

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

CINDY PINO,
GENEVIEVE SANDOVAL,
CATHY SAAVEDRA,
ELIZABETH FINLEY, and
MICHAELA SILVA,
on behalf of themselves and others similarly situated,

Plaintiffs

v.

Case No. D-202-CV-2018-03591

CITY OF ALBUQUERQUE,

Defendant.

**SECOND AMENDED CLASS ACTION COMPLAINT, COLLECTIVE ACTION
COMPLAINT AND INDIVIDUAL CLAIMS FOR VIOLATIONS OF THE FAIR
PAY FOR WOMEN ACT AND THE NEW MEXICO HUMAN RIGHTS ACT**

Plaintiffs Cindy Pino, Genevieve Sandoval, Cathy Saavedra, Elizabeth Finley, and Michaela Silva, on behalf of themselves and others similarly situated, hereby bring this claim for damages pursuant to the Fair Pay For Women Act (referred to hereafter as the “PPFWA”), NMSA 1978, §§ 28-23-1 to -6 (2013) and the Human Rights Act (referred to hereafter as the “HRA”), NMSA, §§ 28-1-1 to -15 (1969, as amended through 2015). As grounds for this complaint, Plaintiffs state as follows.

INTRODUCTION

1. Both the PPFWA and the HRA prohibit an employer from paying differential wages to persons of the opposite sex “for equal work on jobs the performance of which requires equal skill, effort and responsibility that are performed under similar working conditions.” § 28-

23-2(A). See also, NMSA 1978, § 28-1-7 (prohibiting gender discrimination in matters of compensation). As explained in detail below, Defendant City of Albuquerque (“the City”) is in violation of the requirements of both the FPFWA and the HRA. The City systematically pays its female employees less than their male counterparts. The plaintiffs in this matter seek redress for these violations.

JURISDICTION, VENUE, & PARTIES

1. Jurisdiction and venue is proper pursuant to common law, and NMSA 1978, § 38-3-2 (1953).

2. Cindy Pino is now, and has been at all times material to this Complaint, a City employee. Ms. Pino is a woman. She is a resident of the City of Albuquerque. Ms. Pino seeks relief individually, and also on behalf of other similarly situated female employees.

3. Genevieve Sandoval is now and has been at all times material to this Complaint, a City employee. Ms. Sandoval is a woman. She is a resident of the City of Albuquerque. Ms. Sandoval seeks relief individually, and also on behalf of other similarly situated female employees.

4. Cathy Saavedra is now, and has been at all times material to this Complaint, a City employee. Ms. Saavedra is a woman. She is a resident of the City of Albuquerque. Ms. Saavedra seeks relief individually, and also on behalf of other similarly situated female employees.

5. Elizabeth Finley is now, and has been at all times material to this Complaint, a City employee. Ms. Finley is a woman. She is a resident of the City of Albuquerque. Ms. Finley seeks relief individually, and also on behalf of other similarly situated female employees.

6. Michaela Silva is now, and has been at all times material to this Complaint, a City employee. Ms. Silva is a woman. She is a resident of the City of Albuquerque. Ms. Silva seeks relief individually, and also on behalf of other similarly situated female employees.

7. The City is an employer for purposes of the FPFWA and the HRA. It is the employer for the individually named plaintiffs and all proposed class members.

GENERAL ALLEGATIONS

A. Despite performing the same job, under the same conditions, and having significant experience, the named plaintiffs are paid less than their male counterparts.

8. The City employs thousands of people to perform various job functions attendant to the operations of a municipal corporation.

9. Each employment position within the City has a specific job title and requires the performance of specific duties. However, the duties required of each position are uniform. The City identifies the duties and required functions for each job in publications and also on the internet. See <https://www.governmentjobs.com/careers/cabq>.

10. Although the working conditions, job requirements, and pertinent obligations are uniform for each employment position with the City, male employees are paid disproportionately higher wages than their female counterparts in most, if not all, positions.

11. Wage data obtained from the City of Albuquerque shows that for employees classified as “graded employees”, women are paid an average of \$3 less per hour than their male counterparts. For “ungraded employees”, women are paid an average of \$6 less per hour than their male counterparts.

