

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BERNARDETA SIKIC,)	
LISA WALKER, and)	
KATHERINE MEMBERS,)	
on behalf of themselves and a)	
class all those similarly-situated,)	Case No. 17-cv-06041
)	
<i>Plaintiffs,</i>)	Judge John Robert Blakey
)	Magistrate Judge Mary M. Rowland
v.)	
)	JURY TRIAL DEMANDED
ILLINOIS DEPARTMENT)	
OF TRANSPORTATION,)	
)	
<i>Defendant.</i>)	

AMENDED CLASS ACTION COMPLAINT

The plaintiffs, Bernardeta Sikic, Lisa Walker, and Katherine Members, by their attorneys, file the following Amended Class Action Complaint against defendant Illinois Department of Transportation pursuant to Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §§ 2000e, *et seq.* for sex discrimination and retaliation.

THE PARTIES

1. Defendant Illinois Department of Transportation (“IDOT”) is a department of the State of Illinois that was created in 1972 to administer the State of Illinois’ transportation systems and activities. IDOT is an umbrella organization containing several divisions, including the Division of Highways, which oversees nine highway districts throughout the state of Illinois. District 1 contains Cook County and several other counties. The administrative office for District 1 is located in Schaumburg, IL. Each district is divided into several maintenance yards.

2. Plaintiff, Bernardeta Sikic is a female employee of IDOT. She has worked as a Seasonal Highway Maintainer in the Harvey Maintenance Yard of IDOT's District 1 from December 2012 to the present. She is a resident of Cook County, IL.

3. Plaintiff Lisa Walker is a female former employee of IDOT. She worked as a Seasonal Highway Maintainer in the Bolingbrook and Harvey Maintenance Yards of IDOT's District 1 from November or December 2007 until 2014. She is a resident of Cook County, IL.

4. Plaintiff Katherine Members is a female employee of IDOT. She has worked as a Seasonal Highway Maintainer in the I-57 and Bishop Ford Maintenance Yards of IDOT's District 1 from December 2003 to the present. She is a resident of Cook County, IL.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the plaintiff's claims pursuant to 28 U.S.C. § 1331, as they arise under a federal statute.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claims occurred in this District.

7. The Northern District of Illinois has personal jurisdiction over the defendant because it resides in and/or do business in this District.

8. Ms. Sikic filed an EEOC charge (No. 440-2016-06114) on September 20, 2016 and received a Notice of Right to Sue from the EEOC dated May 22, 2017.

9. This Complaint is filed within 90 days of the plaintiff's receipt of the Notice of Right to Sue.

FACTUAL BASIS OF CLAIMS

The plaintiffs' employment at IDOT

10. Plaintiff Bernardeta Sikic currently works as a Seasonal Highway Maintainer (also known as a “Snowbird”) in the Harvey Yard of District 1. Ms. Sikic has worked as a Snowbird every winter season from December 2012 until the present. Snowbirds typically work from November until April, depending on the weather.

11. Plaintiff Lisa Walker worked as a Snowbird in the Bolingbrook and Harvey Yards of District 1 every winter season from November or December 2007 until the spring of 2014.

12. Plaintiff Katherine Members currently works as a Snowbird in the Bishop Ford Yard of District 1. She has worked as a snowbird at the I-57 and Bishop Ford Yards from December 2003 until to the present.

13. The job duties of a Highway Maintainer are to perform maintenance and repair of roads, bridges, signs, road striping and related functions by semi-skilled operations of tools, equipment, and light and heavy vehicles. Seasonal Highway Maintainers are also responsible for the removal of snow and ice.

14. The position of permanent Highway Maintainer is subject to the Illinois Veterans Preference Act, 330 ILCS 55 *et seq.* The Veterans Preference Act provides that “preference shall be given to persons who have been members of the armed forces of the United States” in certain public works jobs.

15. IDOT implements the Veterans Preference Act with respect to the Highway Maintainer position.

16. Veterans with “A” grades on the Highway Maintainer test are to be given the opportunity to interview and seek employment before non-veterans with “A” grades. Veterans with “A” grades are put on a list that is then used to fill positions as they become open. After the

“A” grade veterans list is exhausted, then the policies followed by IDOT require it to hire from the “A” grade non-veterans list.

