

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

Wednesday, 09 May, 2018 03:00:18 PM
Clerk, U.S. District Court, ILCD

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

RENT-A-CENTER EAST, INC.,

Defendant.

Case No. 16-cv-2222

Magistrate Judge Long

PRE-TRIAL ORDER

This matter having come before the Court at a pre-trial conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16.1; and Miles Shultz and Justin Mulaire having appeared as counsel for the plaintiff, and Andrew Trusevich and Stephanie Quincy having appeared as counsel for defendant, the following action was taken.

I. NATURE OF ACTION AND JURISDICTION

This is an action under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000 *et seq.*, and the jurisdiction of the Court is invoked under 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. The jurisdiction of the Court is not disputed.

II. JOINT STATEMENT

A. **PROPOSED JOINT STATEMENT OF THE CASE**

The parties jointly propose the following statement of the case for use with the jury:

This is a lawsuit brought under Title VII of the Civil Rights Act, which prohibits discrimination in the workplace. The case was brought by the plaintiff, the United States Equal Employment Opportunity Commission (sometimes referred to as the “EEOC” for short), against the defendant, Rent-A-Center East, Inc. The case arises out of Megan Kerr's employment with Rent-A-Center as an assistant manager at the Rent-A-Center store in Rantoul, Illinois.

The EEOC claims that Rent-A-Center terminated Ms. Kerr's employment in July 2014 because she is transgender. Rent-A-Center denies that and contends that it terminated Ms. Kerr for unauthorized use of a company vehicle. You will hear evidence about this dispute.

B. JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. The jurisdiction of the Court is not disputed.

C. UNCONTESTED ISSUES OF FACT

1. The Plaintiff, the United States Equal Employment Opportunity Commission (“EEOC”), is an agency of the United States Government that is responsible for the enforcement of Title VII of the Civil Rights Act, and is authorized to bring this action.

2. The Defendant, Rent-A-Center East, Inc. (“Rent-A-Center” or “RAC”), is a Delaware corporation, and at all relevant times was a corporation doing business in the Central District of Illinois.

3. At all relevant times, RAC was an employer within the meaning of Title VII.

4. At all relevant times, RAC has had at least 15 employees.

5. At all relevant times, Megan Vanna (Kerr)¹ was an employee of RAC within the meaning of Title VII.

6. In at least 20 calendar weeks in the year 2014, RAC had more than 500 employees.

7. RAC is a rent-to-own retailer of furniture, electronics, appliances, and computers.

8. All conditions precedent to the filing of this suit have been fulfilled.

¹ After the events at issue in this case, Ms. Kerr’s last name changed to Vanna. For consistency, and because witnesses and documents refer to her by the surname Kerr, she is referred to that way throughout.

9. Kerr was employed by Rent-A-Center beginning in or around May 2005.

10. Kerr was an assistant manager at Rent-A-Center store no. 319, in Rantoul, Illinois from July 2010 until July 2014.

11. Kerr is transgender. That is, her gender identity (female) is different from the sex she was designated at birth (male).

12. Kerr informed Rent-A-Center in March 2013 that she was changing her name and gender presentation.

13. Throughout 2013 and 2014, Jason Carnahan was the District Manager who oversaw the Rantoul Store and was the immediate supervisor of the Rantoul Store's store manager.

14. In December 2013, Rent-A-Center discharged Russell Kasper.

15. In or around February 2014, Rent-A-Center assigned Jason Morris to be the new store manager of the Rantoul Store.

16. At all relevant times, David Leavengood was Kerr's regional director.

17. Rent-A-Center terminated Kerr on Monday, July 21, 2014.

18. Kerr made \$13.53 per hour at Rent-A-Center and worked full-time at the time she was terminated.

19. Rent-A-Center operates approximately 2,463 stores within the United States.

20. As of the end of December 2016, the most recent year for which data is available, Rent-A-Center's net worth was \$264,933,000.

