Defendant on or about March 12, 1979.

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5. Because of health issues, and if it became necessary to use sick time, Plaintiff applied for the Federal Medical Leave Act (FMLA) program offered to full time employees of Defendants.
6. FMLA allows eligible employees to take job-protected, unpaid leave or to substitute appropriate paid leave if an employee has earned it for up to a total of 12 work weeks in any 12 months due to serious health condition.
7. Employees of Defendants taking FMLA leave must complete and submit all required documents to certify that the absence qualifies as FMLA prior to taking the leave, including a Fitness for Return to Duty Form requiring a doctor's signature.
8. Because of the Plaintiff's chronic medical condition, his physician recommended some physical restrictions.
9. The limitations set forth by Plaintiff's doctor were: unable to participate in physical force situation or training; unable to run or jump; unable to negotiate a 4 foot fence and other similar obstacles; unable to push a small car on a flat surface; unable to climb through windows and unable to evacuate an unconscious person from a dangerous area.
10. None of these limitations had any impact on Plaintiff's ability to perform any job related function listed in the job description title Police Captain coded 7309 by the City of Gainesville's Human Resource Department.
11. As required, the Plaintiff forwarded the completed paperwork through the proper channels. Upon receiving the Plaintiff's Fitness for Duty Form, the Personnel

Lieutenant (Willis) initiated a private meeting with the Plaintiff to discuss his condition and a course of action to take.

12. On or about April 15, 2008, Chief Botsford summoned the Plaintiff to his office to discuss his employment status with the City. Chief Botsford stated that because Plaintiff's recommended restrictions were permanent, Plaintiff would not be able to continue his employment with the City and to consider other options. The Plaintiff was told to go and speak with Human Resources and establish a departure date.
13. Plaintiff made an attempt, without success, to explain the differences in job descriptions and duties with Chief Botsford to get further consideration.
14. Chief Botsford advised Plaintiff that the action being taken was consistent with past practice.
15. Chief Botsford requested that the complainant make contact with the Human Resource Department and get back with him by Friday (4/18).
16. On or about April 18, 2008, the Plaintiff had a follow-up meeting with Chief Botsford regarding his employment status. During this conversation, Plaintiff was told that he would need to complete the resignation process. Plaintiff was told that he would need to do a "voluntary resignation."
17. After learning that he was expected do a voluntary resignation, Plaintiff refused.
18. Plaintiff was then advised that he would have to do a "voluntary resignation or be fired."
19. The options given to the Plaintiff to either resign or be terminated are given as a

common practice by the Defendants when discharging employees as and for disciplinary action.

20. The Defendants violated the City of Gainesville Policies and Procedures Number 34 (Disability) and Policies and Procedure Number 35 (Equal Employment Opportunity).
21. Plaintiff was told the reason he had to resign was because of physical limitations set forth by Plaintiff's doctor.
22. Plaintiff was not provided the opportunity to engage in any interactive process to see if his physical limitations could be accommodated.
23. Any physical limitations placed on Plaintiff by his physician would not have interfered with the performance of the essential functions of Plaintiff's job.
24. The only individuals employed by Defendant who were provided with reasonable accommodations were Caucasian.
25. Plaintiff, throughout all times he was employed by Defendant, performed the duties of each position he held with Defendant in an exemplary manner.

COUNT I: RACE DISCRIMINATION IN VIOLATION OF CHAPTER 760 FLA. STATS.

26. Plaintiff realleges paragraphs 1 - 25, as if fully set forth herein, and further alleges:
27. This action is brought against the Defendant on the basis of an unlawful discriminatory practice relating to plaintiff's race.
28. Section 760.10(1)(a), Florida Statutes(1993), states that it is an unlawful employment practice for an employer...to discriminate against any individual with

respect to compensation, terms, conditions or privileges of employment because of such individual's...race.

29. Plaintiff has timely filed a Charge of Discrimination on the basis of his race.
30. All statutory pre-requisites have been complied with prior to the filing of this complaint.
31. At all times material hereto, the Plaintiff is and has been a member of protected class, in that he is African American.
32. The Plaintiff's race was the sole or motivating factor which contributed to the discrimination against him in the terms, conditions and/or privileges of his employment.
33. As a direct and proximate result of the actions of its' agents and/or employees, the Defendant has caused the Plaintiff to suffer lost wages, past, present and future, mental anguish, pain and suffering and loss of dignity.
34. The Defendant's acts of discrimination were performed with malice and reckless indifference to Plaintiff's protected civil rights.
35. Plaintiff has obligated himself to pay a reasonable attorney's fee, including costs, in connection with the bringing of this action.