17. According to IDOT’s current Notices of Vacancy for the position of Full Time Permanent Highway Maintainer, the job’s qualifications are as follows: “Has worked 180 days or more as a MONTHLY snowbird, in good standing with the IDOT (eligible for rehire), Class ‘A’ CDL with ‘n’ or ‘x’ endorsements, and CURRENTLY POSSESS an Open Competitive Eligible grade for Highway Maintainer.”

18. Ms. Sikic was informed during her initial interview that if she performed her duties as required and met the expectations for a Snowbird, she would have a good chance of being hired as a full-time Highway Maintainer, which was her goal.

The plaintiffs’ efforts to become a permanent Highway Maintainer

19. Ms. Sikic, Ms. Walker, and Ms. Members all possess all of the qualifications listed in IDOT’s job postings for the position of permanent Highway Maintainer: they have worked 180 days as Snowbirds, they are in good standing with IDOT, they have a Class A CDL with either an n or x endorsement, and they have or had, at the relevant time, a current “A” grade on the Highway Maintainer test.

20. The plaintiffs also has experience operating heavy equipment. For example, Ms. Sikic has obtained several certifications from the Highway Construction careers Training Program at South suburban College in Oak Forest, IL (a program was funded and operated by IDOT). Ms. Walker and Ms. Members both attended commercial truck driving school.

21. Ms. Sikic, Ms. Walker, and Ms. Members all performed their duties as Snowbirds satisfactorily throughout their employment. They have never been disciplined, and they garnered excellent reviews from their supervisors.

22. For example, in Ms. Sikic's 2015 review, her supervisor stated that she was an "excellent employee, always willing to help out, team player." Similarly, in her 2014 review, her supervisor stated, "very good worker and great attitude. Did a nice job for us here at the Harvey Yard." And her 2013 review stated that "Bernardeta did a very good job. Hope to see her return next season."

23. Ms. Sikic and Ms. Walker were both asked to train new Snowbirds in the Harvey Yard.

24. Ms. Sikic applied for permanent Highway Maintainer positions on multiple occasions, including January 2012, September 22, 2014, November 4, 2014, March 23 and 24, 2016, December 22, 2016, sometime in 2017, and February 27, 2018, all with no success.

25. Additionally, each year when Ms. Sikic returned to IDOT for the Snowbird season, she made it known to IDOT management and her supervisors that she wanted to be considered for the next available permanent position – also to no avail.

26. Ms. Walker applied for four permanent Highway Maintainer positions in the Harvey Yard on December 17, 2013. She was never considered or interviewed for the positions. She received rejection letters from IDOT stating that she was "not eligible to interview." She also applied for a permanent Highway Maintainer position in 2016 after taking CMS test and receiving an "A" grade, but she never received a response from IDOT to this application. Ms. Walker sought employment as a Snowbird for the 2017-18 snow and ice season, but, despite her many years in the position, and despite submitting a complete application, she received a response from IDOT stating that her application was "incomplete."

27. Ms. Members applied for permanent Highway Maintainer positions on multiple occasions, including in 2007 and 2013. Most recently, she applied for two open positions at the Harvey and Bishop Ford Yards on February 28, 2018.

28. Ms. Members also went to Schaumburg a few years after she began working for IDOT to ask about being hired as a permanent Highway Maintainer. She was told “it’s going to be awhile” before she could be considered.

29. None of the plaintiffs were ever interviewed for any of the permanent Highway Maintainer positions they applied for.

30. IDOT failed to follow the Illinois Veterans Preference Act and the policies implementing the Act, to the detriment of Ms. Sikic, Ms. Walker, Ms. Members, and other female job seekers.

31. First, IDOT hired male non-veterans as permanent Highway Maintainers in District 1 during the time period that the plaintiffs sought the position. For example, Arnoldo Pineda, who is not a veteran, was hired as a permanent Highway Maintainer in the Grayslake yard in 2016. On information and belief, other non-veteran males were hired in District 1 yards and other districts statewide between 2012 and the present.

32. In addition, IDOT did not follow its policy of offering jobs to the “A” grade non-veterans list after exhausting the “A” grade veterans list. For example, IDOT hired several male veterans who attended a job fair and were not previously on the “A” veterans list, including Marc Hobson and Derek Wilson. These individuals had no experience as Highway Maintainers and did not satisfy the qualifications stated on the Notices of Vacancy for the position. Under IDOT’s policies, they should have had to work as Snowbirds for 180 days and fulfill the other prerequisites before being eligible for a permanent position. If the “A” veterans list was

exhausted, IDOT should have hired from the “A” non-veterans list, which should have included the plaintiffs and putative class members, instead of seeking otherwise-unqualified male candidates from job fairs or elsewhere.

