

JURISDICTION AND VENUE

2. This action arises under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-2, 2000e-3), the Federal Equal Pay Act (29 U.S.C. §§ 206(d)(1), 215(a)), Title I of the Americans with Disabilities Act (42 U.S.C. §§ 12112, 12203(a)), the Family and Medical Leave Act (29 U.S.C. §§ 2612(a)(1), 2615(a), 2617(a)(1)(B)), and the First Amendment to the United States Constitution (42 U.S.C. § 1983).
3. This court has jurisdiction over these claims pursuant to 28 U.S.C. § 1331.
4. All conditions to jurisdiction under Title VII have been met.
5. Venue is proper in this district under 28 U.S.C. § 1391(b).

PARTIES

6. Plaintiff Anne Manning resides in Peabody, Essex County, in the Eastern Division of the District of Massachusetts. Ms. Manning has been employed by the Department of Correction (“DOC”) since 2006 in various capacities.
7. Defendant Commonwealth of Massachusetts (“Commonwealth”) is, and was at all times relevant hereto, a public employer of the plaintiff.
8. Defendant Department of Correction (“DOC”) is a department within the Executive Office of Public Safety and Security of the government of the Commonwealth of Massachusetts whose central office is in Milford, Worcester County, in the Eastern Division of the District of Massachusetts. The DOC is, and was at all times relevant hereto, a public employer of plaintiff.
9. Defendant Executive Office of Public Safety and Security (“EOPSS”) is an office in the executive branch of the government of the Commonwealth of Massachusetts, whose central office is in Boston, Suffolk County, in the Eastern Division of the District of Massachusetts. EOPSS is, and was at all times relevant hereto, a public employer of plaintiff.
10. Defendant Office of the Governor of Massachusetts (“Governor’s Office”) is an office in

the executive branch of the government of the Commonwealth of Massachusetts, located in Boston, Suffolk County, in the Eastern Division of the District of Massachusetts. The Governor's Office is, and was at all times relevant hereto, involved in the hiring and promotion decisionmaking of EOPSS and the DOC as it related to Ms. Manning.

11. Defendant Luis Spencer is an individual who is sued in his official capacity as the Commissioner of the DOC and who may be served with service of process at his place of employment, Central Headquarters, 50 Maple Street, Suite 3, Milford, MA 01757 12. Defendants John Doe 1-5 are unknown employees of one or more of the defendants, who made or participated in the adverse employment actions against Ms. Manning.
13. Defendants Jane Doe 1-5 are unknown employees of one or more of the defendants, who made or participated in the adverse employment actions against Ms. Manning.

STATEMENT OF FACTS

14. Ms. Manning, who holds both Bachelor's and Master's degrees in criminal justice, came to the DOC in 2006 after working in the Suffolk County Sheriff's Department for thirteen (13) years. At the Sheriff's Department Ms. Manning held the positions of caseworker, HIV Coordinator, Supervisor of Program Services, and Supervisor of Classification. She oversaw all discharge planning for inmates, managed the Segregation Unit, and oversaw disciplinary sanctions. She also participated in the development of violence prevention programs and the Boston Re-entry Initiative program. Ms. Manning received excellent reviews of her work at the Sheriff's Department.
15. In 2006, the DOC hired Ms. Manning as the Director of Treatment at the Boston Pre-Release Center, a position she held until July 2010, receiving very laudatory evaluations of her work, her work ethic, and her "demonstrated potential for advancement within the agency." By the end of her four years in that position, Ms. Manning's salary was \$68,000 per year.
16. In December of 2009, Ms. Manning submitted her resume in connection with job posting #J19620, Program Manager VIII, Deputy Superintendent and job posting #J19621,

Program Manager VII, Deputy Superintendent, and followed up with formal applications for those positions in January 2010.

