

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

LAURA A. MONTAÑO, an individual,

Plaintiff,

vs.

No. _____

NEW MEXICO MOTOR VEHICLE DIVISION,

Defendant.

**Complaint for Damages for Violation of the
New Mexico Whistleblower Protection Act and
Retaliatory Discharge/Wrongful Termination**

Plaintiff Laura A. Montaña brings this action under the New Mexico Whistleblower Protection Act and under the common law tort of retaliatory discharge, challenging the unlawful and retaliatory termination of her employment by Defendant New Mexico Motor Vehicle Division (“MVD”), for whom she worked from July 2011 through August 2011. The MVD terminated Plaintiff from her employment after she voiced objections to a number of unfair, improper and discriminatory acts, policies and practices that the MVD had implemented as part of its “Foreign National Residency Recertification Program,” a program which has since been preliminarily enjoined by a New Mexico State District Court after being found constitutionally suspect. By terminating her employment because she reported unlawful and improper acts that were occurring under the unconstitutional program, the MVD violated the New Mexico Whistleblower Protection Act (“Whistleblower Act”) and is liable to Ms. Montaña under the common law tort of retaliatory discharge.

Parties

1. Plaintiff is a resident of Bernalillo County, New Mexico. Plaintiff gained her employment with the MVD through a staffing agency, ATA Services, Inc., in Albuquerque, New Mexico. Plaintiff worked full-time for the MVD until she was terminated after complaining of the illegal and/or improper acts that form the basis of this complaint. Plaintiff was a public employee as defined in Section 10-16C-2B of the Whistleblower Act.

2. Defendant New Mexico Motor Vehicle Division is a division of the New Mexico Taxation and Revenue Department, part of the executive branch of the state government. The MVD is thus a public employer as defined in Section 10-16C-2C of the Whistleblower Act. The MVD's duties and responsibilities include licensing commercial and non-commercial drivers; registering, titling, and licensing commercial and non-commercial vehicles and boats; and contracting with private partners to provide selected MVD services.

Jurisdiction and Venue

3. The Court has original jurisdiction to hear these claims under Article VI, Section 13 of the New Mexico Constitution and under NMSA § 10-16C-4(A).

4. Venue is proper under NMSA § 38-3-1.

Facts

The Creation of the “Foreign National Residency Recertification Program”

5. The current Governor of New Mexico, Susana Martinez, has publicly opposed the issuance of driver's licenses to certain foreign nationals and has supported a repeal of the New Mexico state law which allows all residents of New Mexico to obtain driver's licenses, regardless of their immigration status.

6. In the 2011 regular legislative session, the Governor failed in her efforts to have the law repealed, but vowed that she would continue to oppose the legislature's decision to ensure that all persons who live in New Mexico, and are eligible to drive, can obtain a driver's license. On July 19, 2011, only a few months after the Governor's failed attempt to have the legislature repeal the law, the Governor's office issued a press release, announcing the creation and implementation of a "residency certification program for those who have obtained a foreign national driver's license," later referred to by the administration as the "Foreign National Residency Recertification Program" (hereinafter, the "Program").

7. The press release announced that the MVD would immediately begin sending letters to a random sample of 10,000 foreign nationals (persons born outside the United States), each of whom would be ordered to schedule, within 30 days, an in-person appointment in Albuquerque to [re-]verify their residency in New Mexico. The Secretary of the New Mexico Taxation and Revenue Department warned that the MVD would cancel the driver's licenses or identification card of those individuals who could not or did not obey the command.¹

8. The Program, created by the MVD without statutory authorization, targeted only foreign national driver's license holders, including visa holders, legal permanent residents, and naturalized citizens.

9. The MVD did not have information or any basis to believe that any one of the 10,000 foreign nationals it was requiring to appear before it had done anything wrong when those

¹ A group of plaintiffs, including a legal permanent resident residing in New Mexico, filed suit against Secretary Padilla in the First Judicial District Court to enjoin the re-certification program, alleging, *inter alia*, that the program violated the Equal Protection Clause of the Constitution of the State of New Mexico. *See Garcia v. Padilla*, D-101-CV-2011-02630 (N.M. Dist. Ct.). On August 31, 2011, the district court entered a Temporary Restraining Order against the re-certification program. On September 22, 2011, the court entered an order preliminarily enjoining the re-certification program because the plaintiffs' had shown a substantial likelihood of success on the claims brought under the Equal Protection Clause.

individuals initially acquired their driver's licenses. Further, the MVD had no reason to believe or suspect that these individuals had committed fraud, or that they lived outside of New Mexico.