WHEREFORE, the Plaintiff demands judgment against the Defendant for back pay, front pay, compensatory and punitive damages, pre-judgment interest, costs, attorney's fees, and any further relief the Court deems just and proper.

**COUNT II: RACE DISCRIMINATION IN VIOLATION OF
THE CIVIL RIGHTS ACT OF 1886, 42 U.S.C § 1981 ET SEQ.**

36. Plaintiff realleges paragraphs 1 - 25, as if fully set forth herein, and further

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alleges:

37. The unlawful discrimination against Plaintiff denied Plaintiff the same right to make and enforce contracts as enjoyed by white citizens of the United States, in violation of the Thirteenth Amendment to the Constitution as protected by 42 U.S.C. § 1981, as amended in 1991.
38. Plaintiff's race (African American) was a motivating factor with regard to the decision to terminate Plaintiff's employment. Moreover, these decisions would not have been made but for Plaintiff's race, and Plaintiff has been treated differently than similarly situated white employees in this regard.
39. The discrimination described above was done maliciously and with a reckless disregard for Plaintiff's rights. As a result, Plaintiff has suffered damages.

WHEREFORE, the Plaintiff demands judgment against the Defendant for back pay, front pay, compensatory and punitive damages, pre-judgment interest, costs, attorney's fees, and any further relief the Court deems just and proper.

**COUNT III: HANDICAP DISCRIMINATION IN VIOLATION OF
CHAPTER 760 FLA STATS.**

40. Plaintiff realleges paragraphs 1 - 25, as if fully set forth herein, and further alleges:
41. This action is being brought pursuant to the Florida Civil Rights Act (FCRA), specifically claims for handicap discrimination based on a handicap and/or being regarded as having a handicap and/or having a record of a handicap.
42. At all times material to this complaint, Plaintiff has been an individual with a "handicap" within the meaning of the FCRA.
43. Plaintiff is a "qualified individual with a handicap" as he suffers from long term

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permanent orthopedic deficits, and as such, Plaintiff is an individual with a handicap and/or an individual who was regarded as a handicap and/or perceived as having a record of a handicap who, with or without a reasonable accommodation, could perform the essential functions of his job throughout all times material.

44. Section 760.10(1)(a), Florida Statutes(1993), states that it is an unlawful employment practice for an employer...to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's...handicap.
45. Plaintiff has timely filed a Charge of Discrimination on the basis of his handicap.
46. All statutory pre-requisites have been complied with prior to the filing of this complaint.
47. Defendants' decisions to terminate Plaintiff and/or to not allow him to return to work were based upon his physical handicap, and/or his record of such handicap and/or his having been regarded as having such handicap.
48. Defendants also failed to provide reasonable accommodation to Plaintiff in that Defendants failed to enter into an interactive process to determine whether Plaintiff could or could not perform the essential functions of his job, with or without reasonable accommodation.
49. The discriminatory practices described above were made by Defendants with malice or with reckless indifference to Plaintiff's federally protected rights.
50. Defendant's discrimination against Plaintiff caused, continues to cause, and will cause Plaintiff to suffer substantial damages in the form of lost wages, other

pecuniary losses, mental anguish, loss of enjoyment of life, and/or other non-pecuniary losses, which cannot be measured in monetary terms.

WHEREFORE, the Plaintiff demands judgment against the Defendant for back pay, front pay, compensatory and punitive damages, pre-judgment interest, costs, attorney's fees, and any further relief the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

RESPECTFULLY SUBMITTED,

LAW OFFICES OF DAVID B. SACKS



DAVID B. SACKS, ESQUIRE

Florida Bar No.: 964409

1017 Lasalle Street

Jacksonville, Florida 32207

Tele: (904) 634-1122

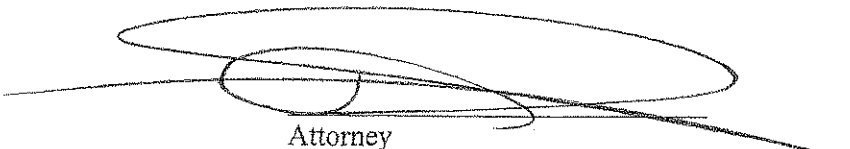
Fax: (904) 355-8855

Email: david@sackslegal.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by process server to the designated individual or individuals to be so served.



Attorney