17. As part of the formal application procedure, Ms. Manning was required to identify and did identify her relationship with her sister, Mary-Ellen Manning, and Mary-Ellen Manning's position as an elected official who serves on the Governor's Council. In her role as a Governor's Councillor, Mary-Ellen was widely known as a critic of Governor Deval Patrick's judicial nominees and a number of his other political views. Upon information and belief the information regarding Ms. Manning's relationship with her sister was transmitted to EOPSS with Ms. Manning's application.
18. Ms. Manning interviewed for those two positions on January 20, 2010. The interview panel stated that she was a good candidate for a Deputy Superintendent position.
19. In June 2010, Deputy Commissioner James Bender ("Bender"), who upon information and belief was authorized to make hiring decisions for the DOC, notified Ms. Manning that she had been selected as Deputy Superintendent at the Lemuel Shattuck Hospital Correctional Unit ("the Shattuck").
20. Mr. Bender informed Ms. Manning that although it might take some time for her appointment and attendant salary increase to be formally approved, he wanted her to begin her duties as Deputy Superintendent immediately. Based on past practice, Mr. Bender and Ms. Manning believed that formal approval would be granted and she would be paid for her entire term of service.
21. Prior to Ms. Manning's appointment Brian Burgwinkle had served as the Deputy Superintendent at the Shattuck, earning a salary of \$85,847.60.
22. When Ms. Manning was told she had been selected for promotion, DOC Assistant Deputy Commissioner Karen Hetherson ("Hetherson") informed her that her new salary would be at least \$78,000 per year. Ms. Manning requested a salary of \$82,000 per year, and Ms. Hetherson said she would note that request in Ms. Manning's file.
23. Acting Deputy Commissioner Paul DiPaolo ("DiPaolo") assured Ms. Manning that when the promotion was formally processed, her new salary would be applied retroactively to July 11, 2010. With this assurance from Mr. DiPaolo, and the understanding from Ms.

Hetherson that her salary would be at least \$78,000 per year, if not more, Ms. Manning accepted the promotion.

24. Also on July 8, 2010, an announcement went out over the DOC's internal website announcing that Ms. Manning had been named Deputy Superintendent of the Shattuck effective July 11, 2010, and on July 11, 2010 Ms. Manning began her tenure as Deputy Superintendent of the Shattuck.
25. Ms. Manning was issued a DOC identification badge identifying her position as "Deputy Superintendent."
26. The Massachusetts Department of Correction Institutional Telephone & Address Listing was updated to list Ms. Manning as "Deputy Superintendent" of the Shattuck.
27. On July 12, 2010, Ms. Manning moved from her office at the Boston Pre-Release Center in Roslindale to an office at the Shattuck in Jamaica Plain.
28. For the next twenty-one (21) months Ms. Manning served as Deputy Superintendent of the Shattuck. In that position she oversaw the daily operations of the Shattuck, carried out discipline that had been approved by the Superintendent, attended Deputy and Superintendent meetings, and acted as Acting Superintendent when the Superintendent was not at the facility. Although Ms. Manning had significant operational responsibilities and oversight over the facility, her work did not entail policy making for any of the Defendants.
29. Upon information and belief, Ms. Manning was the first, and to date the only, woman who has ever served as either Deputy Superintendent or Superintendent at the Shattuck.
30. Ms. Manning served as the Deputy Superintendent of the Shattuck until March 30, 2012, but never received the salary increase that was promised.
31. Ms. Manning and others repeatedly asked administrators within the DOC and EOPSS about the promised salary increase, but did not receive any answers as to why she was not being paid as promised. Ms. Manning was given repeated assurances that the pay would be forthcoming.
32. Upon information and belief, during the time Ms. Manning served as Deputy Superintendent at the Shattuck other managers were promoted into new positions and,

although some were delayed for a considerable time, their increased salaries did eventually go into effect.

33. In December 2011, during her tenure as Deputy Superintendent of the Shattuck, Ms. Manning began to give vocal support on the internet to her sister, Mary-Ellen Manning, a member of the Governor's Council and a candidate for State Senate.
34. Also in December 2011, the Governor sought an advisory opinion from the Supreme Judicial Court of Massachusetts as to whether he was required to be present at the Governor's Council if the Lieutenant Governor was to vote on matters before the Council. Mary-Ellen Manning, Ms. Manning's sister, filed a brief in that case opposing the Governor's position.
35. Over the course of the next few months Ms. Manning posted near-daily statements of support of her sister's campaign on her Twitter account, including sharing some messages from her sister that could be seen as critical of the Governor.
36. None of the political statements Ms. Manning made or the articles discussing her sister's campaign that she posted discussed any issues relating to the DOC or EOPSS.
37. On February 27, 2012, Ms. Manning wrote a letter to DOC Assistant Deputy Commissioner Hetherson, copying DOC Commissioner Luis Spencer ("Spencer") and Shattuck Superintendent Raymond Marchilli Jr. ("Marchilli"), objecting to the DOC's failure to pay her for her work as Deputy Superintendent.
38. On March 23, 2012, Ms. Manning informed Mr. Marchilli that she had tested positive for uterine cancer. She asked him to keep this information confidential.
39. On March 26, 2012, Mr. Marchilli informed Ms. Manning that he had told his superior, Assistant Deputy Commissioner Thomas Dickhaut, that she had cancer.
40. On March 27, 2012, the Supreme Judicial Court, agreeing with the position put forth by Mary-Ellen Manning and disagreeing with the position of the Governor, determined that the Governor did have to be present at the Governor's Council in order for the Lieutenant Governor to vote on matters.
41. On March 27-28, 2012, the plaintiff Ms. Manning made a number of statements on her Twitter account celebrating the Court's opinion.

