

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KIMBERLY A. HIVELY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:14-cv-01791-JD-MGG
)	
IVY TECH COMMUNITY COLLEGE,)	
)	
Defendant.)	

**ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant, Ivy Tech Community College of Indiana (“Defendant”) now answers Plaintiff Kimberly A. Hively’s Amended Complaint. Plaintiff’s allegations are set forth *verbatim* below, with Defendant’s responses immediately following each allegation.

[Unnumbered Paragraph] This is an action under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e-5) and for equal rights under law (42 U.S.C. § 1981), to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Plaintiff Kimberly Hively. As alleged with greater particularity in paragraphs 6-18 below, Plaintiff alleges that Defendant, Ivy Tech Community College (“Ivy Tech”) denied her full-time employment and promotion, and terminated her based on her sexual orientation.

ANSWER: Defendant admits that Plaintiff’s Amended Complaint alleges violations of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e-5) and for equal rights under law (42 U.S.C. § 1981). Defendant denies violating any of the foregoing statutes and further denies that Plaintiff is entitled to relief under the above-named statutes. Defendant denies

any remaining allegations contained in the foregoing paragraph and further denies violating any of Plaintiff's legal rights.

PARTIES

1. The Plaintiff is Kimberly A. Hively. Her address is 1112 S. 25th St., South Bend, IN 46615, and her telephone number is (574) 232-7986.

ANSWER: Defendant admits that the Plaintiff is Kimberly A. Hively. Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained in the foregoing paragraph and therefore denies same.

2. The Defendant is Ivy Tech Community College. Ivy Tech is located at 220 Dean Johnson Blvd., South Bend, IN 46601. The Defendant has appeared in this case, and thus no further service of process is required.

ANSWER: Defendant admits it is the Defendant in this case and conducts business at 220 Dean Johnson Blvd., South Bend, IN 46601. Defendant further admits that it received service on process on or about August 18, 2014.

BASIS OF CLAIMS AND JURISDICTION

3. This action is brought for employment discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17, and equal rights under Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

ANSWER: Defendant admits that Plaintiff's Amended Complaint alleges violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e 17, and equal rights under Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. Defendant

denies violating any of Plaintiff's legal rights or that Plaintiff is entitled to relief under the above-named statutes. Defendant denies any remaining allegations contained in the foregoing paragraph.

4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a).

ANSWER: Defendant admits that Plaintiff seeks to attain jurisdiction through 28 U.S.C. §§ 1331 and 1343(a).

5. This case is on remand from the United States Court of Appeals for the Seventh Circuit. There is no dispute at this point about jurisdiction, venue, or exhaustion of administrative remedies.

ANSWER: Defendant admits this case is on remand from the United States Court of Appeals for the Seventh Circuit. Defendant denies the remaining allegations contained in the foregoing paragraph as written.

STATEMENT OF CLAIMS

6. Kim Hively is a woman. She is a private person. Her sexual orientation is homosexual.

ANSWER: Defendant admits that Plaintiff is a woman. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and therefore denies same.

7. Plaintiff began teaching as a part-time adjunct professor at Ivy Tech Community College ("Ivy Tech") in South Bend, Indiana in 2000.

ANSWER: Defendant admits that Plaintiff was previously employed as a part-time adjunct professor at Ivy Tech in South Bend, Indiana beginning in 2000. Defendant denies any remaining allegations contained in the foregoing paragraph.

8. Plaintiff received a master's degree in liberal studies from Indiana State University in 2011, with hopes to advance her career with Ivy Tech.

ANSWER: Defendant admits that Plaintiff received a master's degree in liberal studies from Indiana State University in 2011. Defendant is without knowledge or information sufficient as to the remaining allegations contained in the foregoing paragraph and therefore denies same.

9. In her time at Ivy Tech, Plaintiff has consistently received high performance reviews as an adjunct professor, as well as positive student-evaluations. In 2011-2012, Plaintiff received the Adjunct Faculty Award for Excellence in Instruction. In 2014, she received praise from Dean James Powell in a written recommendation.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to what Plaintiff deems "high performance reviews" or "positive student-evaluations" and therefore denies same. Defendant denies the remaining allegations contained in the foregoing paragraph.

