

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ALLISON DANIELS,

Plaintiff,

CIVIL ACTION NO. _____
HONORABLE _____

v.

**WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES, A Branch of the State
of West Virginia; and, BRIAN PHILLIPS,
Individually and in his former Official Capacity
With the State of West Virginia,,**

Defendants.

COMPLAINT

COMES NOW the plaintiff, Allison Daniels, by counsel, for her Complaint against the Defendants, the West Virginia Department of Health and Human Resources and Brian Phillips, and alleges as follows:

1. Plaintiff Allison Daniels was at all times pertinent hereto a citizen and resident of Kanawha County, West Virginia.
2. Defendant, West Virginia Department of Health and Human Resources (hereinafter "DHHR") is a division of the State of West Virginia.
3. Defendant Brian Phillips (hereinafter "Phillips") is and at all times pertinent hereto was a citizen and resident of Kanawha County, West Virginia and the Adult Protective Services Supervisor for the DHHR.
4. Plaintiff herein is seeking recovery against the divisions of the State only under and up to the limits of the State's liability insurance coverage, thereby negating arguments of sovereign immunity.

5. Jurisdiction and venue are proper in the Circuit Court of Kanawha County, West Virginia pursuant to West Virginia Code §14-2-2(a)(1) which provides that Kanawha County is the only county where suits against the State of West Virginia or any of its officers may be brought.

FACTS

6. At all times relevant herein, Plaintiff was employed by the Defendant DHHR and performed her job to the satisfaction of her employer.

7. Plaintiff's direct supervisor was then Supervisor Defendant Phillips.

8. Defendant DHHR provides a wide range of necessary and life-saving services to many West Virginia residents, including the protection of West Virginia children.

9. In the early months of 2022, Plaintiff began receiving unwarranted, unreciprocated, and unprofessional sexual advances by her supervisor, Defendant Phillips.

10. Defendant Phillips would text the Plaintiff that "[y]ou know you are never alone."

11. In the office, Defendant Phillips would make gestures towards his groin area acting like he was taking a picture of his penis for Plaintiff to see.

12. In the office, Defendant Phillips would make comments of a sexual nature towards the Plaintiff to which she on numerous occasions informed him that he should not be saying such things to her or any other female in the office.

13. Defendant Phillips would discuss sexual topics directed towards the Plaintiff in an effort to induce her into a sexual relationship.

14. Defendant Phillips conduct continued almost daily causing the Plaintiff extreme discomfort and anxiety.

15. Defendant Phillips went out of his way on occasions to tell the Plaintiff that he was her direct supervisor and in control of her, thus implying that if she did not acquiesce to his sexual advances, he could damage her career.

16. Defendant Phillips' conduct became so atrocious, Plaintiff did not attend a work-related conference in Huntington as she did not wish to be in a car with Defendant Phillips.

17. Plaintiff continually combated Defendant Phillips' advances.

18. On June 10, 2022, Defendant Phillips received his first EEOC letter.

19. On June 14, 2022, Plaintiff filed a formal complaint and submitted a form to the EEOC. *See June 14, 2022 Complaint, attached hereto as Exhibit A.*

20. On August 29, 2022, the DHHR forwarded correspondence to Plaintiff informing her that her complaints regarding Defendant Phillips had been substantiated by the DHHR. *See August 29, 2022 correspondence, attached hereto as Exhibit B.*

21. As a result of the complaints brought by women at the DHHR, Defendant Phillips is no longer employed with the DHHR.

22. Despite her claims being substantiated, Plaintiff began to recognize different, hostile treatment from many of her coworkers and managers.

23. Recently, in his new employment with Arc of the Three Rivers, Plaintiff learned that she would again be working with Defendant Phillips.

24. The conduct Plaintiff was met with in response to her refusal to work with Mr. Phillips caused her to file a second grievance at work at the DHHR.

COUNT I

SEXUAL ABUSE/SEXUAL HARASSMENT/QUID PRO QUO HARASSMENT

WEST VIRGINIA HUMAN RIGHTS ACT

25. Plaintiff repeats and realleges the allegations contained in the above-paragraphs of this Complaint as if set forth fully herein.

26. Defendant DHHR and Defendant Phillips are liable to Plaintiff for sexual harassment, under the West Virginia Human Rights Act, W.Va. Code §5-11-1, *et. seq.*

27. Defendant Phillips and Defendant DHHR are liable to Plaintiff for *quid pro quo* sexual harassment.

28. That as a further consequence of these Defendants' violations of the West Virginia Human Rights Act, as herein above described, Plaintiff has sustained:

- a. Pain and suffering, past and future;
- b. Lost future earnings;
- c. Impairment of earning capacity;
- d. Emotional and mental anguish;
- e. Humiliation and embarrassment; and
- f. Other consequential damages, including attorneys' fees and costs, for which Plaintiff deserves to be compensated.