42. On March 28, 2012, Ms. Hetherson's assistant scheduled a meeting for March 30, 2012 with Ms. Manning and Assistant Deputy Commissioner Peter Pepe ("Pepe"). Also on March 28, 2012, Ms. Manning saw her doctor, and immediately informed Mr. Marchilli of her need to take medical leave for surgery to treat her cancer. Upon information and belief, the information regarding Ms. Manning's illness and need to take medical leave was communicated to Ms. Hetherson and others within the Commonwealth who had authority to make decisions regarding Ms. Manning's employment.
43. During the meeting on March 30, 2012, Ms. Hetherson, in the presence of Mr. Pepe, informed Ms. Manning that she was being removed from the Deputy Superintendent position and would not be compensated for her service as Deputy Superintendent.
44. Upon information and belief, this decision was made by the Governor's Office, EOPSS, and/or the DOC.
45. With respect to decisions concerning Ms. Manning's employment and tenure as Deputy Superintendent for the Shattuck, Ms. Hetherson and Mr. Pepe and, upon information and belief, other Commonwealth employees were acting in the interest of the Governor's Office, EOPSS, and/or the DOC.
46. Ms. Manning was told her new title was "Director of Treatment" at the Shattuck, a position that had never previously existed at the Shattuck.
47. Upon information and belief, there was previously no Director of Treatment position at the Shattuck because the inmates at that facility are there solely to receive medical care and then return to their parent institutions; there is no ongoing treatment program for them at the Shattuck nor any of the other programs like those that Ms. Manning oversaw as Director of Treatment at her prior facility.
48. The DOC has given Ms. Manning no guidance as to what her role is as Director of Treatment at the Shattuck, nor have her superiors given her any responsibilities in this role in the year she has been in the position.
49. On April 9, 2012, Michael Devine began working as the interim Deputy Superintendent of the Shattuck.
50. In April and May 2012, Ms. Manning took six (6) weeks sick leave time to have surgery

to treat her cancer. In June 2012, Ms. Manning worked three days a week and had radiation treatment two days a week. Ms. Manning recovered fully from her treatments and was able to return to work full time in July 2012.

51. On June 29, 2012, it was announced that William Devine would be the Deputy Superintendent of the Shattuck, effective July 16, 2012. Upon information and belief, in his role as Deputy Superintendent, William Devine's salary started at approximately \$104,895 per year.
52. On or about October 12, 2012, Ms. Manning applied for a position as a Program Manager VII – Unit Administrator/Intensive Treatment, Close Custody Residential Treatment & Health Services at the Intensive Treatment Unit at MCI - Framingham. Based on her over two decades of experience in criminal justice and treatment and rehabilitation, and her Masters Degree in criminal justice, Ms. Manning is eminently qualified for this position. This position, while designated a Level VII like the Deputy Superintendent position Ms. Manning held at the Shattuck, entailed less responsibility than the Deputy Superintendent position because the Program Manager oversees only one treatment unit rather than an entire facility. Ms. Manning was interviewed for the position in early December 2012.
53. On October 18, 2012, Ms. Manning filed a complaint with the Office of the Attorney General, alleging that the defendants violated the Massachusetts Wage Act.
54. On December 13, 2012, Ms. Manning filed a complaint with the Massachusetts Commission Against Discrimination (MCAD) and Equal Employment Opportunity Commission (EEOC) alleging the defendants discriminated against her on the basis of gender and disability and failed to pay her equal wages to her male counterparts.
55. In February 2013, within two months of filing her complaint with the MCAD, Ms. Manning learned that she was not recommended for the position in Framingham..
56. For the 21 months Ms. Manning served as Deputy Superintendent of the Shattuck, the Commonwealth paid her a salary of \$68,000 a year, when it promised to pay her a starting salary of at least \$78,000 a year during that time period. The Department thus paid Ms. Manning more than \$10,000 a year less than it promised to pay her upon her promotion.
57. The Department paid Ms. Manning approximately \$17,847 less per year than it paid the

male employee she replaced in that position, and approximately \$34,855 less per year than it paid the male employee who replaced her in that position.

58. Ms. Manning currently spends her days sitting in an office at the Shattuck with no responsibilities, has been denied promotion opportunities since filing her complaints with the Attorney General’s Office, MCAD, and EEOC, and has lost the wages she earned and should have continued to earn as Deputy Superintendent of the Shattuck.