10. Nevertheless, the MVD initiated the Program and hired employees through ATA Services, Inc., a local staffing agency, to staff the Albuquerque office it set up to conduct interviews under the Program.

Plaintiff's Employment and Termination

11. Plaintiff was one of approximately 17 people who staffed the Albuquerque office to implement the Program.

12. Plaintiff's job at the MVD, under the direction of a MVD supervisor, was to interview foreign national driver's license and identification card holders, examine documents they provided to prove their residency, and then determine whether the individuals could keep their New Mexico driver's licenses or identification cards.

13. On information and belief, the purpose of the Program was to deny recertification to as many foreign national driver's license and identification card holders as possible.

14. On information and belief, another primary objective of the Program was to gather information that would aid Governor Martinez in her attempt during the special legislative session to repeal the state law authorizing foreign nationals to obtain a New Mexico driver's license or identification card.

15. The MVD personnel who supervised Plaintiff told Plaintiff that the program would be politically unpopular and promised that the MVD would hire Plaintiff if she remained with the Program until the end. Upon information and belief, the MVD offered permanent employment positions to the employees who completed the assignment.

16. Almost immediately after beginning her employment with the MVD, Plaintiff began to have serious concerns about the Program and the manner in which the MVD intended to implement it.

17. For instance, Plaintiff became concerned with the lack of training she received. Despite the fact that the letters sent to the targeted foreign nationals stated that their interviews would be conducted by “MVD employees who are specially trained in the Foreign National compliance process,” Plaintiff did not receive any “special” training of any kind regarding the compliance process. Notwithstanding the lack of training, Plaintiff received a certificate from the MVD stating that she had completed “Fraudulent Document Recognition Training.”

18. Plaintiff also believed that several of the MVD’s procedures for reviewing and revoking licenses were improper and unlawful and repeatedly voiced her concerns to her MVD supervisor.

19. For example, the letters that the MVD sent to the foreign nationals it targeted were written only in English. When the license and identification card holders came in for their interviews, many did not speak English and did not understand exactly what they were supposed to provide to the MVD to “recertify” their residency. The Program employees, however, including Plaintiff, were not allowed to translate the letter to the individuals who came in for their interviews. The MVD supervisor also prohibited the Program employees from speaking Spanish to any of the individuals who were being interviewed to assist them in any manner to determine whether they had brought the appropriate documents to verify their residency. Plaintiff raised her objection to this practice to her MVD supervisor, who responded by stating that anyone who assisted the interviewees by providing them translation would be immediately terminated. Later, the MVD allowed Program employees to provide interviewees with a Spanish

translation of the letter they had received, but never allowed for the re-evaluation of any person denied translation and whose recertification was denied.

20. The MVD did not permit employees to explain the review process, read the Spanish translation to the individual, or specify which documents were needed for a person responding to a re-verification letter.

21. Additionally, the MVD advised Plaintiff to make false statements to interviewees during the license review process. For example, the MVD supervisor instructed Plaintiff to say that she was merely collecting data during the interviews, when in reality Plaintiff was determining on behalf of the MVD whether the interviewees' recertification would be denied or approved. The MVD required Plaintiff to immediately indicate the denial of a license or identification card holders' recertification in the MVD's computer system if a person failed to tender documents required by the letter, even if that person brought but failed to tender such a document because the individual was confused about the necessary documents and the process.

22. Plaintiff also witnessed dissimilar treatment of Latino foreign nationals compared to non-Latino foreign nationals who were interviewed. For instance, when Plaintiff sought advice from an MVD supervisor regarding the paperwork required of a non-Latino (white) foreign national, the MVD supervisor instructed Plaintiff to dismiss immediately the foreign national without denying her recertification. On information and belief, the MVD supervisor never made this kind of exception for any Latino foreign nationals.

23. Latino foreign nationals were also not allowed to go home to collect documents they may have forgotten or to supplement the documents they provided during the interview process in any manner. If they did not provide the documents demanded by the MVD, their recertification was

denied. A non-Latino (white) foreign national, however, was allowed to leave the interview to return with the documentation she had forgotten.

24. Plaintiff also witnessed a number of other improper practices by the MVD, including, but not limited to:

- the refusal by the MVD supervisor to allow Latino foreign nationals to reschedule their appointments if necessary, including the refusal to reschedule the appointment of a Latina foreign national who was in labor at the time her interview was scheduled;
- the denial of foreign nationals' recertification for spurious and arbitrary reasons, such as the lack of a date of birth on a marriage certificate where the applicable regulations do not require such information for obtaining a driver's license;
- the refusal to allow two Latino foreign nationals – a mother and her son - from using the same bank statement to prove their residency even though both mother and son were named on the account – and requiring that the mother and son choose which one of them could use the documents to prove their residency.

