


**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: March 26, 2015

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Kathryn M. West, Assistant Corporation Counsel 

SUBJECT: *Sam Zielinski v. County of Milwaukee*
ERD Case No. CR201400268
EEOC Case No. 26G201400480C

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority to settle this case for the total sum of \$7,500.00, which will be paid out of an appropriate account at the Milwaukee County House of Correction.

This case involves a complaint filed with the Wisconsin Department of Workforce Development-Equal Rights Division (“ERD”) on January 23, 2014, and dual-filed with the federal Equal Employment Opportunity Commission (“EEOC”). Mr. Zielinski was employed as a correctional officer in the House of Correction from 2003 through 2013. In early June 2013, Mr. Zielinski was on a medical leave that was ultimately approved by Risk Management under the federal Family and Medical Leave Act (“FMLA”).

On June 13, 2013, Mr. Zielinski submitted return to work documentation to Risk Management, which included an 8 hour/day and 40 hour/week restriction. There is a dispute as to whether he submitted the information to anyone at the House of Correction prior to returning to work. Mr. Zielinski was scheduled to return to work on third shift, Sunday, June 16, 2013. Following roll call on his first day back to work, Mr. Zielinski was asked to sign a slip which would have required him to work overtime on his scheduled day off. Mr. Zielinski refused to sign the slip, referencing his restriction. His supervisors, with no knowledge of such a restriction and no human resources staff working that shift, sent Mr. Zielinski home and directed him to address the matter with Superintendent Hafemann the following day. Mr. Zielinski claims that during a phone call the following day, the Superintendent told him that he could not use him with such a restriction. According to Mr. Zielinski, because he understood that his health restrictions would not be accommodated, he felt he had no other choice but to retire, and following his conversation with

Superintendent Hafemann, Mr. Zielinski filed the documentation necessary to effectuate his retirement as of June 18, 2013.

Superintendent Hafemann disputes Zielinski's story, and indicates that he advised Mr. Zielinski that he had not seen any documentation of a restriction, and that Mr. Zielinski needed to send it to him for review before any further discussions could occur. The Superintendent notes that he planned to consult with Human Resources to determine how to address Mr. Zielinski's claimed restrictions. Before Superintendent Hafemann could take any additional actions, however, he learned that Mr. Zielinski had retired. Prior to retiring, Mr. Zielinski never provided the requested documentation to the Superintendent or to the Human Resources office at the House of Correction.

After Milwaukee County received Mr. Zielinski's ERD complaint, and conducted an investigation, it appeared that he had retired based upon a misunderstanding. On March 17, 2014, Milwaukee County made an unconditional offer to re-employ Mr. Zielinski, affirming his right to exercise any rights to which he might be entitled under the FMLA and Americans with Disabilities Act. Mr. Zielinski declined the offer of re-employment.

After completing its investigation, the ERD found probable cause to believe that Milwaukee County may have violated the Wisconsin Fair Employment Law, sec. 111.31--111.395, Stats., by refusing to reasonably accommodate a disability; and by terminating the employment of the Complainant because of disability. The case was referred to an Administrative Law Judge ("ALJ") for formal hearing to ultimately decide the case. The hearing was scheduled for March 24, 2015. The parties agreed to convert the hearing to a mediation, with the ALJ facilitating the mediation. Mr. Zielinski is represented by counsel.

Prior to the mediation, the parties did engage in discovery and discussed settlement options. The parties ultimately reached a settlement on Mr. Zielinski's claims. The settlement provides that Milwaukee County will pay \$7,500.00 to Sam Zielinski. No payment is being made by Milwaukee County to his attorneys. In return, Mr. Zielinski will withdraw his complaints with the ERD and EEOC, and provide Milwaukee County with a full and complete release from any liability. The release will cover any possible federal court litigation as well as state or administrative action. In addition, Mr. Zielinski agrees that he will not apply for employment with Milwaukee County in the future.

Corporation Counsel recommends this settlement for approval. If approved, payment will be made from Fund 0001, Agency 430, Org. Unit 4311, Object 6993 – Employee Settlement.

cc: Kelly Bablitch
Alexis Gassenhuber
Erica Hayden
Raisa Koltun
Michael Hafemann