12. Male employees are paid an average wage that is higher than female employees in a number of job categories.

13. A review of publicly available data shows that there are hundreds of women who are paid less than men for similar work under similar conditions.

14. The City’s failure to pay female employees the same wage as male employees violates the FPFWA. The FPFWA (§ 28-23-3(A)) states that:

No employer shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in the establishment at a rate less than the rate that the employer pays wages to employees of the opposite sex in the establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility and that are performed under similar working conditions, except where the payment is made pursuant to a: (1) seniority system; (2) merit system; or (3) system that measures earnings by quantity or quality of production.

15. Similarly, the HRA provides that “[i]t is an unlawful discriminatory practice for . . . an employer . . . to discriminate in matters of compensation” based upon the employee’s sex. § 28-1-7(A).

16. The City’s pay rates are not the result of a seniority system, merit system, and the City lacks any measurement of quantity or quality for its workers.

17. Further, the FPFWA bars the City from asserting contractual agreements as a basis to pay its female employees less than its male counterparts. See § 28-23-3(C) (2013) (“No agreement between an employer and an employee for a specific wage in violation of the Fair Pay for Women Act shall prevent the employee from raising a claim based on a violation of the Fair Pay for Women Act.”).

18. The City is without any basis to justify the disparate payment of wages between male and female employees.

B. The plaintiff evidence technicians are paid less than their male counterparts in contravention of the FPFWA, and the EEOC found reasonable cause supporting their claims of discrimination.

19. Ms. Pino began working for the City in July 1996. She began her tenure as an evidence technician in 2004. Ms. Pino has held the same position since that time. Although Ms. Pino has been working as an evidence technician for nearly two decades, she makes less per hour

than a number of her male counterparts—many of whom started after she did. Ms. Pino has an excellent work history with the City.

20. Ms. Sandoval began working for the City in September 2006. In 2008, she started working as an evidence technician. Ms. Sandoval has held the same position since that time. Although Ms. Sandoval has been working as an evidence technician for approximately a decade, she makes less per hour than a number of her male counterparts. Ms. Sandoval has an excellent work history with the City.

21. Ms. Saavedra began working for the City in 1988. She started as a library clerk where she remained until 2003. At that time, Ms. Saavedra began working as an evidence technician. Ms. Saavedra has an excellent work history with the City.

22. Ms. Finley began working for the City in 1996. She started as a human resources clerk and later worked at the Metropolitan Detention Center. In 2006, she began working as an evidence technician. Ms. Finley has an excellent work history with the City.

23. The duties performed by the named plaintiffs, like the other putative class members, are the same as those of male employees who work as evidence technicians and require equal skill, effort, and responsibility. The named plaintiffs' working conditions are the same as those of male evidence technicians. Yet, according to the most recent data publicly available, the plaintiffs in this matter make an average of \$16.78 per hour while their male counterparts make an average of \$18.33 per hour.

24. In support of their discrimination claims, each of the Plaintiffs filed charges with the United States Equal Employment Opportunity Commission (“EEOC”). Those allegations included that each plaintiff “and a class of female employees were paid lower wages because of their sex (female) in violation of the Title VII and the [Equal Pay Act (“EPA”).”

25. After a lengthy investigation, the EEOC found that “[b]ased on the evidence . . . there is reasonable cause to believe [the City] violated Title VII and the EPA, as alleged”.

26. At the Plaintiffs’ request, the United States Department of Justice issued a right to sue letter rather than pursue claims on their behalf.

27. The New Mexico Human Rights Commission issued a corresponding right to sue letter on August 17, 2018.

C. Albuquerque transit employees are paid less than their male counterparts in contravention of the FPFWA.

28. Ms. Silva is a Sun Van chauffeur driver. In that capacity, she is a City employee.

29. The duties she performs, like the other putative class members, are the same as those of male employees who work as transit workers and require equal skill, effort, and responsibility. Her working conditions are the same as those of male transit workers. Yet, she, like most other female transit workers, makes significantly less than her male counterparts.

30. A chart showing the highest paid transit drivers within the City payroll provides a useful illustration of the pay disparity at issue in this case.

