

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

| | | |
|-----------------------|---|--------------------------------------|
| _____ |) | |
| CURTIS HARDAWAY, |) | |
| Plaintiff, |) | Civil Action. No.3:16-CV-00115 (JCH) |
| |) | |
| v. |) | |
| |) | |
| THE CITY OF HARTFORD, |) | MAY 22, 2018 |
| Defendant. |) | |
| _____ |) | |

FIFTH AMENDED COMPLAINT

The Parties

1. The plaintiff, Curtis Hardaway (“Plaintiff”) is an individual who, at all times relevant, was and is a resident of Town of Windsor in the State of Connecticut.
2. The Defendant, City of Hartford (“City” or “Defendant”), is a municipality of and located in the State of Connecticut.
3. Plaintiff is an African-American male who, at all times relevant, was employed by the City as an employee working within City’s Department of Public Works (“DPW”).

Jurisdiction and Venue

4. This Court has personal jurisdiction over the parties to this action, who all reside in the State of Connecticut.
5. This Court has original jurisdiction over this action, which arises from Defendant’s acts in violation of 42 U.S.C. § 1983 and 42 U.S.C. § 2000e *et seq.*, pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, and this Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367, which related to and derive from a common nucleus of operative fact as Plaintiff’s claims pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 2000e *et seq.*

6. Venue is proper in the District Court for the District of Connecticut pursuant to 28 U.S.C. § 1391 as all parties reside in the State of Connecticut and the events giving rise to this action occurred within the District of Connecticut.

FACT ALLEGATIONS COMMON TO ALL COUNTS

7. As of November 2013, Plaintiff was employed by City, had been employed by City within DPW for more than eighteen (18) years, and through several prior promotions held the position of “Maintainer III” within DPW – the highest level of “Maintainer” within DPW.

8. As a “Maintainer III” at DPW, during winter months Plaintiff worked, on average, approximately seventy (70) hours per week, and was essentially on-call seven (7) days a week.

9. As a Maintainer III for DPW, Plaintiff’s job duties included working with DPW field crews and driving DPW vehicles used during and in connection with road-repair work by DPW.

10. Throughout Plaintiff’s employment with City DPW, his job duties and responsibilities did not require him to inspect and identify unsafe and/or hazardous working conditions and then report the same to the Connecticut Department of Labor’s Division of Occupational Safety and Health (“CONN-OSHA”).

11. On or about November 11, 2013, Plaintiff observed and began documenting and taking pictures of unsafe and hazardous working conditions and practices being used by other DPW employees in the course of their work for DPW and in which Plaintiff had been required to work in or in close proximity to. These conditions and practices created serious risks of injury, illness and/or death to Plaintiff, City DPW employees and/or members of the public in the vicinity of such conditions and practices, such as:

- a. DPW employees were improperly storing diesel fuel and fuel powered tools in truck cabs;
- b. DPW employees were smoking tobacco products in the cabs of trucks where fuel and fuel powered tools were being stored;
- c. DPW employees were using diesel fuel to remove asphalt from asphalt-covered portable tools on road jobs and then operating truck cabs immediately after doing so and while such employees' clothes were soaked with fuel.

12. Plaintiff voiced his concerns about the hazardous conditions to his supervisor at DPW, a white male, showed the supervisor photos of these life-threatening safety violations, and reported that these safety violations were endangering Plaintiff's life, the lives of other employees, and the lives of members of the public. In response, Plaintiff's supervisor at DPW told Plaintiff to "stop acting like a girl and go back to work" and took no action to correct the safety violations Plaintiff had reported.

13. Thereafter, on or about November 18, 2013, Plaintiff voluntarily reported the hazardous and life-threatening conditions he had previously observed and reported to his DPW supervisor, to the Connecticut Department of Labor's Division of Occupational Safety and Health ("CONN-OSHA"), out of fear for his life and safety, as well as the lives and safety of others City employees and members of the public.

14. In filing the complaint with CONN-OSHA, Plaintiff was not carrying out any of his official responsibilities or duties as an employee of City.

