

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

<p>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,</p> <p>Plaintiff,</p> <p>v.</p> <p>DAVIS TYPEWRITER COMPANY,</p> <p>Defendant.</p>	<p>Civil Action No. _____</p> <p><b>COMPLAINT</b></p> <p><b>JURY TRIAL DEMANDED</b></p>
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**NATURE OF THE ACTION**

This is a sexual harassment action brought by the United States Equal Employment Opportunity Commission (“EEOC”) under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”) and Title I of the Civil Rights Act of 1991 to correct unlawful harassment on the basis of sex, and provide appropriate relief to Tracey Kelley who was adversely affected and constructively discharged by such harassment. The EEOC alleges that Davis Typewriter Company, (“Defendant”) subjected Ms. Kelley to a sexually hostile working environment causing her to be constructively discharged.

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to §§ 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3); and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The unlawful employment practices alleged were committed within the jurisdiction of the United States District Court for the District of Minnesota.

**PARTIES**

3. The plaintiff, the EEOC, is the agency of the United States of America charged with administering, interpreting and enforcing Title VII, and is expressly authorized to bring this action by § 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant has continuously been and is now incorporated in the State of Minnesota, doing business in the City of Worthington.

5. At all relevant times, Defendant has continuously had at least 15 employees.

6. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

**STATEMENT OF CLAIMS**

7. More than 30 days prior to the institution of this lawsuit, Tracey Kelley filed a charge of discrimination with the EEOC alleging violations of Title VII by Defendant.

8. On March 14, 2013, the EEOC determined that the evidence obtained during its investigation of Ms. Kelley's charge of discrimination established reasonable cause to believe that Defendant discriminated against Ms. Kelley on the basis of sex/female by subjecting her to sexual harassment and constructively discharging her.

9. Defendant received the EEOC's letter of determination related to Ms. Kelley's charge.

10. Prior to institution of this lawsuit, the EEOC's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with Title VII through informal methods of conciliation, conference and persuasion within the meaning of §§ 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

11. On May 24, 2013, The EEOC determined that its efforts to conciliate Ms. Kelley's charge with the Defendant were unsuccessful.

12. Defendant received the EEOC's notification that conciliation efforts were unsuccessful.

13. All conditions precedent to the institution of this lawsuit have been fulfilled.

14. Tracey Kelley began working for Defendant on or about March 11, 2010.

15. Tracey Kelley's employment with Defendant ended on or about July 29, 2010.

16. Stanley Alm, Defendant's operations manager, was Tracey Kelley's supervisor.

17. Between March 2010 and July 2010, Defendant engaged in unlawful employment practices at its place of business located at 1158 Oxford Street, Worthington, Minnesota in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2. Among other things, Defendant's operations manager Stanley Alm subjected Tracey Kelley to severe or pervasive sexual harassment, (including, but not limited to Mr. Alm's manipulation of Defendant's security camera system to conduct ongoing, surreptitious video surveillance of Ms. Kelley focusing the cameras on her face, body and chest), which created a sexually hostile work environment.

18. Upon discovering Stanley Alm's sexually harassing conduct on or about July 27, 2010, Ms. Kelley promptly notified Defendant's President Larry Davis, and manager Michelle Carlson.

19. Defendant failed and refused to take prompt and appropriate action to correct the severe and pervasive harassment and the resulting hostile environment.

20. Defendant's failure to prevent or correct Stanley Alm's harassing conduct rendered Ms. Kelley's working conditions objectively intolerable, making her resignation a reasonably foreseeable consequence of the sexually hostile working environment.

21. The unlawful employment practices complained of in Paragraphs 14-20 resulted in Kelley's constructive discharge from Defendant.

22. The unlawful employment practices complained of in Paragraphs 14-20 were intentional.

23. The unlawful employment practices complained of in Paragraphs 14-20 were done with malice or reckless indifference to the federally protected rights of Ms. Kelley to be free of employment discrimination on the basis of sex.

**PRAYER FOR RELIEF**

WHEREFORE, the EEOC respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant and its officers, successors and assigns, and all persons in active concert or participation with them, from engaging in sexual harassment, any other employment practice which discriminates on the basis of sex, and from retaliation for opposition to such practices.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for women, protect employees who make complaints of discrimination or sexual harassment from retaliation, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make Tracey Kelley whole by providing appropriate back pay and benefits, with pre-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices described in Paragraphs 14-20 including (but not limited to) rightful place reinstatement and/or front pay in lieu thereof.

D. Order Defendant to make Tracey Kelley whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices described in Paragraphs 14-20, including emotional distress, such as humiliation, embarrassment, pain and suffering, in amounts to be determined at trial.

E. Order Defendant to make Tracey Kelley whole by paying punitive damages for its malicious and reckless conduct described in Paragraphs 14-20 in amounts to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. Award the EEOC its costs of this action.

**JURY TRIAL DEMAND**

The EEOC requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

P. David Lopez  
General Counsel

James L. Lee  
Deputy General Counsel

Gwendolyn Young Reams  
Associate General Counsel

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Dated: Aug. 27, 2013

s/John C. Hendrickson  
John C. Hendrickson  
Regional Attorney

Dated: Aug. 27, 2013

s/Jean P. Kamp  
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Dated: Aug. 27, 2013

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**Attorneys for Plaintiff EEOC**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Nicholas J. Pladson, EEOC, 330 Second Avenue South, Suite 720, Minneapolis, MN 55401 (612) 335-4047

DEFENDANTS

DAVIS TYPEWRITER CO., INC.

County of Residence of First Listed Defendant Nobles (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with multiple columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Contains numerous checkboxes for various legal categories.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Title VII of the Civil Rights Act of 1964, as amended and Title I of the Civil Rights Act of 1991
Brief description of cause: discrimination on the basis of sex

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/27/2013 SIGNATURE OF ATTORNEY OF RECORD s/Nicholas J. Pladson

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.