WHEREFORE, the Plaintiff demands judgment of and from Defendant DHHR and Defendant Phillips in such amounts as will fully and fairly compensate her for her injuries and damages sustained, together with pre-judgment interest, post-judgment interest, attorneys' fees and costs of this proceeding, and any other relief that the Court finds to be fair, just, equitable, or allowed by law.

COUNT II

RESPONDEAT SUPERIOR/NEGLIGENT HIRING, SUPERVISION AND RETENTION

DEFENDANT DHHR

29. Plaintiff repeats and realleges the allegations contained in the above-paragraphs of this Complaint as if set forth fully herein.

30. Upon information and belief, the Defendant DHHR was negligent in several aspects, including but not limited to the following facts:

- a. failing to properly interview, evaluate and screen Defendant Phillips prior to placing him in the position of supervisor; and,
- b. failing to properly supervise and monitor Defendant Phillips;

31. Defendant DHHR had an affirmative duty to properly continuously evaluate all of their employees prior to providing employment. Upon information and belief, Defendant DHHR breached said duty by negligently placing Defendant Phillips in direct supervisory position over Plaintiff.

32. As a direct and proximate result of the Defendant's aforesaid actions, Plaintiff has suffered and will continue to suffer damages in an amount to be proven at trial.

WHEREFORE, the Plaintiff demands judgment of and from Defendant DHHR in such amounts as will fully and fairly compensate her for her injuries and damages sustained, together with pre-judgment interest, post-judgment interest, attorneys' fees and costs of this proceeding, and any other relief that the Court finds to be fair, just, equitable, or allowed by law.

COUNT III

HARASSMENT/INTIMIDATION/BULLYING

DEFENDANT DHHR AND DEFENDANT PHILLIPS

33. Plaintiff repeats and realleges the allegations contained in above-paragraphs of this Complaint as if set forth fully herein.

34. At all times relevant to this action the Defendant DHHR was required under West Virginia law to establish a policy prohibiting harassment, intimidation, or bullying.

35. At all times relevant to this action the Defendant DHHR had adopted a policy prohibiting harassment, intimidation, or bullying.

36. Defendant Phillips subjected Plaintiff to daily harassment, intimidation, and bullying in an attempt to force her into an unwanted romantic relationship due to his infatuation with her.

37. Plaintiff was almost daily subjected to bizarre and inappropriate comments, and gestures from Defendant Phillips in a threatening manner.

38. Plaintiff was subjected to daily harassment, both physical and oral, from Defendant Phillips attempting to engage in an inappropriate sexual relationship with Plaintiff.

39. The harassment inflicted on Plaintiff was continuous, insulting, intolerable, severe, pervasive, and beyond the bounds of decency to the point of being outrageous.

40. The actions of Defendant Phillips were taken in the scope of his employment with Defendant DHHR.

41. Defendant DHHR is liable for the conduct of Defendant Phillips for the conduct which occurred within the scope of his employment with Defendant DHHR.

42. Defendant Phillips is individually liable for conduct that occurred outside of the scope of his employment with Defendant DHHR including liability for punitive damages.

43. As a direct, proximate, and foreseeable result of the harassment, intimidation, and/or bullying inflicted on Plaintiff by Defendant DHHR and Defendant Phillips, Plaintiff was traumatized.

44. The harassment, intimidation, and/or bullying inflicted on Plaintiff was sufficiently severe, persistent, and/or pervasive that it had the effect of creating an intimidating, threatening, and/or abusive working environment.

45. As a direct, proximate, and foreseeable result of the harassment, intimidation, and/or bullying inflicted on Plaintiff, she was damaged by the above-described conduct in the form of past, present and future emotional distress; past, present and future annoyance and inconvenience; loss of income at the time and in the future, and other significant injuries and damages as more fully described herein.

WHEREFORE, the Plaintiff demands judgment of and from Defendant DHHR and/or Defendant Phillips in such amounts as will fully and fairly compensate her for her injuries and damages sustained, punitive damages, together with pre-judgment interest, post-judgment interest, attorneys' fees and costs of this proceeding, and any other relief that the Court finds to be fair, just equitable or allowed by law.