25. Plaintiff believed that Defendant's routine arbitrary and discriminatory practices violated state and federal laws and regulations, and she shared these concerns with her supervisor.

26. Plaintiff was terminated following her objections to the arbitrariness of the program and what Plaintiff perceived to be the violation of license holders' rights.

27. Plaintiff has been unable to obtain gainful employment since her termination by MVD. On information and belief, ATA Services now refuses to staff Plaintiff in other assignments. On information and belief, MVD may have transmitted unwarranted negative information about Plaintiff to ATA Services.

28. Plaintiff has suffered from stress, insomnia, and other emotional distress, pain and suffering as a result of MVD's employment actions.

Count I
Violation of the Whistleblower Protection Act

29. The facts alleged above in paragraphs 1-28 are fully incorporated herein.

30. Defendant MVD qualifies as a “public employer” under NMSA § 10-16C-2(C).
31. Plaintiff Montaño qualifies as a “public employee” under NMSA § 10-16C-2(B).
32. Plaintiff had a good faith belief that the acts and failures to act committed by Defendant and described above were improper and unlawful. Plaintiff’s communication of her concerns and objections regarding these practices were protected under NMSA § 10-16C-3(A).
33. Plaintiff’s objections to participating, and refusal to participate, in Defendant’s activities, policies and practices, which constituted unlawful or improper acts, are protected under NMSA § 10-16C-3(C).
34. Defendant terminated Plaintiff for voicing her concerns and objections. Defendant also terminated Plaintiff for her refusal to participate in the practices of Defendant that Plaintiff believed to violate the law, regulations, or license-holders’ rights. Such retaliation is prohibited under NMSA § 10-16C-3(C).
35. Plaintiff is entitled to relief under NMSA § 10-16C-4.

Count II
Wrongful Termination / Retaliatory Discharge

36. The facts alleged above in paragraphs 1-28 are fully incorporated herein.
37. Plaintiff had a good faith belief that the acts and failures to act committed by Defendant and described above were improper and unlawful.
38. Plaintiff’s communication of her concerns and objections regarding these practices constituted an act that public policy authorizes or would encourage, including the public policy reflected in the Equal Protection Clause of the Constitution of the State of New Mexico, the New Mexico Human Rights Act, the New Mexico Motor Vehicle Code, and the New Mexico Whistleblower Protection Act.

39. Plaintiff's objection to participating, and refusal to participate, in Defendant's unlawful and improper activities, policies and practices, constituted an act that public policy authorizes or would encourage.

40. Plaintiff was terminated in retaliation for communicating her concerns about the unlawful and improper actions of Defendant and for refusing to engage in these unlawful and improper actions.

41. Defendant's termination of Plaintiff was in violation of public policy, as reflected in the Equal Protection Clause of the Constitution of the State of New Mexico, the New Mexico Human Rights Act, the New Mexico Motor Vehicle Code, and the New Mexico Whistleblower Protection Act.

42. Defendant's actions in terminating Plaintiff for raising concerns about unlawful and improper conduct, and for failing to engage in unlawful and improper conduct, was willful, wanton, reckless and/or malicious.

Prayer

WHEREFORE, Plaintiff prays that this Court:

- a. Order Defendant to reinstate Plaintiff in a position with the MVD with the same seniority status;
- b. Order Defendant to remove any negative information from Plaintiff's employment file;
- c. Order Defendant to retract any negative information about Plaintiff that it conveyed to ATA and/or any other third party;
- d. Award Plaintiff actual damages and an amount equal to two times the amount of back pay owed to her by Defendant, plus interest on the back pay, as provided by NMSA 1978 § 10-16C-4A ;
- e. Award Plaintiff her litigation costs and attorneys' fees as provided by NMSA 1978 § 10-16C-4A ;

- f. Award Plaintiff compensatory damages for her emotional distress, pain and suffering;
- g. Award Plaintiff punitive damages; and
- h. Award Plaintiff any other form of relief in law or equity that this Court deems necessary and proper.

Jury Demand

Pursuant to NMRA Rule 1-038(A), Plaintiff demands a jury trial on all issues subject to a jury's determination.

Respectfully submitted,

/s/ _____
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* *Pro hac vice* applications pending