COUNT 1
GENDER DISCRIMINATION
(TITLE VII, 42 U.S.C. § 2000e-2)
All state entity defendants

59. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
60. The defendants Commonwealth of Massachusetts, Governor’s Office, EOPSS, and DOC (“state entity defendants”) discriminated against the plaintiff on the basis of gender, in violation of 42 U.S.C. § 2000e-2, by paying her less than her male counterparts for the performance of the same job.
61. As a result of the defendants’ actions Ms. Manning has experienced lost wages, lost earning capacity, damage to her reputation, and has suffered and continues to suffer emotional distress. All damages continue to date.

COUNT 2
RETALIATION
(TITLE VII, 42 U.S.C. § 2000e-3)
All state entity defendants

62. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
63. Plaintiff was qualified for, applied for, and interviewed for a promotion within the DOC in the fall and winter of 2012.
64. In the winter of 2012-2013 plaintiff made a complaint to the MCAD and EEOC regarding

the defendants' discrimination on the basis of gender.

65. The state entity defendants retaliated against Ms. Manning by refusing to consider her for the promotion because she made complaints about their unlawful practices.
66. As a result of the defendants' actions Ms. Manning has experienced lost wages, lost earning capacity, damage to her reputation, and has suffered and continues to suffer emotional distress. All damages continue to date.

COUNT 3
PAY DISCRIMINATION
(FEDERAL EQUAL PAY ACT, 29 U.S.C. § 206(d))
All state entity defendants

67. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
68. The state entity defendants paid the plaintiff less than her male counterparts for the performance of the same job, or jobs that required the same skill, effort, and responsibility, in violation of 29 U.S.C. § 206(d).
69. As a result of the defendants' actions Ms. Manning has experienced lost wages and lost earning capacity. All damages continue to date.

COUNT 4
RETALIATION
(FEDERAL EQUAL PAY ACT, 29 U.S.C. § 215(a))
All state entity defendants

70. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
71. Plaintiff was qualified for, applied for, and interviewed for a promotion within the DOC in the fall and winter of 2012.
72. In the winter of 2012-2013 plaintiff made a complaint to the MCAD and EEOC regarding the defendants' failure to pay her equal wages.
73. The state entity defendants retaliated against Ms. Manning by refusing to consider her for the promotion because she made complaints about their unlawful practices.

74. As a result of the defendants' actions Ms. Manning has experienced has experienced lost wages, lost earning capacity, and has suffered and continues to suffer emotional distress. All damages continue to date.

COUNT 5

DISABILITY DISCRIMINATION

(AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12112)

Claim for Prospective Relief Against Defendants Luis Spencer and John Does 1-5 and Jane Does 1-5 in their official capacities

75. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
76. Ms. Manning was disabled or perceived as disabled because she had cancer.
77. Ms. Manning took six (6) weeks of time off to have and recover from surgery. Ms. Manning worked part-time for one month while having radiation treatment. After the treatments, Ms. Manning fully recovered and was capable of performing the duties of Deputy Superintendent.
78. Ms. Hetherson, Acting Deputy Commissioner Pepe, and, upon information and belief, other Commonwealth employees, acting in the interest of the state entity defendants, discriminated against Ms. Manning on the basis of her actual or perceived disability – cancer – in violation of the Americans with Disabilities Act by removing her from her position as Deputy Superintendent of the Shattuck and giving her a new job title with no responsibilities within days of learning that she had cancer.
79. Defendants Spencer and John Does 1-5 and Jane Does 1-5, in their official capacities, have the authority to reinstate Ms. Manning to her position as Deputy Superintendent of the Shattuck, but have refused to do so in continuing violation of the ADA.

COUNT 6

RETALIATION

(AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § § 12203(a))

Claim for Prospective Relief Against Defendants Luis Spencer and John Does 1-5 and Jane Does 1-5 in their official capacities

80. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
81. Ms. Manning was qualified for, applied for, and interviewed for a promotion to a Program Manager VII at MCI-Framingham in the fall and winter of 2012.
82. In the winter of 2012-2013, Ms. Manning made a complaint to the MCAD and EEOC regarding the defendants' discrimination on the basis of disability.
83. Commonwealth employees, acting in the interest of the state entity defendants, retaliated against Ms. Manning on the basis of her actual or perceived disability – cancer – in violation of the Americans with Disabilities Act by refusing to consider her for the promotion because she made complaints about their unlawful practices.
84. Defendants Spencer and John Does 1-5 and Jane Does 1-5, in their official capacities, have the authority to promote Ms. Manning to the Level VII position at Framingham, but have refused to do so in continuing violation of the ADA.