COUNT IV

QUID PRO QUO SEXUAL HARASSMENT/STRICT LIABILITY

DEFENDANT PHILLIPS AND DEFENDANT DHHR

46. Plaintiff repeats and realleges all of the allegations contained in the above-paragraphs as if set forth verbatim herein.

47. Defendant Phillips was the direct supervisor of Plaintiff and performed her "reviews" for purposes of employment.

48. While engaging in his sexually harassing conduct, Defendant Phillips made it clear that he was Plaintiff's supervisor and could affect her employment if she did not

engage in a sexual relationship with him, thereby threatening her employment in the event she did not acquiesce to his sexual harassment and advances.

49. Consequently, Defendant Phillips was demanding sexual consideration for employment benefits.

50. The actions of Defendant Phillips equate to *quid pro quo* sexual harassment.

51. Defendant DHHR is strictly liable for the *quid pro quo* sexual harassment Defendant Phillips inflicted on Plaintiff.

WHEREFORE, the Plaintiff demands judgment of and from Defendant DHHR and Defendant Phillips in such amounts as will fully and fairly compensate her for her injuries and damages sustained, together with pre-judgment interest, post-judgment interest, attorneys' fees and costs of this proceeding, punitive damages, and any other relief that the Court finds to be fair, just, equitable, or allowed by law.

COUNT V

PUNITIVE DAMAGES

52. Plaintiff repeats and realleges all of the allegations contained in the above-paragraphs as if set forth verbatim herein.

53. At all times relevant herein, the conduct of the individual defendant was willful, wanton, reckless, and disregarded the rights of Plaintiff. As such, Plaintiff is entitled to punitive damages to deter Defendant and others from engaging in a like course of conduct in the future.

WHEREFORE, the Plaintiff demands judgment of and from all Defendants in such amounts as will fully and fairly compensate her for her injuries and damages sustained, together with pre-judgment interest, post-judgment interest, attorneys' fees and costs of this proceeding,

punitive damages, and any other relief that the Court finds to be fair, just equitable or allowed by law.

COUNT VI

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

54. Plaintiff repeats and realleges all of the allegations contained in the above-paragraphs as if set forth verbatim herein.
55. The actions of Defendant Phillips were outrageous, willful, wanton, reckless and intentionally aimed at inflicting emotional distress on Jane Doe.
56. The actions of Defendant Phillips was outrageous and is beyond the realm of decency in our society.
57. The actions of Defendant Phillips were taken in the scope of his employment with the Defendant DHHR.
58. The continuous, daily harassment conducted by Defendant Phillips contributed to his intentional infliction of emotional distress on the Plaintiff.
59. Defendants are liable to Plaintiff for this intentional infliction of emotional distress.

WHEREFORE, the Plaintiffs demand judgment of and from all Defendants in such amounts as will fully and fairly compensate them for their injuries and damages sustained, together with pre-judgment interest, post-judgment interest, attorneys' fees and costs of this proceeding, punitive damages, and any other relief that the Court finds to be fair, just equitable or allowed by law.

COUNT VII

DAMAGES

60. Plaintiff repeats and realleges all of the allegations contained in the above-paragraphs as if set forth verbatim herein.
61. As a direct and proximate result of the negligent, careless, reckless, willful, wanton, intentional and/or unlawful conduct of the Defendants, as aforesaid, Plaintiff has sustained severe and permanent injuries and damages, including without limitation the following:
- a. Pain and suffering and mental anguish in the past that will continue into the future;
 - b. Loss of enjoyment of life;
 - c. Humiliation, embarrassment, and shame in the past that will continue into the future;
 - d. Other general and special damages including but not limited to lost wages, loss of future earning capacity, and any other damages permitted under West Virginia law.
 - e. Punitive damages.

WHEREFORE, the Plaintiff demands judgment against Defendants jointly and severally for punitive, compensatory and general damages including prejudgment interest, post-judgment interest, annoyance, aggravation, inconvenience, and attorneys' fees, costs, punitive damages, and expenses in an amount sufficient to compensate the child for his injuries and damages and for any and all other relief the Court finds to be fair, just, equitable and allowed by law. The Plaintiff demands a trial by jury.

Allison Daniels,

By Counsel,

A handwritten signature in blue ink, appearing to be 'Travis A. Griffith', written over a horizontal line.

Travis A. Griffith (WVSB #9343)

GRIFFITH LAW CENTER, PLLC

One Bridge Place

10 Hale Street, Suite 203

Charleston, WV 25301

(304) 345-8999


EXHIBIT A



**WV DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Equal Employment Opportunity
Discrimination Complaint Form**

1. Name and Address of Complainant

Telephone Number

Allison Daniels 
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2. List the person(s) you believe discriminated against or harassed you.