IDOT’s underutilization of women

33. According to IDOT’s 2016 Affirmative Action Plan, IDOT has an underutilization of 937 women statewide. See

[https://www.google.com/url?q=http://www.idot.illinois.gov/Assets/uploads/files/Doing-Business/Manuals-Guides-%26-Handbooks/OBWD/2016%2520Affirmative%2520Action%2520Plan\(web%2520version\).pdf&sa=U&ved=0ahUKEWjyzYjwgOrZAhVC94MKHTz8CFAQFggFMAA&client=internal-uds-cse&cx=001777681116861149309:quxgcr1pktu&usg=AOvVaw0vydMyxGVZrxq9dpMuZ6B4,](https://www.google.com/url?q=http://www.idot.illinois.gov/Assets/uploads/files/Doing-Business/Manuals-Guides-%26-Handbooks/OBWD/2016%2520Affirmative%2520Action%2520Plan(web%2520version).pdf&sa=U&ved=0ahUKEWjyzYjwgOrZAhVC94MKHTz8CFAQFggFMAA&client=internal-uds-cse&cx=001777681116861149309:quxgcr1pktu&usg=AOvVaw0vydMyxGVZrxq9dpMuZ6B4)

p. 172.

34. The Plan states that IDOT has set a diversity goal of increasing the number of women in Highway Maintainer positions, and it admits there are “insufficient numbers of protected class ... non-veterans” on the Highway Maintainer eligibility list. Plan, p. 165.

35. IDOT set a statewide goal of hiring 618 more women in the Service/Maintenance category (which includes the position of Highway Maintainer). Plan, p. 172.

36. However, IDOT’s own summary of its workforce discloses that in District 1, there are only 10 women out of a total of 577 full-time employees in the “Service/Maintenance” category. Plan, p. 51. This is despite IDOT’s own availability analysis stating that women make up 32.71 percent of the available workforce in the Service/Maintenance category of District 1.

37. The numbers are similar in the other Districts.

38. IDOT's hiring of women in the Service/Maintenance category has not improved over time. There were 9 women in District 1's Service/Maintenance category in 2014, 10 in 2015, and 9 in 2016.

39. IDOT's practice, pattern and/or policy of hiring non-veteran males and unqualified veteran males, while bypassing qualified females, discriminate against and result in a disparate impact against the plaintiffs and other female applicants.

40. The United States Department of Veteran Affairs estimates that women currently make up approximately 15% of all veterans at all age groups. See https://www.va.gov/vetdata/docs/Demographics/New_Vetpop_Model/1L_VetPop2016_National.xlsx. Despite this, IDOT has done nothing to implement its stated goal of increasing female Highway Maintainers, which currently comprise just **1.73% of the positions**. Instead, it has acted to further limit female applicants' chances.

Differential treatment

41. Despite her training and experience, Ms. Sikic was treated differently while working as a Snowbird than her male coworkers by routinely being assigned the most menial jobs, like picking up litter, while male Snowbirds were operating heavy equipment or being trained on new equipment. For example, she asked to be trained on the front loader, but was refused, while male Snowbirds received training.

42. Ms. Sikic also experienced a strong bias against female Highway Maintainers. Coworkers told her that IDOT didn't want women in the job. The women's dressing and washroom facilities were dirty and substandard compared to the men's facilities. And several individuals stated to Ms. Sikic that women were viewed as "risks" or "problems" rather than valued employees.

43. Ms. Members was also treated differently than male coworkers. For example, in 2007, she was sexually assaulted in the workplace by a union steward. She was afraid she would lose her job if she reported the incident. Several years later, a coworker who knew about what had happened reported it to IDOT, leading to Ms. Members lodging a formal complaint in 2011 (though it was too late, by that time, to pursue a Title VII claim). On information and belief, IDOT conducted an investigation, but the individual who assaulted Ms. Members was never terminated, and, in fact, eventually retired with his full pension.

Retaliation against Ms. Sikic

44. Throughout her employment, Ms. Sikic complained to several members of IDOT management about IDOT's failure to hire female Highway Maintainers and its failure to follow its own policies, including James Stumpner, who is the Bureau Chief of Maintenance for District 1, and her supervisors in the Harvey Yard.