D. CONTESTED ISSUES OF FACT

1. Whether RAC discharged Kerr because she is transgender.

2. Whether RAC acted with malice or reckless indifference to the federally protected rights of Ms. Kerr.

3. The appropriate amounts of backpay, compensatory, and punitive damages.

E. CONTESTED ISSUES OF LAW

1. The standard for causation: The EEOC contends the legal standard is “was Kerr’s transgender status a motivating factor in RAC’s decision to terminate her employment.” RAC contends the legal standard is “did RAC terminate Kerr’s employment ‘because’ of her transgender status.”

F. JURY DEMAND

The EEOC requests a jury trial on liability, compensatory, and punitive damages. Equitable relief, including back pay, prejudgment interest and the determination of injunctive relief, to be determined by the Court.

III. PLAINTIFF’S STATEMENT

A. ITEMIZED STATEMENT OF DAMAGES

The EEOC is seeking back pay for Ms. Kerr from July 21, 2014, through July 30, 2016. EEOC also seeks compensatory and punitive damages in amounts to be determined by the jury. Although by statute a jury may not be informed of the statutory caps on compensatory and punitive damages, the EEOC understands that the total amount of compensatory and punitive damages included in any judgment may not exceed \$300,000. *See* 42 U.S.C. § 1981a(b)(3)(D), (c)(2).

The EEOC also seeks equitable relief, to be determined by the Court, including: (i) back pay; (ii) prejudgment interest; (iii) a permanent injunction enjoining RAC, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in

any employment practice that violates Title VII, including discriminating against employees or application on the basis of sex; (iv) a permanent injunction requiring RAC to institute and carry out policies, practices, and programs which eradicate the effects of its past and present unlawful employment practices; and (v) such further relief as the Court deems necessary and proper, including, without limitation, an order requiring RAC to provide its managers and human resources staff with training on Title VII, post a notice advising employees of the outcome of this action, and keep records of requests for reasonable accommodation and make periodic reports to the EEOC regarding the handling of such requests.

The EEOC also seeks an award of its costs in this action.

IV. WAIVER OF CLAIMS OR DEFENSES

None.

V. EXHIBITS ATTACHED

The following are attached as exhibits to this order and are made a part hereof:

- A. Plaintiff's Witness List.
- B. Defendant's Witness List.
- C. Plaintiff's Exhibit List.
- D. Defendant's Exhibit List.

VI. GENERAL ADDITIONAL

The following additional action was taken:

A party may supplement a list of witnesses or exhibits only upon good cause shown in a motion filed and served upon the other parties prior to trial; except that, upon the development of

testimony fairly shown to be unexpected, any party may, with leave of court, call such contrary witnesses or use such exhibits as may be necessary to counter the unexpected evidence, although not previously listed, and without prior notice to any other party.

It is mutually estimated that the length of trial will not exceed 5 full days. The case will be listed on the trial calendar to be tried when reached.

The parties have stipulated to treat Mary Ann Kelly and Marcy Bussman as unavailable, in the interest of justice, within the meaning of Fed.R.Civ.P. 32(a)(4).

Once a final version of this order has been approved by the Court, it may be modified at the trial of the action, or prior thereto, only to prevent manifest injustice. Such modification may be made either on motion of counsel for any party or on the Court's own motion.

IT IS SO ORDERED.

s/ ERIC I. LONG

Eric Long
United States Magistrate Judge

APPROVED AS TO FORM AND SUBSTANCE:

s/ Justin Mulaire
U.S. Equal Employment
Opportunity Commission
33 Whitehall St., Fl. 5
New York, NY 10004
212.336.3744

Miles Shultz
U.S. Equal Employment
Opportunity Commission
500 W. Madison St., Ste. 2000
Chicago, IL 60661
312.869.8053

s/ Helene Wasserman
Helene Wasserman
Littler Mendelson, P.C.
633 West Fifth St., 63rd Floor
Los Angeles, CA 90071
213.443.4300