15. Plaintiff's reason for filing the complaint with CONN-OSHA was to protect the Plaintiff, other City employees, and all non-employee members of the public against possible

serious and/or life-threatening injuries or illnesses that could result from the dangerous conditions reported by Plaintiff.

16. On information and belief, on or about November 29, 2013, CONN-OSHA performed a formal inspection of working conditions at DPW as a result of the complaint Plaintiff filed with CONN-OSHA, and thereafter issued a serious citation to City DPW, including the imposition of substantial monetary fines and requirement that DPW implement corrective actions.

17. On information and belief, to resolve the safety issues Plaintiff had reported to CONN-OSHA, CONN-OSHA required City DPW to implement a safety department, to implement additional employee training, and to use a special solvent instead of fuel to remove asphalt from tools used by DPW employees.

18. The City's DPW supervisors knew it was Plaintiff who filed a complaint with CONN-OSHA because Plaintiff was the only City employee at DPW who had previously complained to DPW supervisors about the dangerous working environment and conditions investigated by CONN-OSHA.

19. Plaintiff's white male supervisor was upset with Plaintiff for having filed the complaint with CONN-OSHA and repeatedly threatened that Plaintiff would be fired. Thereafter, Plaintiff was labeled a "troublemaker," a "gay/girl," called racial slurs, and told to "play ball" and stop asking safety questions and to stop reporting safety issues.

20. Other DPW employees with whom Plaintiff regularly worked in the field became aware that Plaintiff had filed the complaint with CONN-OSHA, and thereafter Plaintiff was immediately threatened, harassed and intimidated. Plaintiff was outcast and labeled as "the snitch" who complains to OSHA and called "a bitch," "gay," and "a person that will complain to OSHA," all of which Plaintiff's supervisors at DPW were aware.

21. No shift leaders and supervisors at DPW wanted to work with Plaintiff after he filed the complaint with CONN-OSHA in November 2013.

22. Because Plaintiff had been labeled a troublemaker, Plaintiff was denied the opportunity to work overtime and/or work certain jobs as he had done prior to filing the complaint with CONN-OSHA and Plaintiff earned substantially less than in prior years working for City DPW.

23. Additionally, as a result of filing a complaint with CONN-OSHA, Plaintiff was demoted by DPW from "Maintainer III" to "Maintainer I" and his regular wage rate was reduced to less than Plaintiff had earned as a Maintainer III. Plaintiff had never been previously demoted while employed by City as a DPW Maintainer.

24. Thereafter, because Plaintiff had filed a complaint with CONN-OSHA, other DPW employees continued to call Plaintiff derogatory and harassing names, Plaintiff was expected by his supervisors to work in dangerous working environments, and Plaintiff's employment was suspended.

25. Because Plaintiff had complained to CONN-OSHA about safety violations and dangerous working conditions at DPW, certain other City employees at DPW also started to complain about safety violations and safety concerns for the first time. Plaintiff was further labeled a "troublemaker" by his supervisors at DPW, who grew angrier with Plaintiff for having informed other City employees at DPW that they did not have to risk their lives or the lives of others due to dangerous and hazardous working conditions and work practices at DPW.

26. On or about August 5, 2014, Plaintiff was told by one of his white male supervisors at DPW that if Plaintiff stopped reporting safety violations his demotion would "go away" and that Plaintiff's ability to work overtime would be reinstated.

27. On or about August 5, 2014, Plaintiff filed a whistleblower complaint with the Connecticut Department of Labor (“CTDOL”), in which Plaintiff reported that as a result of having filed a complaint with CONN-OSHA on November 23, 2013 which reported hazardous and dangerous working conditions, Plaintiff had been and continued to be subjected to retaliation, harassment, demotion and reduced work hours, discrimination and threats from his supervisors at DPW.

28. Thereafter, Plaintiff’s supervisors at DPW were upset over having additional work duties as a result of DPW having to comply with new safety rules imposed by CONN-OSHA because of the complaint filed by Plaintiff with CONN-OSHA.

29. Additionally, Plaintiff’s supervisors at DPW became aware that Plaintiff had filed a whistleblower retaliation complaint with CTDOL.