Gender	Hourly Wage
Male	\$19.53
Male	\$19.53
Male	\$19.53
Male	\$19.53
Male	\$19.53
Female	\$19.53
Female	\$19.53
Male	\$19.53
Male	\$19.53
Male	\$19.53
Male	\$19.53
Male	\$19.53
Male	\$18.22
Male	\$18.22
Male	\$18.22
Male	\$16.57

Male	\$16.57
Male	\$16.57
Male	\$16.57

As can be seen in this chart, of the nineteen transit workers who are making \$16.57 or more per hour, seventeen are male. Yet, Ms. Silva, like many of her female colleagues, makes only \$12.93 per hour.

31. The duties performed by the female transit workers, like the other putative class members, are the same as those of male employees who are transit workers. The positions require equal skill, effort, and responsibility. The named plaintiff's working conditions are the same as those of other male transit workers.

32. Ms. Silva filed a complaint with the Human Rights Bureau and with the United States Equal Employment Opportunity Commission on November 20, 2018 alleging discrimination on the basis of sex.

33. The New Mexico Human Rights Bureau issued an Order of Non-Determination on March 26, 2019.

CLASS ACTION AND COLLECTIVE ALLEGATIONS

34. The Plaintiffs incorporate the preceding paragraphs as though they were fully stated herein.

35. The FPFWA expressly provides that a person aggrieved by violations of the FPFWA may bring an action on behalf of the affected employee or "on behalf of other employees similarly situated".

36. As described above, the Plaintiffs in this matter are similarly situated to other female employees working at the City.

37. Further, the Plaintiffs and the proposed class have similar factual and employment settings, will be subject to the same defenses from the City, and there are no fairness or procedural considerations militating against certification of a collective action.

38. For this reason, this case should be certified as a collective action.

39. Further, this matter is properly brought as a class action pursuant to the HRA and Rule 1-023 NMRA. The Class is defined as follows:

The Class is comprised of all “graded” City employees who are women and who are employed by the City at time of the filing of this Complaint.

40. Excluded from the Class are police officers, police service aides, cadets in the Albuquerque Police Academy, and those persons employed with the Albuquerque Fire Department.

41. Class members may be easily ascertained. “[The City’s] files would reflect the objective information encompassed by Plaintiffs’ class definition.” Lindquist v. Farmers Insurance Company of Arizona, et al., 2008 U.S. Dist. LEXIS 11832 at * 10 (D. Ariz. Feb. 6, 2008) (holding that a class that could be objectively determined from the defendants’ records was ascertainable under Federal Rule of Civil Procedure 23). This point is without dispute. Those female employees who are paid less than male employees and who hold the same job description can be easily identified through the City’s employee files. Further, the information is publicly available online. See e.g., <https://www.cabq.gov/abq-view>.

42. Certification of this Class is desirable and proper because there are questions of law and fact in this case that are common to all members of the Class. Such common questions of law and fact include, but are not limited to the following issues:

- a. Whether the City's failure to pay female employees the same amount for equal work requiring equal skill, effort and responsibility and that is performed under similar working conditions constitutes a violation of the FPFWA;
- b. Whether the City's systematic failure to pay female employees in amounts equal to their male counterparts constitutes intentional conduct;
- c. The content, interpretation, and application of City policies to employees' pay rates;
- d. The available remedies and damages to Class members; and
- e. The applicability to any affirmative defenses with respect to systematic inequalities in pay that may be raised by the City in response to these allegations.

43. Certification of the Class is desirable and proper because Plaintiffs' claims are typical of the claims of the members of the Class they seek to represent. Plaintiffs are graded female employees who are paid significantly less on average than their male counterparts and have been employed throughout the six (6) year Class period. Publicly available data demonstrates that other graded female employees have been subject to similar disparities in pay despite performing work under similar working conditions and requiring equal skill, effort and responsibility.

44. Certification of the Class is desirable and proper because the Plaintiffs will fairly and adequately protect the interests of the Class they seek to represent. There are no conflicts of interest between the Plaintiffs and other members of the putative Class, and the Plaintiffs are cognizant of their duties and responsibilities to the putative Class. The Plaintiffs' attorneys are qualified, experienced, and able to conduct the proposed class action litigation.

