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Labor and Employment

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CONFIDENTIAL
PROTECTED PURSUANT TO EVID.R. 408

LeShelle.Reese@va.gov
Andrea.Freeman@va.gov
Brian.Cmolik@VA.gov
Jill.Dietrich@va.gov

Dear Ms. Reese, Ms. Freeman, Mr. Cmolik, and Ms. Dietrich:

I am writing to you on behalf of Diana Sygula, who has sought my legal advice and counsel in connection with issues that have arisen in her employment with the VA.

Ms. Sygula, who began her employment with the VA in 2010, worked without incident until January 2015, when Dr. Susan Raphaely became section chief of the anesthesiology department, and solicited complaints¹ to remove Anesthesia Tech Bruce Haggins, and hire Greg Henley -- Dr. Raphaely's friend and colleague from UH -- to replace him. Around the same time, Dr. Raphaely also demoted Charles Conor, Ms. Sygula's then-Anesthesia Technician Supervisor, and replaced him with Greg Henley.

In complete derogation of the VA's hiring policies and procedures, Dr. Raphaely made these placement decisions unilaterally. She failed to post the Supervisor Anesthesia Tech position, for which Ms. Sygula would have liked to apply, and for which she had expressed her interest to Dr. Raphaely. However, Dr. Raphaely denied Ms. Sygula that opportunity, using the pretextual excuse that she was not required to post the position because it was an "emergency" situation. This position would have been a promotion for Ms. Sygula, and would have increased her salary by thousands of dollars per year. Thus, she has sustained significant economic damages as a result of being deprived this opportunity -- not only in terms of salary, but also in terms of PERS benefits.

Not only are the VA and Dr. Raphaely liable for gender discrimination a result of their decision to place Greg Henley in the Supervisor Anesthesia Tech position, despite being less qualified for the position than Ms. Sygula, without giving Ms. Sygula an opportunity to apply or

¹Though Dr. Raphaely asked Ms. Sygula numerous times to submit a complaint against Mr. Haggins, Ms. Sygula only let herself be pressured into doing so on one occasion.

interview for it, but the VA and Mr. Henley are liable for discriminating and retaliating against Ms. Sygula for taking FMLA leave.

Specifically, Ms. Sygula began taking intermittent FMLA leave in 2019, and whenever she returned from a day of leave, Mr. Henley interrogated her about what she did on her “day off”. Ms. Sygula reported this harassment and discrimination to Dr. Raphaely in 2019, to which Dr. Raphaely responded by stating, “As a supervisor, Greg is allowed to question you when he sees a pattern of you calling off.” Ms. Sygula responded that she was on intermittent FMLA leave. Dr. Raphaely said, “Oh, I didn’t know that”, to which Ms. Sygula responded, “It’s in my file.” At that point, Dr. Raphaely violated Ms. Sygula’s privacy and HIPAA rights **by requiring her to immediately provide her (Dr. Raphaely) with a copy of her (Ms. Sygula’s) FMLA paperwork.**

Mr. Henley also harassed and belittled Ms. Sygula based on her marital status, with comments such as, “You don’t need your job”, and “Your husband makes a lot of money”. He made these offensive remarks in the presence of Ms. Sygula’s peers/co-workers, and soon, 3 of her co-workers began making similar comments. They also began ridiculing her for “driving a nice car” and “living in such a nice house”.

Furthermore, the VA and Mr. Henley have created a hostile work environment for Ms. Sygula as a result of her health condition. Specifically, whenever Ms. Sygula returned from a day of intermittent leave, starting in August 2019, and as a result of Mr. Henley making offensive remarks to and about her when she returned from a day of intermittent leave, her co-workers began making comments to her such as, “We don’t see you working too much longer because of your illness”, and “You have, at the most, 5 more good years of working left”. Similarly, when Ms. Sygula was working 9-5:30, but was supposed to switch to days, Mr. Henley said, “You can’t even work your current shift. How are you going to work days?”

DR. RAPHAELY AND MR. HENLEY ARE HEREBY INSTRUCTED TO IMMEDIATELY CEASE AND DESIST FROM ANY FURTHER RETALIATORY, DISCRIMINATORY, AND/OR HARASSING CONDUCT TOWARD MS. SYGULA.

Ms. Sygula is contemplating the various legal avenues available to her, including injunctive relief, an administrative remedy, a lawsuit, etc., unless this matter can be resolved without such action. Toward that end, I ask that legal counsel who will be representing the VA in this matter contact me within the next 7 days to discuss these issues and determine if we can arrive at a mutually agreeable non-litigation resolution.