30. Plaintiff’s supervisors at DPW wanted to terminate Plaintiff’s employment with City because Plaintiff had filed a complaint with CONN-OSHA and a whistleblower retaliation complaint with CTDOL, and said supervisors devised a plan to do so, and placed Plaintiff’s on employment probation.

31. On or about Feb 10, 2015, one of Plaintiff’s supervisors at DPW told Plaintiff to stop reporting safety violations, to "stop acting like a bitch running to OSHA like a little girl," and that if Plaintiff would stop reporting safety issues to OSHA he would be treated normally by others at DPW once again.

32. On or about February 11, 2015, Plaintiff filed another complaint with CTDOL, informing CTDOL of the retaliation against Plaintiff by DPW, including that Plaintiff had been demoted, threatened, suspended, harassed and intimidated since filing a safety complaint with CONN-OSHA, that Plaintiff had been placed on probation because his supervisors at DPW

considered Plaintiff to be a “snitch,” and that Plaintiff no longer felt safe while working for the City at DPW.

33. Thereafter, approximately three (3) months later, City terminated Plaintiff’s employment.

34. Up until his employment was terminated by City, Plaintiff was a model employee and had never been subjected to employee discipline until after Plaintiff had filed a safety complaint with CONN-OSHA.

35. On information and belief, City’s motivation for terminating Plaintiff’s employment was, in part, to retaliate against Plaintiff for filing a complaint with CONN-OSHA which resulted in citations being issued to DPW for safety violations and a complaint with CTDOL that Plaintiff had been demoted, threatened, suspended, harassed, humiliated, and intimidated by supervisors and other employees as DPW.

36. On information and belief, City DPW wanted to make an example of Plaintiff by terminating his employment to discourage other employees at DPW from reporting safety violation issues to CONN-OSHA or otherwise complaining about safety violations.

37. On information and belief, the employment of white City employees at DPW who reported the same unsafe and hazardous conditions which had been reported by Plaintiff was not terminated, and such employees were neither demoted nor deprived of the opportunity to work overtime.

38. On information and belief, City would not have terminated Plaintiff’s employment if Plaintiff was white.

39. Upon information and belief, after Plaintiff's employment was terminated by City, a supervisor at DPW told other DPW employees to consider DPW's termination of Plaintiff an example of what would happen to them if they pursued complaints as Plaintiff had done.

COUNT 1
Violation of Freedom of Speech
(First Amendment to U.S. Constitution, 42 U.S.C. § 1983)

40. Plaintiff incorporates herein by reference, Paragraphs 1 through 39 above, as if fully set forth in this Count 1.

41. The First Amendment to the Constitution of the United State of America protects the right of City employees to engage in speech as private citizens on issues of public importance which relate to their employment including when such speech relates to dangerous working conditions that endanger not only the employee, but other employees and other members of the public.

42. The adverse employment actions taken against Plaintiff by City were in retaliation for his speech activities relating to the safety and health of the citizens of Hartford, Connecticut and employees of City DPW, and were retaliation against Plaintiff for his lawful protected speech seeking to remedy unsafe and hazardous conditions and to protect himself, other DPW employees, and the public from potential and serious injuries and illnesses which could result from such unsafe and hazardous conditions.

43. In filing a complaint with CONN-OSHA of unsafe and hazardous conditions that were unsafe for employees of City DPW and which could result in injuries to City employees and other non-employee citizens in the vicinity of such conditions, Plaintiff was speaking as a private citizen on matters of public concern.

44. City took adverse employment action against Plaintiff because Plaintiff filed a complaint of unsafe and hazardous conditions with CONN-OSHA and filed retaliation complaints with CTDOL, by:

- a. demoting Plaintiff;
- b. eliminating Plaintiff's ability to work overtime;
- c. subjecting Plaintiff to threats, harassment and intimidation, including but not limited to referring to Plaintiff through racial and sexist names;
- d. suspending Plaintiff;
- e. placing Plaintiff on probation; and
- f. terminating Plaintiff's employment;

all as described in the preceding paragraphs.

