

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 04-2209
v.)	
)	
FEDERAL EXPRESS CORPORATION,)	FIRST AMENDED COMPLAINT
)	
Defendant.)	JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation and to provide appropriate relief to David Marcotte and a class of similarly situated employees who were adversely affected by such practices. Plaintiff Equal Employment Opportunity Commission alleges that David Marcotte, a male, and a class of similarly situated employees were sexually harassed by a co-worker. Defendant Federal Express Corporation (“Defendant”) also discriminated against David Marcotte by retaliating against him for complaining about the harassment and constructively discharging him.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a (“Title VII”).

2. The employment practices alleged to be unlawful were and are now being

committed within the jurisdiction of the United States District Court for Northern District of Illinois, Eastern Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and(3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Federal Express Corporation has continuously been a corporation doing business in the State of Illinois and the City of Kankakee and has continuously had at least 15 employees.

5. At all relevant times, Defendant Federal Express Corporation has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, David Marcotte filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least December 1998, Defendant has engaged in unlawful employment practices at its facility in Kankakee, Illinois, in continuing violation of Sections 703(a)(1) and 704(a) of Title VII, 42 U.S.C. §§2000e-2(a)(1) and 2000e-3(a). These unlawful employment practices include, but are not limited to, the following:

- (a) sexually harassing David Marcotte and a class of similarly situated employees;

- (b) detrimentally affecting the terms and conditions of Marcotte's employment through retaliatory harassment and by reducing his hours because he complained of sexual harassment;
- (c) terminating Marcotte's employment because he complained of sexual harassment; and
- (d) constructively discharging Marcotte.

8. The effect of the practices complained of in paragraph 7 above has been to deprive David Marcotte of equal employment opportunities and otherwise adversely affect his status as an employee, because of his sex and because he complained of sexual harassment.

9. The effect of the practices complained of in paragraph 7 above has been to deprive a class of similarly situated employees of equal employment opportunities and otherwise adversely affect their status as employees, because of their sex.

10. The unlawful employment practices complained of in paragraph 7 above were intentional.

11. The unlawful employment practices complained of in paragraph 7 above were done with malice or with reckless indifference to the federally protected rights of David Marcotte and a class of similarly situated employees.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in sexual harassment and retaliating against employees who exercise their rights under Title VII.

B. Order Defendant to institute and carry out policies, practices, and programs which

provide equal employment opportunities for all employees regardless of their sex and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole David Marcotte by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant to make whole David Marcotte and a class of similarly situated employees by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, in amounts to be determined at trial.

E. Order Defendant to make whole David Marcotte and a class of similarly situated employees by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Defendant to pay David Marcotte and a class of similarly situated employees punitive damages for its malicious and reckless conduct described in paragraph 7 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectf

ully submitted,

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