45. The members of the Class are so numerous that joinder of all members of the Class is impracticable.

46. This action should proceed as a class action under Rule 23(b)(2), because the City has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to the Class as a whole. Plaintiffs seek to establish the rights and obligations of the parties with respect to the claims at issue in this case and to enjoin the City from continuing to engage in violations of the FPFWA and the HRA.

47. This action should also proceed as a class action under Rule 23(b)(3). The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

- a. Common or generalized proof will predominate with respect to the essential elements of the claims at issue;
- b. The common questions of law or fact that pertain to the Class predominate over any individual questions and any individual issues do not overwhelm the common ones;
- c. Any member of the Class who has a substantial interest in individually controlling the prosecution of a separate action may exclude themselves from the Class upon the receipt of notice;
- d. It is desirable to concentrate the litigation of these claims in this forum. The determination of the claims of all members of the Class in a single forum, and in a single proceeding, would be a fair and efficient means of resolving the issues raised in this litigation as between the City and the putative class; and
- e. The difficulties likely to be encountered in the management of a class action in this litigation are reasonably manageable, especially when weighed against the virtual impossibility of affording adequate relief to the members of the Class through numerous separate actions.

CLAIMS FOR RELIEF

Claim for Relief No. 1

(Violations of the Fair Pay for Women Act, NMSA 1978, § 28-23-1 to -6 (2013))

48. The Plaintiffs incorporate the preceding paragraphs as though they were fully stated herein.

49. The FPFWA requires employers, including the City, to pay employees of opposite sexes equal wages for equal work when performed under similar working conditions.

50. Despite this legal obligation, as explained above, the City has failed to comply with its obligations under the FPFWA in that it pays female employees substantially less than their male counterparts.

51. The City is aware that it may not pay employees differently merely because of sex.

52. There is no operative seniority system, merit system, or measure of production that explains the disparity in pay between City employees who are men and those who are women.

53. Plaintiffs bring their claims for relief pursuant to the FPFWA individually and on behalf of the Class identified above.

54. The Court should certify the Plaintiffs FPFWA claims as a collective action.

Claim for Relief No. 2

(Violations of the Human Rights Act, NMSA 1978, §§ 28-1-1 to -15 (2007))

55. The Plaintiffs incorporate the preceding paragraphs as though they were fully stated herein.

56. The City is an employer for purposes of the HRA, and it employs more than fifteen persons.

57. The HRA provides that it is unlawful for the City or any other employer to discriminate in matters of compensation based on gender.

58. As described above, the City is violating this provision.
59. The Plaintiffs have suffered damages as a result of the City's unlawful conduct.
60. All Plaintiffs bring this claim individually and on behalf of the class.
61. This Court should certify this matter as a class action pursuant to Rule 1-023

NMRA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs on their own and on behalf of the Class pray for judgment, injunctive, and declaratory relief against Defendants as follows:

- A. Certifying this matter as a collective action and ordering notice immediately following thereafter;
- B. Certifying this action as a class action pursuant to Rule 23(a) and Rule 23(b)(2) and Rule 23(b)(3) and ordering notice to class members in accordance with certification;
- C. Awarding damages in the amount of the affected employees' unpaid wages;
- D. Awarding all other actual damages as provided by Section 28-1-13;
- E. Awarding any other applicable damages set out in Section 28-23-6;
- F. Awarding the named plaintiffs all available relief permitted by the FPFWA arising from their individual claims;
- G. Granting injunctive relief as may be deemed proper by the Court to require the City to desist in the wrongful actions described herein and to require the City to post notice describing its violations as set out in Section 28-23-4(C);
- H. Awarding the Plaintiffs and the class their costs and expenses incurred in this action, including reasonable attorneys' fees, experts' fees, and costs as provided by Section 28-23-4(B) and Section 28-23-6; and

I. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Alexandra Freedman Smith
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I hereby certify that I caused a copy of the foregoing pleading to be served all counsel through the NM Odyssey electronic filing system on June 13, 2019.

/s/ Alexandra Freedman Smith
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