

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

_____)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE COMMONWEALTH OF)
MASSACHUSETTS,)
)
and)
)
MASSACHUSETTS DEPARTMENT)
OF CORRECTIONS,)
)
Defendants.)
_____)

COMPLAINT

Plaintiff, United States of America, alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended (“Title VII”).

2. This court has jurisdiction of this action under 42 U.S.C. § 2000e-6(b), 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1345.

3. Defendants, the Commonwealth of Massachusetts (“Commonwealth”) and the Massachusetts Department of Corrections (“MDOC”), are public employers created pursuant to the laws of the Commonwealth of Massachusetts. M.G.L. ch. 258 § 1.

4. The Commonwealth is a state government, and the MDOC is a governmental agency, within the meaning of 42 U.S.C. § 2000e(a).

5. The Commonwealth and the MDOC are persons within the meaning of 42 U.S.C. § 2000e(a) and employers within the meaning of 42 U.S.C. § 2000e(b).

6. The MDOC employs entry-level Correctional Officers (“COs”) and Correctional Program Officers (“CPOs”) who are responsible for, among other things, maintaining the custodial care and control of inmates housed in correctional facilities in the Commonwealth.

7. The Commonwealth and the MDOC are responsible for establishing the terms, conditions, and other practices which bear upon the employment of COs and CPOs.

8. Since 2007, the MDOC has administered and used a physical abilities test (“PAT”), designed by Caritas Good Samaritan Occupational Health Services, in the selection of applicants for appointment to entry-level CO and CPO jobs.

9. The MDOC has required that applicants pass the PAT in order to continue in the selection process for CO and CPO jobs.

10. In 2007 and 2008, approximately 107 of 182 female applicants for entry-level CO and CPO jobs who took the PAT passed the test. During the same time period, approximately 628 of 652 male applicants for entry-level CO and CPO jobs who took the PAT passed the test.

11. In 2007 and 2008, approximately 58.8% of the female applicants for entry-level CO and CPO jobs who took the PAT passed the test. During the same time period, approximately 96.3% of the male applicants for entry-level CO and CPO jobs who took the PAT passed the test.

12. The MDOC’s use of the PAT in the screening and selection of applicants for entry-level CO and CPO jobs has resulted in disparate impact on women.

13. The MDOC's use of the PAT in the screening and selection of applicants for the entry-level CO and CPO jobs is not job related and consistent with business necessity, and does not otherwise meet the requirements of Section 703(k) of Title VII, 42 U.S.C. § 2000e-2(k).

14. The Commonwealth and the MDOC have pursued and continue to pursue policies and practices that discriminate against women and that deprive or tend to deprive women of employment opportunities because of their sex, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. The MDOC has implemented these policies and practices, among other ways, as follows:

- a. by failing or refusing to hire women for entry-level CO and CPO jobs on the same basis as men;
- b. by using a PAT in the screening and selection of applicants for entry-level CO and CPO jobs where such use results in disparate impact on women, and is not job related for the jobs in question and consistent with business necessity; and
- c. by failing or refusing to take appropriate action to correct the present effects of its discriminatory policies and practices.

15. The policies and practices of the Commonwealth and the MDOC described in paragraphs 5 through 14, above, constitute a pattern or practice of resistance to the full enjoyment by women of their rights to equal employment opportunities without discrimination based on sex, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. The pattern or practice is of such a nature and is intended to deny the full exercise of the rights secured by Title VII. Unless restrained by order of this Court, the Commonwealth and the MDOC will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

16. All conditions precedent to the filing of suit have been performed or have occurred.


WHEREFORE, the United States prays for an order enjoining the Commonwealth and the MDOC, their officers, agents, employees, successors and all persons in active concert or participation with them, from engaging in discriminatory employment practices against women based on their sex in violation of Title VII, and specifically from:

- a. failing or refusing to hire women for entry-level CO and CPO jobs on an equal basis as men;
- b. using a PAT in the screening and selection of applicants for entry-level CO and CPO jobs where such use results in disparate impact on women, and is not job related for the jobs in question and consistent with business necessity;
- c. failing or refusing to provide make-whole relief, including back pay with interest, offers of employment, retroactive seniority, and other benefits to women who have suffered losses or will suffer losses as a result of the discriminatory policies and practices alleged in this Complaint; and
- d. failing or refusing to take other appropriate non-discriminatory measures to overcome the effects of their discriminatory policies and practices.

Plaintiff United States prays for such additional relief as justice may require, together with its costs and disbursements in this action.

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