45. After she complained about not being hired as a full-time Highway Maintainer because of her gender, Ms. Sikic experienced retaliation in the form of continued poor assignments, hostility, and a continued refusal to hire her as a permanent Highway Maintainer.

Class action allegations

46. The plaintiffs bring this Complaint as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of a class of all female applicants and deterred prospective female applicants (including female Snowbirds) for the position of permanent Highway Maintainer from December 2012 to the present.

47. Ms. Sikic, Ms. Walker, and Ms. Members are all members of the class they seek to represent.

48. IDOT's own workforce analysis concludes that there should be 618 more women employed in the Service/Maintenance category statewide. Its demographics sharply diverge from the relevant labor pool, according to its own analyses.

49. The members of the class are so numerous that joinder of all members is impracticable.

50. There are questions of law or fact common to the class, and these questions predominate over any questions affecting only individual class members. Common questions include, but are not limited to, the following:

- a. Did IDOT's recruiting and hiring policies, patterns, and/or practices, including hiring non-veteran males and unqualified male veterans while bypassing qualified nonveteran females, constitute intentional discrimination against female applicants?
- b. Did IDOT's recruiting and hiring policies, patterns, and/or practices, including hiring non-veteran males and unqualified male veterans while bypassing qualified nonveteran females, result in a disparate impact disfavoring female applicants?
- c. Did IDOT violate Title VII by implementing these policies, patterns and/or practices?

51. The plaintiffs' claims are typical of the claims of the class. They, like the class members, have been denied the opportunity to work as a permanent Highway Maintainer, and they and the class members have suffered the same types of damages due to the loss of the position and all benefits associated with it.

52. Ms. Sikic, Ms. Walker, and Ms. Members will fairly and adequately represent and protect the interests of the members of the class. They have a strong personal interest in the outcome of this action. They have no conflicts of interest with members of the class, and they will fairly and adequately protect the interests of the class.

53. The plaintiffs have retained counsel competent and experienced in both class actions and employment discrimination litigation. Counsel for the plaintiffs have the resources, expertise, and experience to prosecute this action, having practiced in both areas for many years.

54. The class seeks both monetary and injunctive relief. The Seventh Circuit has held that it is appropriate in such cases to either certify the entire case under Rule 23(b)(3) or to certify a Rule 23(b)(2) class for injunctive relief and a Rule 23(b)(3) class for damages. Because the class satisfies both Rule 23(b)(3) and 23(b)(2), either course is possible here.

55. First, class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) for determination of the monetary claims of individual class members. Rule 23(b)(3) provides that a class can be maintained if “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and ... a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

56. The primary question common to the class is whether IDOT discriminated on the basis of sex or gender in its uniform hiring policies, patterns, and/or practices. This question predominates over any individual issues among the members of the proposed class. The central issue of liability is thus common to the class, and a common nucleus of operative facts forms this central issue, which predominates over individualized issues of proof.

57. Class certification under Rule 23(b)(3) is superior to other methods for fair and efficient resolution of conflict because certification will avoid the need for repeated litigation by each individual class member.

58. Second, class certification is appropriate under F.R.C.P. 23(b)(2) regarding the plaintiffs’ prayer for injunctive relief because IDOT has acted or refused to act on grounds that

apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate for the class as a whole.

59. Any resolution of the classwide claim would, among other things, require IDOT to establish a new policy regarding the hiring of women as Highway Maintainers; as such, class-wide injunctive relief both appropriate and necessary to the resolution of this case.

FIRST CLAIM FOR RELIEF
Sex discrimination in violation of
Title VII of the Civil Rights Act of 1964,
as amended, 42 U.S.C. §§ 2000e, et seq.

Intentional discrimination

Brought on behalf of each plaintiff and the members of the putative class

60. The plaintiffs reallege each of the paragraphs set forth above.

61. Title VII prohibits employers from denying employees equal employment opportunities with respect to terms, conditions, benefits or privileges of employment based on their sex or gender, whether intentionally or unintentionally. It also prohibits employers from limiting, segregating, or classifying employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1) and (2).

62. IDOT is an "employer" within the meaning of Title VII, and Ms. Sikic, Ms. Walker, Ms. Members, and the members of the putative class are "employees" or "applicants" within the meaning of Title VII.

63. As alleged above, IDOT denied the plaintiffs and the members of the putative class the equal terms, conditions, benefits or privileges of employment because of their sex or

gender. It also limited, segregated, or classified them for employment in such a way as to deprive them of employment opportunities.