COUNT 7

VIOLATION OF FMLA

(FAMILY AND MEDICAL LEAVE ACT, 29 U.S.C. §§ 2612, 2615, 2617)

Claim for Prospective Relief Against Defendants Luis Spencer and John Does 1-5 and Jane Does 1-5 in their official capacities

85. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
86. Ms. Manning, who worked for the DOC for more than a year prior to March 30, 2012 and, in the year preceding March 30, 2012, worked 1250 hours, is an eligible employee under the FMLA.
87. The DOC, which is a public agency or entity that has fifty employees within 75 miles of Ms. Manning's worksite at 170 Morton Street, Jamaica Plain, MA 02130, is a qualifying

- employer under the FMLA.
88. Ms. Manning was entitled to take up to twelve weeks leave under the FMLA for her own serious health condition of uterine cancer, which required surgery, radiation treatment, and ongoing treatment that would temporarily prevent her from performing the functions of her position.
 89. Ms. Manning provided notice to her supervisor of the need for such leave as soon as she found out that she required surgery.
 90. Roughly forty-eight (48) hours after notifying her supervisor of the need for such leave, Ms. Manning was removed from the Deputy Superintendent position.
 91. Ms. Hetherson, Acting Deputy Commissioner Pepe, and, upon information and belief, other Commonwealth employees, acting in the interest of the state entity defendants, discriminated against Ms. Manning or otherwise interfered with, restrained, or denied Ms. Manning's exercise of her right to take protected leave under the FMLA by removing her from the Deputy Superintendent position for requesting to take medical leave to treat her cancer.
 92. Defendants Spencer and John Does 1-5 and Jane Does 1-5, in their official capacities, have the authority to reinstate Ms. Manning to her position as Deputy Superintendent of Shattuck, but have refused to do so in continuing violation of the FMLA.

COUNT 8
POLITICAL DISCRIMINATION
(42 U.S.C. § 1983)

John Does 1-5, Jane Does 1-5, in their official and individual capacities

93. Plaintiff incorporates and realleges the allegations stated in the previous paragraphs as if fully stated herein.
94. Ms. Manning politically supported her sister, Mary-Ellen Manning, who held political views in opposition to the Governor of Massachusetts. The plaintiff, in support of her sister's political campaign, expressed political views that were, at times, critical of the Governor of Massachusetts.

95. Defendants John Doe 1-5 and Jane Doe 1-5 knew of Ms. Manning's relationship to her sister from the time she applied for the Deputy Superintendent position, and upon information and belief were aware of her vocal support of her sister's state senate campaign and her political views.
96. Ms. Manning suffered an adverse employment action when Defendants removed her from her position as Deputy Superintendent of the Shattuck.
97. Ms. Manning's political affiliation was a substantial or motivating factor in the Defendant's decision to remove her from the position.
98. The position from which Ms. Manning was removed was not a confidential or policymaking position such that political affiliation was an appropriate criterion for the job.
99. In removing Ms. Manning for her political expression, the Defendants discriminated against Ms. Manning on the basis of her political affiliation, in violation of the First Amendment to the United States Constitution.
100. The actions of the John and Jane Doe defendants violated clearly established law.
101. As a result of the defendants' actions Ms. Manning has experienced lost wages, lost earning capacity, and has suffered and continues to suffer emotional distress. All damages continue to date.

WHEREFORE, plaintiff requests that the Court order:

- A. judgment for plaintiff and against defendants, jointly and severally, where appropriate;
- B. prospective injunctive relief requiring defendants Spencer, John Does 1-5, and Jane Does 1-5, in their official capacities, to take all necessary and appropriate action to reinstate plaintiff to her former position as a Level VII Deputy Superintendent or to promote her to the Level VII Program Manager position at MCI-Framingham;
- C. that the plaintiff be paid a salary comparable to men performing in the same or similar positions;
- D. that the plaintiff be compensated for any loss of wages and/or benefits incurred as a result

- of the defendants' actions;
- E. that the plaintiff be awarded an amount of money which will fairly compensate her for her emotional pain and suffering, damage to her reputation, and earning capacity;
 - F. that the plaintiff be awarded liquidated damages as provided by 29 U.S.C. § 216(b);
 - G. that the defendants pay the plaintiff's costs and attorneys fees resulting from this action;
 - H. that the defendants pay interest on any judgment entered as required by law;
 - I. that the defendants be ordered to pay the plaintiff punitive damages;
 - J. such other relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted,
ANNE M. MANNING,
by her attorneys,

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Date: June 13, 2013

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 13, 2013.

/s/Monica R. Shah