Andrew Trusevich
Texas Bar No. 00785119
RENT-A-CENTER, INC.
5501 Headquarters Drive
Plano, Texas 75024
972.801.1465

EXHIBIT LIST FOR PLAINTIFF

No:	Description	Admit Without Objection	Authentication Waived	Objection
1	RAC's Position Statement (RAC000028-33)	No	No	Relevance (Fed. R. Evid. 401, 402), Prejudice (Fed. R. Evid. 403), Hearsay (Fed. R. Evid. 801), Hearsay within Hearsay (Fed. R. Evid. 805).
2	Morris Declaration (RAC000063-64)	No	No	Relevance (Fed. R. Evid. 401, 402), Prejudice (Fed. R. Evid. 403), Hearsay (Fed. R. Evid. 801).
3	Carnahan Declaration (RAC000061-62)	No	No	Relevance (Fed. R. Evid. 401, 402), Prejudice (Fed. R. Evid. 403), Hearsay (Fed. R. Evid. 801).
4	Wilkerson Record (RAC000523)	Yes	Yes	
5	Parking Lot Picture (RAC000777)	Yes	Yes	
6	Kerr's 2014 RAC W-2 (EEOC0366)	Yes	Yes	
7	Job Advertisements (EEOC0292-300)	Yes	Yes	
8	RAC's Response to EEOC's Tenth Interrogatory (April 24, 2017)	Yes	No	
9	RAC's Response to EEOC's Seventh Interrogatory and Verification (Oct. 7, 2016)			

10	RAC's Response to EEOC's Eleventh Interrogatory and Verification (May 8, 2017)			
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EXHIBIT LIST FOR DEFENDANT

No.	Description	Admit Without Objection	Authentication Waived	Objection
1.	Complaint		X	Relevance; 403
2.	EEOC Press Release (RAC00395-396)		X	Relevance; 403
3.	Plaintiff EEOC's Response to Defendant's First Set of Interrogatories to Plaintiff		X	Relevance; 403; completeness
4.	Plaintiff EEOC's First Supplemental Response to Defendant's First Set of Interrogatories to Plaintiff		X	Relevance; 403; completeness
5.	Verification for EEOC's Answers to Defendant's First Set of Interrogatories to EEOC dated October 24, 2016		X	Relevance
6.	Charge of Discrimination dated November 23, 2014 (EEOC00023)		X	Relevance; 403; hearsay; EEOC MIL No. 2
7.	Megan Kerr's, My Indeed Resume (EEOC0288-291)		X	Relevance; 403; EEOC MIL Nos. 2, 9-10
8.	Key Accounts Representative – Entry Level application submission (EEOC0292-293)		X	Relevance; 403; EEOC MIL No. 10
9.	Megan Kerr's "Leading the way, setting new standards" resume (EEOC0301-302)		X	Relevance; 403; EEOC MIL Nos. 2, 9-10
10.	Kerr's resume with photograph (EEOC00303-304)		X	Relevance; 403; EEOC MIL Nos. 2, 9-10
11.	MeganLynn Vanna's "Artist/Owner" LinkedIn resume (EEOC0305-0308)		X	Relevance; 403; EEOC MIL Nos. 2, 9-10
12.	Kerr's "small paper route" resume (EEOC0309-310)		X	Relevance; 403; EEOC MIL Nos. 2, 9-10