64. Sex or gender were motivating factors in IDOT's conduct towards the plaintiffs and the members of the putative class.

65. IDOT's actions were willful, intentional and/or done maliciously or with callous disregard or reckless indifference to the plaintiffs' and the putative class members' federally protected rights. Exemplary damages are warranted to prevent similar unlawful conduct by IDOT.

66. Ms. Sikic, Ms. Walker, Ms. Members, and the putative class members were damaged by IDOT's conduct.

SECOND CLAIM FOR RELIEF
Sex discrimination in violation of
Title VII of the Civil Rights Act of 1964,
as amended, 42 U.S.C. §§ 2000e, et seq.

Disparate impact

Brought on behalf of each plaintiff and the members of the putative class

67. The plaintiffs reallege each of the paragraphs set forth above.

68. As alleged above, IDOT's hiring policies, patterns, and/or practices had a disparate adverse impact on the plaintiffs and the members of the putative class in violation of Title VII.

69. As alleged above, these policies, patterns, and/or practices cannot be justified by reasonable factors other than gender.

70. Ms. Sikic, Ms. Walker, Ms. Members, and the members of the putative class were damaged by IDOT's conduct.

THIRD CLAIM FOR RELIEF
**Retaliation in violation of the
Title VII of the Civil Rights Act of 1964,
as amended, 42 U.S.C. §§ 2000e, et seq.**

Brought on behalf of Ms. Sikic only

71. The plaintiffs reallege each of the paragraphs set forth above.

72. Title VII prohibits employers from retaliating against anyone who engages in protected activity, including by opposing conduct reasonably believed to be unlawful under Title VII or by participating in an employer's internal investigation into allegations of conduct reasonably believed to be unlawful under Title VII.

73. Ms. Sikic engaged in protected activity by opposing conduct by IDOT that she reasonably believed was unlawful under Title VII. This includes complaining to IDOT management and her supervisors and filing an EEOC charge.

74. As described above, IDOT retaliated against Ms. Sikic for engaging in protected activity, including (but not limited to) being regularly assigned to undesirable duties and continually being passed over for employment as a permanent Highway Maintainer.

75. IDOT's actions were willful, intentional and/or done maliciously or with callous disregard or reckless indifference to Ms. Sikic's federally protected rights. Exemplary damages are warranted to prevent similar unlawful conduct by IDOT.

76. Ms. Sikic was damaged by IDOT's conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Bernardeta Sikic, Lisa Walker, and Katherine Members pray for relief from defendant IDOT on her their behalf and on behalf of the members of the putative class as follows:

A. Certification of the case as a class action on behalf of the proposed class;

- B. Designation of Bernardeta Sikic, Lisa Walker, and Katherine Members as class representatives;
- C. Designation of Jamie S. Franklin and Paul Strauss as class counsel;
- D. An order declaring that the IDOT violated Title VII;
- E. An order enjoining future violations;
- F. An order requiring IDOT to implement a plan to correct its underutilization of women in the position of Highway Maintainer statewide and other injunctive relief as the Court deems appropriate;
- G. An order appointing a monitor to ensure that IDOT complies with such injunctive relief;
- H. An order retaining jurisdiction over this action to ensure that IDOT complies with such injunctive relief;
- I. Instatement to the position of full-time Highway Maintainer for Ms. Sikic, Ms. Walker, and Ms. Members;
- J. Instatement of additional women to the position of full-time Highway Maintainer to the extent necessary to comply with the injunctive relief ordered in this matter;
- K. Payment of the plaintiffs' and the class members' lost past and future wages and benefits (including any and all types of compensation and benefits);
- L. Compensatory damages, emotional and mental distress damages, punitive damages, statutory damages, liquidated damages, and civil penalties on behalf of the plaintiffs and the class members;
- M. Payment of the plaintiffs' attorneys' fees and all costs of litigation (including statutory fees and expert witness fees);

- N. Pre-and post-judgment interest; and
- O. All other and relief, whether legal or equitable, that the Court may deem appropriate.

JURY DEMAND

The plaintiffs demand a trial by jury.

Respectfully submitted,

Jamie S. Franklin

/s/ Jamie S. Franklin
Jamie S. Franklin

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Electronically filed on March 22, 2018

CERTIFICATE OF SERVICE

I, the undersigned, certify that the foregoing Amended Class Action Complaint was served on the parties listed below via the Court's ECF Service on March 22, 2018.

/s/ Jamie S. Franklin

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