10. In 2009, Plaintiff and her partner were reported to have been kissing in the parking lot at Ivy Tech. Subsequently, Ivy Tech called Plaintiff to inform her of the report, and to remind her of her "professionalism," notwithstanding that public displays of affection at Ivy Tech were common (e.g., "kiss good-bye," hand-holding, etc.) among men in relationships with

women who conformed to Ivy Tech's gender norms. Plaintiff, however, was reprimanded by the office of Academic Affairs because Plaintiff was female and because she was not conforming with Ivy Tech's gender norms.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of any of the allegations in this paragraph. Defendant denies that Plaintiff was issued a reprimand for this alleged incident.

11. Plaintiff had applied for at least six positions with Ivy Tech. She was not recommended for hire for a single teaching or administrative position she applied for over a five-year period beginning in 2009.

ANSWER: Defendant admits that Plaintiff has applied for various positions with Ivy Tech and that she was never a full time employee. Defendant denies any remaining allegations contained in the foregoing paragraph.

12. In 2011-2012, Plaintiff won the Adjunct Faculty Award for Excellence in Instruction, and was nominated for an additional teaching award. She had good reviews and positive student evaluations.

ANSWER: Plaintiff received varying feedback on her performance from several superiors during the course of her employment. Defendant denies the remaining allegations contained in the foregoing paragraph.

13. Nonetheless, despite several applications, Plaintiff was never offered full-time employment, and her part-time employment contract was not renewed in July 2014.

ANSWER: Defendant admits that Plaintiff was never a full time employee. Defendant denies any remaining allegations contained in the foregoing paragraph.

14. In 2014, a new dean was promoted who took over the function of employment of adjunct professors. This administrator was also on different committees who had considered and ultimately rejected Plaintiff's applications for full time employment. Plaintiff was treated adversely because of her sex and because she did not conform to Ivy Tech's gender norms for women, when other less qualified candidates were promoted, hired, or retained over her.

ANSWER: Defendant is without information or knowledge sufficient to form a belief as to the allegations contained in the foregoing paragraph and therefore denies same. Answering further, Defendant specifically denies discriminating against Plaintiff in the hiring process for any unlawful reason(s).

15. On December 10, 2013, Plaintiff filed a sex discrimination charge regarding these adverse employment actions, which was presented to the Equal Employment Opportunity Commission (the "EEOC"). In that charge, she asserted that she was "being discriminated against based on [her] sexual orientation."

ANSWER: Defendant admits that Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") and alleged discrimination based on her sexual orientation, but denies the allegations in this charge. Defendant denies any remaining allegations contained in the foregoing paragraph.

16. Ivy Tech's aforementioned decision to not promote or renew Plaintiff's contract was motivated by her sex, including her failure to conform to the female gender stereotypes

given her sexual orientation toward other women. By discriminating against Plaintiff for failing to conform to the female stereotype, and by discriminating against her based on conduct it allowed men to engage in, Ivy Tech engaged in unlawful gender stereotyping that falls within Title VII's prohibition against sex discrimination. *Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339, 346 (7th Cir. 2017), as well as sexual discrimination in favor of men.

ANSWER: Defendant denies the allegations contained in the foregoing paragraph.

17. Ivy Tech's aforementioned decision to not promote or renew Plaintiff's contract was motivated by Plaintiff's sex and sexual orientation. Ivy Tech did not take adverse action against men who were attracted to, dating, or living with women. Ivy Tech has disadvantaged Plaintiff because she did not conform to gender stereotypes and norms about women, was treated less favorably than men who were attracted to women, and she has experienced "paradigmatic sex discrimination" under Title VII. *Id.*

ANSWER: Defendant denies the allegations contained in the foregoing paragraph.