45. Plaintiff's complaints to CONN-OSHA and CTDOL were speech protected from retaliation by City pursuant to the First Amendment of the Constitution of the United States of America and 42 U.S.C. § 1983.

46. By subjecting Plaintiff to the foregoing adverse employment actions, City retaliated against Plaintiff for engaging in speech protected by the First Amendment and therefore violated Plaintiff's right to engage in free speech, including but not limited to, to speak about safety hazards that are potentially dangerous to the public and/or to report the same to CONN-OSHA, and to report whistleblower retaliation to the appropriate governmental authorities.

47. City's actions constitute retaliatory adverse employment actions and retaliatory discharge against Plaintiff, which have caused Plaintiff to suffer damages, including but not

limited to loss of wages and other employment benefits, as well as other financial losses related to City's termination of Plaintiff's employment.

COUNT 2
Discrimination and Hostile Work Environment
in Violation of Title VII of the Civil Rights Act (42 U.S.C. § 2000e)

48. Plaintiff incorporates herein by reference, Paragraphs 1 through 47 above, as if fully set forth in this Count 2.

49. As an African-American male, at all times relevant Plaintiff was a member of a protected class pursuant to Title VII of Civil Rights Act, 42 U.S.C. § 2000e *et seq.*

50. On information and belief, after Plaintiff filed a safety complaint with CONN-OSHA in December 2013 and a retaliation complaint with CTDOL, City DPW, through its employees and supervisors at DPW, took adverse employment actions against Plaintiff including:

- a. forcing Plaintiff to work in dangerous working conditions in which Plaintiff's white coworkers were not similarly required to work;
- b. demoting Plaintiff;
- c. eliminating Plaintiff's ability to work overtime;
- d. subjecting Plaintiff to threats, harassment, humiliation, abuse and intimidation during which DPW supervisors and/or other DPW employees used racist and sexist names for Plaintiff and refused to work with Plaintiff;
- e. suspending Plaintiff;
- f. placing Plaintiff on probation; and
- g. terminating Plaintiff's employment with City;

all as described in the preceding paragraphs.

51. On information and belief, City would not have taken some or all of the foregoing adverse employment actions against Plaintiff and would not have terminated Plaintiff's employment if Plaintiff had been a white male employee who had filed safety complaints with CONN-OSHA or whistleblower complaints with CTDOL.

52. On information and belief, in taking the aforesaid adverse employment actions against Plaintiff, City acted with a discriminatory motive based on Plaintiff's race and gender, which were substantial and/or motivating factors in the City's adverse employment actions against Plaintiff.

53. As a result of the foregoing race and gender discrimination to which Plaintiff was subjected while employed by City at DPW, Plaintiff was denied the enjoyment of all benefits, privileges, terms, and conditions of that employment relationship.

54. Additionally, after December 2013 until City terminated Plaintiff's employment, Plaintiff was repeatedly and consistently subjected to discriminatory treatment, harassment, intimidation, humiliation, ridicule and insults from other City employees—including but not limited to being called "a little girl," "a p*ssy," and/or "gay" by other DPW employees for reporting violations to CONN-OSHA—that were so severe and pervasive that the conditions of Plaintiff's employment with DPW constituted an abusive and hostile working environment, of which Plaintiff's supervisors at DPW were aware, all as described in the preceding paragraphs.

55. City violated Title VII, 42 U.S.C. § 2000e *et seq.* by subjecting Plaintiff to and requiring Plaintiff to work in an abusive and hostile working environment.

56. As a direct and proximate result of City's violations of 42 U.S.C. § 2000e, Plaintiff suffered and sustained emotional distress and mental anguish, past and future injuries to feelings

including extreme embarrassment and humiliation, past and future outrage and damages to reputation.

57. As a result of the foregoing actions by City, Plaintiff has suffered damages including but not limited to lost wages, humiliation, embarrassment, emotional distress, and Plaintiff is entitled to an award of attorney's' fees and costs based on City's violations of 42 U.S.C. § 2000e *et seq.*

COUNT 3
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

58. Plaintiff incorporates herein by reference, Paragraphs 1 through 57 above, as if fully set forth in this Count 3.

59. City owed Plaintiff, as an employee of City, a duty to refrain from unreasonable conduct in the process of terminating Plaintiff's employment which would foreseeably cause the Plaintiff to reasonably suffer emotional distress.