13.	Job application submissions from indeed.com (EEOC0294—300), Snagajob.com application submissions (EEOC0311-313, EEOC0328-0334, EEOC0337-0357), and LinkedIn.com applied jobs (EEOC0314-327)		X	Relevance; 403; EEOC MIL No. 10
14.	Food4Less job submission (EEOC0335-336)		X	Relevance; 403; EEOC MIL No. 10
15.	Equal Employment Opportunity Commission Intake Questionnaire (EEOC0065-68)		X	Relevance; 403; hearsay; EEOC MIL No. 2
16.	Email from MeganLynn Vanna to EEOC Investigator, Gloria Mayfield dated December 22, 2015 (Kerr Deposition Exhibit RAC 9), Email from Gloria Mayfield to MeganLynn Vanna dated February 3, 2016 (Kerr Deposition Exhibit RAC 11), Email from MeganLynn Vanna to Miles Shultz - Email to craigslist job posting “tattoo artist needed” applied to on November 2, 2014 (EEOC0284), Email from MeganLynn Vanna to Miles Shultz - Email to craigslist job posting for a “legal coordinator” applied to on February 13, 2014 (EEOC0285), and Email from MeganLynn Vanna to Miles Shultz - Email job posting for a “Associate Estimator” dated April 22, 2014 (EEOC0286)		X	Relevance; 403; hearsay; EEOC MIL Nos. 9-10
17.	EEOC Investigator notes (EEOC0037, EEOC0046-49, EEOC55-56, EOC0005, EEOC0045, EEOC0050-54, EEOC0039-44, EEOC0038)		X	Relevance; 403; notes contain hearsay; EEOC MIL Nos. 2, 10

18.	Typed EEOC Investigator notes (RAC000375, RAC000379, RAC000382-384, RAC000378, RAC000387-390, RAC000380-381, RAC000391-394, RAC000377, RAC000376, RAC000374, RAC000385-386, RAC000372-373, RAC000371)		X	Relevance; 403; notes contain hearsay; EEOC MIL Nos. 2, 10
19.	EEOC Investigator Gloria Mayfield's notes dated September 17, 2015 (EEOC0084-91)		X	Relevance; 403; notes contain hearsay
20.	Rent-A-Center Coworker Handbook excerpts from February 2014 (RAC000744-750)	X		
21.	Open Door Policy (EEOC0110)	X		
22.	Rent-A-Center's Coworker Handbook Acknowledgment signed by Jason Kerr dated May 21, 2005 (EEOC0112)		X	Relevance
23.	Rent-A-Center's Coworker Integrity Commitment signed by Jason Kerr dated May 21, 2005 (EEOC0113)		X	Relevance
24.	Rent-A-Center's Manager/Supervisor Integrity Commitment signed by Jason Kerr dated March 8, 2007 (EEOC0114)		X	Relevance
25.	RAC Workplace behavior Training Store Employee Listing Checklist dated January 13, 2012 (EEOC0115)		X	Relevance
26.	Jason Kerr's Webhire Candidate details (EEOC0178-180)			Relevance; 403; EEOC MIL No. 9
27.	Assistant Manager Job Description (EEOC0228)		X	Relevance
28.	Lease (Ink's Mistress Tattoo Shop) (EEOC0372-382)		X	Relevance; 403; EEOC MIL No. 9
29.	R.J. flat's – 105 E. State Rent Collection form. (RAC000275-289)		X	Relevance; 403; EEOC MIL No. 9

30.	Performance Discussion Summaries from Jason Carnahan to Russell Kasper (EEOC0219)		X	Relevance; 403; hearsay; RAC MIL No. 2
31.	Performance Discussion Summaries from Jason Carnahan to Russell Kasper (EEOC0218)		X	Relevance; 403; hearsay; RAC MIL No. 2
32.	Performance Discussion Summaries from Jason Carnahan to Russell Kasper (EEOC0217)		X	Relevance; 403; hearsay; RAC MIL No. 2
33.	Handwritten letter from Jason Kerr to Russell Kasper with change of name documents. (EEOC0358-362, EEOC0365, EEOC0419-420)		X	Hearsay; 403 (Kerr's transgender status is uncontested)
34.	Performance Discussion Summary from Russell Kasper to Roger Harding dated June 18, 2012 (EEOC0188)		X	Relevance; 403; hearsay
35.	Rent-A-Center's Coworker Handbook Acknowledgment (Russell Kasper Deposition Exhibit RK #5)		X	Relevance
36.	Coworker Integrity Commitment signed by Russell Kasper dated June 25, 2005 (Russell Kasper Deposition Exhibit RK#6)		X	Relevance
37.	Color photograph of Store 00319 parking lot dated July 20, 2014 (RAC0000777)	X		
38.	Letter from CEO Mark Speese and Mitch Fadel to All Coworkers dated June 1, 2012 (RAC000008)	X		
39.	United States Army records (RAC000593-639)		X	Relevance; 403; hearsay; compound exhibit; EEOC MIL No. 9
40.	Moraine Valley Community College records (RAC000471-522)		X	Relevance; 403; compound exhibit; hearsay; EEOC MIL Nos. 9-10
41.	Village of Rantoul, Illinois – Department of Public Works records (RAC000660-673)		X	Relevance; 403; compound exhibit; EEOC MIL No. 9