18. Ivy Tech took adverse action against Plaintiff based on her association and relationship with another woman. Plaintiff would not be suffering the adverse actions against her, had her sex been different. Ivy Tech's decision not to promote or renew Plaintiff's contract because of her association with another woman is prohibited sex discrimination under Title VII. *Id.* at 348-349.

ANSWER: Defendant denies the allegations contained in the foregoing paragraph.

19. The effect of the practices described in paragraphs 6-18 above have been to deprive Plaintiff of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex.

ANSWER: Defendant denies the allegations contained in the foregoing paragraph.

20. The unlawful employment practices complained of in paragraphs 6-18 above were intentional.

ANSWER: Defendant denies the allegation contained in the foregoing paragraph.

21. The unlawful employment practices complained of in paragraphs 6-18 above were done with malice or with reckless indifference to Kim Hively's federally protected rights.

ANSWER: Defendant denies the allegation contained in the foregoing paragraph.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

22. Order Ivy Tech to make Kim Hively whole, by providing appropriate back-pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

23. Order Ivy Tech to make Kim Hively whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 6-18 above, such as debt-related expenses, job search expenses, medical expenses, and other expenses incurred by her, which were reasonably incurred as a result of Defendant's conduct, in the amounts to be determined at trial.

24. Order Ivy Tech to make Kim Hively whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices complained of in paragraphs 6-18 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, the amounts to be determined at trial.

25. Order Ivy Tech to pay Kim Hively punitive damages for its malicious and reckless conduct described in paragraphs 6-18 above, in amounts to be determined at trial.

26. Award Kim Hively attorneys' fees, expenses and costs for this action.

ANSWER: Defendant denies Plaintiff is entitled to judgment in her favor or any relief whatsoever, including the relief requested within Prayer for Relief Paragraphs 22-26. Defendant denies any remaining allegations contained in Prayer for Relief Paragraphs 22-26.

JURY DEMAND

The Defendant, by counsel, respectfully requests a jury trial for all issues deemed so triable.

AFFIRMATIVE AND OTHER DEFENSES

1. Subject to a reasonable opportunity for investigation and discovery, Plaintiff has failed to mitigate her alleged damages, if any.

2. Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claims are barred in whole or in part due to her failure to exhaust administrative remedies, including, but not limited to, those internal to Ivy Tech.

3. Subject to a reasonable opportunity for investigation and discovery, some of Plaintiff's claims may be barred to the extent that they are beyond the scope of her administrative charge.

4. Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claims are barred in whole or in part as a result of the applicable statute of limitations.

5. Plaintiff's claims are barred in whole or in part due to Ivy Tech's sovereign immunity pursuant to the Eleventh Amendment of the United States Constitution which Ivy Tech does not waive and instead specifically reserves to the fullest extent possible.

6. Plaintiff's claims for certain damages, including punitive damages, are barred or limited by the United States and Indiana Constitutions, Title VII, and other federal and state laws. For example, 42 U.S.C. § 1981a does not prevent punitive damages against an arm of the state.

7. Plaintiff's claims for certain damages, including punitive damages, are barred by Defendant's good faith efforts to comply with the law.

8. Plaintiff has no right to damages because Defendant would have made the same decisions and taken the same actions absent any allegedly unlawful motivation.

9. Defendant had legitimate, non-discriminatory reasons for its actions regarding Plaintiff.

10. Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claims are barred in whole or in part by the doctrine of waiver, laches, estoppel, and/or unclean hands.

11. Plaintiff fails to state a claim upon which relief may be granted.

12. Defendant denies any allegations contained in Plaintiff's Complaint that are not expressly admitted herein.

13. Defendant reserves the right to raise additional defenses that may later arise due to an intervening change in controlling law.

WHEREFORE, Defendant respectfully requests that Plaintiff take nothing by way of her Amended Complaint, that judgment be entered in Defendant's favor and against Plaintiff, that Defendant be awarded its costs and expenses in defending this action, and that Defendant be awarded all other just and proper relief.

Respectfully submitted,

s/ Adam L. Bartrom

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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