

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

Hazel Erby,

Plaintiff,

vs.

St. Louis County,

Defendant.

Case No.

**JURY TRIAL DEMANDED**

**PETITION**

1. Plaintiff sues under Missouri's public-employee whistleblower's statute, Mo.Rev.Stat. §105.055 (2020).

**Jurisdiction, Venue, and the Parties**

2. Plaintiff was a 15-year member of the St. Louis County Council and the first black female councilmember.
3. Plaintiff was defendant's Director of the Office of Diversity, Equity, and Inclusion.
4. Plaintiff was defendant's employee.
5. Plaintiff was a "Public Employee" as that term is used in Mo.Rev.Stat. §105.055.1(2).
6. Defendant is a governing body and a political subdivision of the State of Missouri.
7. Defendant is a "Public Employer" as that term is used in Mo.Rev.Stat. §105.055.1(3).
8. The violations of law described here occurred in St. Louis County, Missouri, and the plaintiff and defendant reside in St. Louis County.
9. The amount in controversy exceeds \$25,000.

## Allegations

*Despite historically choosing the Councilmember in plaintiff's position, the County Council selects Sam Page as Interim Executive*

10. Since the County adopted a new County Charter in 1951, the County Council has filled every mid-term vacancy in the County Executive seat by appointing as interim the senior councilman of the former Executive's political party.
11. Since 1951, there have been nine County Executives and three mid-term vacancies.
12. In all but the most recent Executive vacancy, the Council followed its practice of filling the position with the senior Councilmember of the same party as the former Executive.
13. In 1989, George H.W. Bush appointed the Republican County Executive, Gene McNary, as Commissioner of the Immigration and Naturalization Service. As a result, McNary resigned from his County Executive role.
14. To fill McNary's empty seat, the County Council selected councilperson H.C. Milford to serve as Interim Executive.
15. Milford was the senior Republican councilperson when selected for the interim role.
16. In 2003, the Democratic County Executive, Buzz Westfall, died in office.
17. To fill Westfall's empty seat, the County Council selected councilperson Charlie Dooley to serve as Interim Executive.
18. Dooley was the senior Democratic councilperson when selected for the interim role.
19. In 2019, the Democratic County Executive, Steve Stenger, resigned after federal indictment.
20. At the time of Stenger's resignation, plaintiff was the senior Democratic councilperson on the County Council.
21. The County Council did not select plaintiff to serve as Interim County Executive, instead choosing councilman, Sam Page.

22. Upon information and belief, Page actively campaigned for the interim role, meeting with councilmembers in private to secure their support of him over plaintiff in anticipation of Stenger's resignation.

*Sam Page becomes Interim County Executive*

23. Sam Page became the County's Interim County Executive after an emergency meeting and Council vote on April 29, 2019.

24. Plaintiff opposed the rushed meeting, believing instead that the Council should have given the public sufficient notice.

25. Page and the Council did not allow the public to comment during the emergency meeting.

26. Believing the public should have a say in who the Council selected for County Executive, Plaintiff opposed the decision to not allow public comment.

27. During the emergency session, plaintiff asked Page why the Council was not allowing public comment.

28. Page did not answer plaintiff's question.

29. Plaintiff voted against Page for Interim County Executive, the only councilperson to do so.

*The Minority and Women-Owned Business Enterprise Program*

30. While on the County Council, plaintiff championed the County's first minority contracting ordinance, the Minority and Women-Owned Business Enterprise Program (M/WBE).

31. The M/WBE became law on May 8, 2018.

32. Generally, the M/WBE requires bidders on County projects to employ equitable numbers of minority- and women-owned businesses.

33. Before the County enacted the M/WBE, it commissioned the St. Louis County Disparity Study, dated December 2017.

34. The Disparity Study found statistically significant differences in the County's award of contracts between minority and non-minority contractors.
35. Minority-owned contractors referred to businesses owned by members that are Asian, Black, Hispanic, or Native American.
36. Based on the Disparity Study, and in an attempt to "alleviate documented disparity and ensure that all businesses are afforded the maximum opportunity for participation in the County's contracting," the M/WBE established minority-inclusion goals for County contracts. ST. LOUIS COUNTY, MO., CODE OF ORDINANCES, §107.071.3(b)
37. "[T]he construction subcontract goal shall be twenty-four (24) percent for minority-owned business enterprises and nine and one-half (9.5) percent for women-owned business enterprises available for construction, and sixteen (16) percent for minority owned business enterprises and fifteen (15) percent for women owned business enterprises for architecture and engineering projects or as determined by the most recent St. Louis County Disparity Study." ST. LOUIS COUNTY, MO., CODE OF ORDINANCES, §107.071.3(c)(3).
38. The M/WBE requires bidders for County projects to demonstrate compliance with the goals set out in §107.071.3(c) of the M/WBE or provide evidence of a good-faith effort to meet the goals through requirements, rules, and procedures established by the Department of Administration Division of Purchasing. ST. LOUIS COUNTY, MO., CODE OF ORDINANCES, §107.071.2 and §107.071.3(c)(4)-(5).
39. If a bidder does not meet the M/WBE requirements or provide evidence of a good-faith effort to meet those requirements, the law deems the bidder ineligible for work. ST. LOUIS COUNTY, MO., CODE OF ORDINANCES, §107.071.3(c)(4).

40. The M/WBE required an update to the Disparity Study for construction and professional services subcontracts by January 31, 2019 and yearly updates each year thereafter. ST. LOUIS COUNTY, MO., CODE OF ORDINANCES, §107.071.3(c).