60. The aforesaid conduct of City's agents and employees who were Plaintiff's supervisors at DPW, insofar as such conduct was part of the process through which the City decided to terminate and did terminate Plaintiff's employment, created an unreasonable risk of causing Plaintiff severe emotional distress.

61. As a result of the aforesaid conduct of City's agents and employees who were Plaintiff's supervisors at DPW, insofar as such conduct was part of the process through which the City decided to terminate and did terminate Plaintiff's employment, Plaintiff did suffer severe and substantial emotional distress which was foreseeable under the attendant circumstances and in light of City's conduct.

62. The emotional distress Plaintiff suffered as a result of the conduct of City's agents and employees who were Plaintiff's supervisors at DPW, was severe enough that such distress might have result in illness or bodily harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Curtis Hardaway, prays that this Court grants him the following relief:

1. A finding that the City of Hartford unlawfully retaliated against Plaintiff in violation of Plaintiff's Civil Rights protected by 42 U.S.C. § 1983 and 42 U.S.C. § 2000e *et seq.*

2. Money damages to compensate Plaintiff for loss of wages, accrued and unused vacation and sick time earned by Plaintiff before his employment was terminated, and other lost benefits suffered by reason City's unlawful retaliation against Plaintiff, together with prejudgment interest;

3. An order directing City of Hartford to reinstate Plaintiff's employment to a position comparable to that Plaintiff would currently possess had his employment not been terminated;

4. An order directing City of Hartford to require its Department of Public Works to post notices for its employees stating that the Department of Public Works will not in any manner discriminate against employees because of their engagement in activities protected under the Title VII of the Civil Rights Act of 1964., 42 U.S.C. § 2000e *et seq.*

5. An order for appropriate equitable relief against City of Hartford, as determined this Court, and as allowed by 42 U.S.C § 1983 *et seq.*, and/or 42 U.S.C. § 2000e *et seq.*, to enjoin and permanently restrain violations of the same, and to direct City of Hartford to take affirmative

action as deemed necessary by this Court to ensure that the effects of the City of Hartford's aforesaid conduct are eliminated and do not continue to harm Plaintiff;

6. Money damages in an amount no less than \$750,000 to compensate Plaintiff for the humiliation, frustration, embarrassment, emotional distress, and diversion of resources that Plaintiff has suffered and continues to suffer as a result of the City of Hartford's aforesaid retaliatory, discriminatory and negligent conduct alleged herein;

7. Punitive damages in an amount to be determined at trial;

8. An award of reasonable attorney's fees and costs;

9. Such further relief as deemed necessary and appropriate by this Court.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff, Curtis Hardaway, hereby demands a trial by jury in the above-captioned action on all issues triable by a jury.

PLAINTIFF: CURTIS HARDAWAY

By: /s/ Steven Lapp

Steven Lapp (ct27987)
McElroy, Deutsch, Mulvaney & Carpenter, LLP
One State Street, 14th Floor
Hartford, CT 06103
Tel: 860-522-5175
Fax: 860-522-2796

CERTIFICATION OF SERVICE

This is to certify that on this 22nd day of May, 2018, a copy of the foregoing was filed electronically. Notice of this filing was served via e-mail through operation of the Court's electronic filing system to the following parties and counsel of record. Parties may access this filing through the Court's electronic filing system.

Counsel for the City of Hartford

Lisa S. Lazarek, Esq. (ct15001)
Metzger Lazarek & Plumb LLC
56 Arbor Street, Suite 402
Hartford, CT 06106
Tel: 860-549-5026
Fax: 860-549-5224
llazarek@metzlaz.com

Curtis Hardaway- Plaintiff



Additionally, on this 22nd day of May, 2018, a copy of the foregoing was served via email and first-class mail to the following:

Curtis Hardaway



/s/ Steven Lapp (ct27987)
Steven Lapp