In the meantime, the VA has a legal obligation to take all necessary steps to preserve potentially relevant evidence in this matter, including evidence maintained electronically (“Electronically Stored Information” or “ESI”), digitally, and/or in document form. Please preserve the data on the following electronic devices: all of VA’s servers and back-up devices and systems; and all laptop computers, desktop computers, iphones, ipads, and all other electronic devices,

used at home and/or at work by Ms. Sygula; Dr. Raphaely; Mr. Henley; all individuals who report and/or reported to Dr. Raphaely and/or Mr. Henley directly and/or indirectly at any and all times between January 1, 2015 and June 30, 2020.

Please also preserve the following information in its native format until a true copy is made and the meta data preserved, even though it may, in the event of litigation, later be requested in a text, TIFF, or other user friendly, searchable form:

- Performance evaluations; payroll records; W-2s; 1099s; all documents pertaining to transfers, promotions, and demotions, and work assignments; all schedules, performance evaluations, contracts, discipline-related documents, severance agreements, job descriptions, calendars, production reports, and calendars, for Ms. Sygula; Dr. Raphaely Mr. Henley; all individuals who report and/or reported to Dr. Raphaely and/or Mr. Henley directly and/or indirectly at any and all times between January 1, 2015 and June 30, 2020;
- All electronic data (including but not limited to emails, text messages, what's app messages, and instant messages) created on computers utilized by the above-referenced individuals, and the servers or back-up media on which such data is held and/or through which it was transferred or stored;
- All documents pertaining to any and all investigations by, and/or on behalf of, the VA regarding allegations of discrimination, harassment, and/or retaliation, asserted by current and/or former VA employees in Northeast Ohio between January 1, 2015 and June 30, 2020, including but not limited to the complaints or reports of discrimination, harassment, and/or retaliation; the protocol followed for the investigation; questions asked in interviews; statements taken and/or submitted; recordings; the scheduling of investigatory meetings; results; reports; and conclusions;
- All documents pertaining to lawsuits and/or administrative charges filed against the VA by current and/or former VA employees between January 1, 2015 and June 30, 2020, including all complaints, EEOC/OCRC Charges, and the VA's response to all such complaints and Charges;
- All VA policies and procedures that are, and/or have been, applicable to Ms. Sygula during her employment with the VA, **including all drafts, revisions, amendments, and updates**;
- All job descriptions for the VA's H.R. and anesthesiology departments, **including all drafts, revisions, amendments, and updates**, that exist and/or existed at any and all times between January 1, 2015 and June 30, 2020;
- All of the VA's handbooks, personnel manuals, policies, procedures, memoranda, correspondence, and other documents pertaining to VA work rules, performance criteria, performance evaluations, paid time off, discipline, transfers, demotions, hiring, promotions, FMLA leave, termination, discrimination, retaliation, harassment, and investigations, **including all drafts,**

revisions, amendments, and updates, that exist and/or existed at any and all times between January 1, 2015 and June 30, 2020;

- All documents relating to any and all discrimination and/or retaliation training provided by, and/or on behalf of, the VA to its employees in Northeast Ohio between January 1, 2015 and June 30, 2020, including but not limited to sign-in sheets, materials provided at any and all such trainings, the scheduling of all such trainings, and the CV or resume of all individuals who lead each such training; and
- All of the VA's document retention policies and procedures, **including all drafts, amendments, revisions and updates**, that exist and/or existed at any and all times between January 1, 2017 and June 30, 2020.

The VA's obligation includes discontinuing all relevant data retention, destruction, and back-up tape recycling policies. Please ensure that the VA does not destroy, erase, conceal, change, or alter any paper, electronic files, or any data generated by, or stored on, the VA's computers or storage media (such as hard disk drives, floppy disks, CDs, DVDs, back-up tapes, and other electronic data).

Please also ensure that the VA: (a) does not pack, compress, erase, purge, or otherwise dispose of files, or parts of any files, unless a true and correct copy of such files is first made, and (b) preserve all passwords, decryption procedures, network access codes, ID names, tutorials, written instructions, originating software in each of its versions, and decompression or reconstruction software, in addition to all other information necessary to access, view, and, if necessary, reconstruct the electronic data we may request through discovery. In order to protect this data, please make sure the VA does not reuse or overwrite any media.

The VA can most easily comply with its obligations by making a mirror-image bit stream back-up copy of computers and storage media (such as hard disk drives, CDs, DVDs, back-up tapes, and all other electronic data), which will inexpensively preserve relevant electronic and digital evidence on searchable CD-ROMs and/or DVDs. This copy can be searched at a later time for potentially relevant evidence without imposing an undue burden on the VA.

I look forward to receiving a response to this letter in the forthcoming week.

Very truly yours,



Caryn M. Groedel

CMG:jmc

cc: Ms. Diana Sygula by email