*Page hires plaintiff, removing her from the County Council*

41. After he became Interim County Executive, Page hired plaintiff as the Director of St. Louis County's Office of Diversity, Equity, and Inclusion.

42. By hiring plaintiff, Page removed her from the County Council.

43. Initially reluctant to take the job, plaintiff accepted because she believed she could better serve St. Louis County and would be better able to ensure compliance with the M/WBE in the role.

44. When offering plaintiff the job, Page assured her that she would not take the place of the then-current director of Diversity and Contract Compliance. Instead, the Director of Diversity and Contract Compliance would report to plaintiff and the Office of Diversity, Equity, and Inclusion.

45. When plaintiff took the job, the County's Office of Diversity, Equity, and Inclusion served two main roles: (1) receiving and trying to resolve complaints of discrimination from both County employees and residents; and (2) M/WBE compliance.

*The County does not comply with the M/WBE and plaintiff discloses the noncompliance*

46. The County violated the M/WBE throughout plaintiff's tenure as Director of the Office of Diversity, Equity, and Inclusion.

47. The County accepted bids from contractors who did not comply with the M/WBE's requirements, in violation of the M/WBE.

48. The County allowed contractors who, in their bids claimed to comply with the M/WBE, continue to do work without meeting their bid and M/WBE requirements.
49. The County did not commission updated disparity studies as the M/WBE requires.
50. The County did not adequately fund plaintiff's office.
51. While Director, plaintiff complained about and disclosed her office's lack of funding.
52. While Director, plaintiff complained about and disclosed the County's violations of the M/WBE, §107.071.3(c)(3)-(5), relating to minority inclusion in contracts.
53. While Director, plaintiff complained about and disclosed the County's violations of the M/WBE, §107.071.3(c), relating to the required yearly update to the Disparity Study.

*The Temporary COVID-19 morgue  
and the County's M/WBE violations*

54. Beginning in early April 2020, and in response to the COVID-19 pandemic sweeping the nation, St. Louis and St. Charles Counties worked together to build a morgue to house the anticipated victims of the pandemic.
55. The County named the new morgue the Dignified Transfer Center.
56. In total, the project cost about \$1.67 million.
57. Of the total, St. Louis County was responsible for more than \$1.13 million.
58. In building the morgue, the County violated both the letter and the spirit of the M/WBE.
59. This paragraph and its subparts are pleaded upon information and belief:
  - A. The County awarded work on the Dignified Transfer Center to twelve contractors. Of those, only one met the M/WBE's requirements.
  - B. The County awarded much, though not all, of the work on the Dignified Transfer Center to "on-call" contractors that it did not require, or even ask, to adhere to the M/WBE's mandates.

- C. The County awarded at least two contracts to new contractors that were not on the “on-call” list.
- D. The new contracts totaled about \$400,000.
- E. The County did not require the new contractors to comply with the M/WBE’s requirements, in violation of the law.
- F. Less than \$1,000 of the \$1.13 million the County spent on the Dignified Transfer Center went to minority contractors.

*Plaintiff complains about and discloses M/WBE  
violations in the construction of the temporary morgue*

- 60. At the time the County built the morgue, the typical process required it to inform plaintiff and her office of new construction projects in order to ensure compliance with the M/WBE.
- 61. The County did not inform plaintiff or her office of the construction of the temporary morgue until after the County awarded the contracts and the project was nearly complete.
- 62. The County did not inform plaintiff or her office of the construction of the temporary morgue in a willful, and ultimately successful, attempt to ignore the M/WBE’s requirements.
- 63. Plaintiff only learned about the temporary morgue from local media.
- 64. Upon learning of the project, and how the County side-stepped her office and the M/WBE, plaintiff confronted Page, disclosing violations of the M/WBE to him.
- 65. Plaintiff spoke with Page and complained multiple times about the temporary morgue project and the ways the County violated the M/WBE.

*The County removes plaintiff from her  
role in M/WBE compliance and fires her*

66. After the final conversation between Page and plaintiff about the temporary morgue, Page told plaintiff that she and her office would no longer be involved in the contracting process at all, including M/WBE enforcement.
67. When Page told plaintiff that she would not work to enforce the M/WBE, plaintiff asked Page how the County would enforce the M/WBE. Page responded that he was not going to “deal with that.”
68. Page also told plaintiff that he did not want to keep supporting the M/WBE, that the legislation was “flawed” and “no good.”
69. Page fired plaintiff on August 18, 2020.
70. After her termination, plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission and the Missouri Commission on Human Rights alleging race discrimination and retaliation. The Charge is pending.

**Missouri Public Employee Whistleblower’s Violation, Mo.Rev.Stat. § 105.055**

71. Plaintiff disclosed information which she reasonably believed evidenced a violation of law.
72. Plaintiff disclosed information which she reasonably believed evidenced mismanagement, abuse of authority, and violation of policy.
73. As a result of plaintiff’s disclosures, defendant disciplined her by removing job duties, violating Mo.Rev.Stat. § 105.055 (2020).
74. As a result of plaintiff’s disclosures, defendant terminated plaintiff’s employment, violating Mo.Rev.Stat. § 105.055 (2020).
75. As a result of defendant’s unlawful actions, plaintiff lost wages and other benefits of employment and suffered emotionally.



Plaintiff therefore asks the Court to enter Judgment in her favor and award her actual damages, equitable relief, attorneys' fees and costs, and all other relief the Court deems just.

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