42.	Illinois Department of Employment Security records (RAC00412-469)		X	Relevance; 403; compound exhibit; hearsay; EEOC MIL Nos. 2, 9-10
43.	2013-2016 Wage and Tax Statements (EEOC367-368, EEOC0407-408, EEOC0366, EEOC0409-0417, EEOC0430-0433)		X	Relevance; EEOC MIL No. 10
44.	Performance Discussion Summary from Jason Carnahan to Brock Duncan-Fox (EEOC0235)		X	Relevance; 403; hearsay
45.	Performance Discussion Summary from Jason Carnahan Jason Morris (EEOC0236)		X	Relevance; 403; hearsay
46.	Letter from Megan Kerr to MaryAnn Kelly with MoneyGram receipt (RAC000296)		X	Relevance; 403; hearsay; EEOC MIL No. 9
47.	Solution Center ticket information dated July 24, 2014 (RAC000691-692)		X	Relevance; 403; hearsay; EEOC MIL No. 8
48.	Solution Center ticket information (RAC000683-684, RAC000689-690. RAC000687-688, RAC000685-686, RAC000695-696, RAC000697, RAC000693-694. RAC000691-692.		X	Relevance; 403; hearsay; EEOC MIL No. 8
49.	Verizon phone records. (RAC000698-699)		X	Relevance; 403; hearsay; EEOC MIL No. 8
50.	Incoming call records to telephone number (800)675-0825 (RAC000753-754)			Relevance; hearsay; untimely disclosed
51.	Sprint phone records (RAC00403-404)	X		
52.	Purchase information by customer Amy Wilkerson (RAC000523)	X		
53.	Amber Shumate Facebook posts (RAC000524-533)			Relevance; 403; hearsay
54.	Code of Business Conduct and Ethics dated July, 2011 (RAC000006-000007)		X	Relevance

55.	Instructions on Preparing for Workplace Behavior Training (RAC000010-000011)		X	Relevance
56.	Workplace Behavior Training Facilitation Guide (RAC000012-000022)		X	Relevance
57.	Completed Training Record for Harding, Kerr, Kasper, Morris, Miller, Reeves, Moreland, Coleman, Meister and Kaspov (RAC000024-000025)		X	Relevance
58.	Recording of All Hours Worked Acknowledgement Form signed by Kerr (RAC000153)			Relevance
59.	Diagram of Rent-A-Center space (RAC000370)	X		
60.	Order for Change of Name (RAC000516)		X	Relevance; 403
61.	Terminations for Unauthorized Use of Company Vehicle in Illinois Between May 1, 2011 and November 23, 2015 (EEOC0190)			Relevance; 403
62.	5/10/08 Change Notice – Promotion for Russell Kasper (RAC0000730)			Relevance; 403; completeness; untimely disclosed
63.	10/28/09 Change Notice – Promotion for Russell Kasper (RAC000731)			Relevance; 403; untimely disclosed
64.	Team Member Handbook Acknowledgment signed by Carnahan dated 12/4/99 (RAC000724)			Relevance; untimely disclosed
65.	Team Member Handbook Acknowledgment signed by Carnahan dated 9/5/00 (RAC000725)			Relevance; untimely disclosed
66.	Manager/Supervisor Integrity Commitment signed by Carnahan (RAC000729)			Relevance; untimely disclosed
67.	Manager/Supervisor Integrity Commitment signed by Kober (RAC000728)			Relevance; untimely disclosed
68.	Coworker Handbook Acknowledgment signed by Kober (RAC000726)			Relevance; untimely disclosed