Name

Address

Telephone Number

Brian Phillips, Adult Protective Services Supervisor 4190 Washington St West Charleston WV 25313	
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3. Which of the following best describes why you believe you were discriminated against or harassed?

- Age(40 & Above)
 Race
 Color
 Disability
 National Origin
 Ancestry
 Religion
 Sex (Gender Identity and/or Sexual Harassment)
 Sexual Orientation
 Retaliation
 Veteran Status
 Military Service Member Status
 Political Beliefs
 Genetics

A complaint should be filed promptly following the alleged discriminatory act if possible.

4. On what date(s) did the alleged discrimination/harassment take place?
If there was continuing discrimination/harassment, indicate the dates.

First Occurrence

February 2022

Most recent

6/14/2022

5. Explain briefly and clearly the events that occurred. When alleging discrimination, include how you believe other persons were treated differently from you (if necessary, attach additional sheets). Also, attach any written documentation pertaining to this matter.

On recent trips into Brian's office any conversations we had turned sexual in nature with him. He has sent me text messages saying that "You know you are never alone" and when I did not respond, he stated "Well, I guess I am then." I witnessed him make a gesture of pointing his phone towards his groin area and acting like he was taking picture of penis. He has on several occasions asked me "Do you think I'm creepy?" to which I did not respond. After hearing some of the comments directed to myself, I told him that he should not be saying or doing things like that towards anyone. I was supposed to attend conference in Huntington but did not go because Mr. Phillips want to ride with us. He made comments that the office was quiet, like he knows something is going on. Said he was very anxious.

6. List any witnesses, you believe had direct knowledge of your allegation that we may contact for additional information to support or clarify your complaint.

Name	Work Address	Work Telephone Number
Sierra Feazell	[REDACTED]	[REDACTED]

7. What resolution do you seek?

I would like to be able to work in an non-hostile environment and not be uncomfortable at the office.

8. Have you notified your immediate supervisor of the allegations? If so, when? What if any actions were taken?

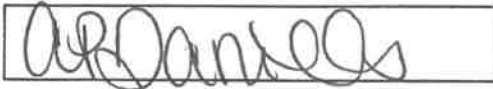
Discriminating party is the direct supervisor. Report was given to Keith Reed.

9. Will you agree to Informal EEO Counseling in an attempt to resolve this dispute (If appropriate)?

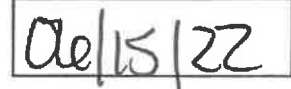
Yes No

10. What resolution do you seek? I would like to be able to work in an non-hostile environment and not be uncomfortable at the office.

I attest that the information provided is true and accurate to the best of my knowledge.



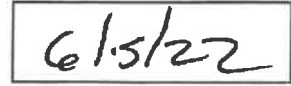
Signature of Complainant



Date



Signature of person accepting complaint



Date

Send this form immediately to:

*West Virginia Department of Health and Human Resources
Attention: EEO Officer.
One Davis Square, Charleston, WV 25301*

EXHIBIT B



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Human Resources Management
One Davis Square, Suite 400
Charleston, WV 25301

Bill J. Crouch
Cabinet Secretary

Angela Jacobs-Ferris
Director

August 29, 2022

Allison Daniels



Dear Ms. Daniels:

On June 15, 2022, you filed a complaint alleging allegations of Sex discrimination against Brian Phillips. An investigation has been conducted, and the allegations were substantiated. The investigative report has been sent to the Bureau Human Resources Director for review.

It is very important to maintain confidentiality. Although DHHR is not trying to limit, discourage, or interfere with your ability to discuss with anyone any concerns you may have about the terms and conditions of your employment, we encourage you to maintain a professional relationship with the respondents and other witnesses interviewed. You are strongly advised not to discuss this investigation with your co-workers. Please remember that negative discussions with coworkers can cause divisions among employees in the workplace and create a less-than desirable work environment. Further, retaliation is strictly prohibited by law.

It is important to note that West Virginia Department of Health and Human Resources considers all complaints a serious matter and is committed to the fair and equitable treatment of all employees. Retaliation directed toward you because of filing this complaint will not be tolerated and is considered as prohibited conduct.

If you have any questions concerning this matter, or require any additional information, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink that reads "Wesley Henderson".

Wesley Henderson
EEO/Civil Rights Officer
Office of Human Resources Management