69.	Coworker Integrity Commitment signed by Kober (RAC000727)			Relevance; untimely disclosed
70.	Coworker Handbook Acknowledgment signed by Bell (RAC000752)			Relevance; untimely disclosed
71.	Manager/Supervisor Integrity Commitment signed by Bell (RAC000751)			Relevance; untimely disclosed
72.	Coworker Handbook Acknowledgment signed by Kasapov (RAC000741)			Relevance; untimely disclosed
73.	Co-Worker Integrity Commitment signed by Kasapov (RAC000742-743)			Relevance; untimely disclosed
74.	Declaration of Jason Carnahan (RAC000061-000062)	X		
75.	Declaration of Russell Kasper (EEOC0279-0280)		X	Relevance; hearsay
76.	Declaration of Jennifer McCallister (EEOC0434)		X	Relevance; hearsay
77.	Declaration of Michael J. Moreland, Jr. (EEOC0453)		X	Relevance; hearsay
78.	Declaration of Jason Morris (RAC000063-64)	X		
79.	Declaration of Frank Piekarski (EEOC0435)	X		
80.	Declaration of Eleena Reeves (RAC000065-66)		X	Relevance; hearsay

WITNESS LIST FOR PLAINTIFF

Witness Name	Address (City and State Only)	Expert	Adverse
Jason Carnahan	Streator, IL		X
Russell Kasper	Rantoul, IL		
Mary Ann Kelly (BY DEPOSITION)	Milford, IL		
David Leavengood (BY DEPOSITION)	Hannibal, MO		X
Michael Moreland, Jr.	Rantoul, IL		
Jennifer McCallister	Rantoul, IL		
Jason Morris	Rantoul, IL		X
Frank Piekarski	Harvey, IL		
Dan Roling (BY DEPOSITION)	Palm Harbor, FL		X
Amber Shumate (Wilkerson)	Royal, IL		
Megan Vanna (Kerr)	Chicago, IL		

WITNESS LIST FOR DEFENDANT

Witness Name	Address (City and State Only)	Expert	Adverse
Pastor Albert Bennett	Rantoul, IL		
Nakia Bell	Plano, Tx		
Marcie y. Bussman	Mahomet, IL		
Jason Carnahan	Streator, IL		
Maria Clatterbuch	McKinney, Tx		
Calvin Davis	Sherman, TX		
Brock Duncan-Fox	Rantoul, IL		
Roger Harding	Gifford, IL		
Alexander Kasapov	Gifford, IL		
Russell Kasper	Rantoul, IL		X
Mary Ann Kelly	Milford, IL		
Dan Kober	Pekin, IL		
David Leavengood	Hannibal, MO		
Joseph Leith	Indianapolis, IN		
Gloria Mayfield	Oak Brook, IL		X
Jennifer McCallister	Rantoul, IL		
Michael J. Moreland, Jr	Rantoul, IL		
Jason Morris	Rantoul, IL		
Charles O'Neil	McKinney, Texas		
Frank Piekarski	Harvey, IL		

Elena Reeves			
Dan Roling	Palm Harbor, FL		
Amber Shumate	Royal, IL		X
Richard Thompson	Paxton, IL		
Marissa Torres	Plano, Texas		
Megan Vanna (Kerr)	Chicago, IL		X
Russell Wiedemann	Deceased - Video		
Corporate Representative of the Equal Employment Opportunity Commission	Chicago, IL		X
Corporate Representative of the Illinois Department of Employment Security	Belleville, IL		
Corporate Representative of Moraine Community College	Palos Hills, IL		
Corporate Representative of the Village of Rantoul Utilities (Carla Toliver)	Rantoul, IL		