

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

DATE: September 29, 2017

TO: Theodore Lipscomb, Sr., Chairman, County Board of Supervisors

FROM: James M. Carroll, Assistant Corporation Counsel

SUBJECT: *Louvenia Wilson v. County of Milwaukee*  
ERD Case No. CR201400520/EEOC Case No. 26G201400573C

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 the claims of plaintiff Louvenia Wilson ("Ms. Wilson") for the total sum of \$125,000.00. Of this total, \$55,500.00 will be paid by Wisconsin County Mutual Insurance Corporation for attorney's fees accrued by Padway & Padway, Ltd., while \$69,500.00 will be paid by Milwaukee County for back wages.

This employment matter includes claims of race discrimination, disability discrimination, and failure to accommodate a disability. Ms. Wilson was a Corrections Officer ("CO") for the Milwaukee County Sheriff's Office. In September of 2012 she was injured in the course and scope of her employment when an inmate kicked her in the left knee. Ms. Wilson was initially placed in light duty assignments to accommodate her temporary restrictions, and ultimately had surgery on her left knee in April 2013. Thereafter, she returned to work in May 2013 on another temporary light duty assignment until her physician assigned her permanent restrictions. At that point, Ms. Wilson was referred to the County's Job Relocation Program.

Ms. Wilson remained in the Job Relocation Program for approximately six months. Ms. Wilson was afforded opportunities to test for two different County positions while in the program, but did not pass the required tests and thus was not offered a placement. When she was offered a re-test opportunity for one of the positions, she declined to take the test again, arguing that she had not received the opportunity to meaningfully prepare for the test. Her participation in the Job Relocation Program ended in April of 2014. Ms. Wilson has identified one employee, a white female, who did not have to test for a position in which she was ultimately placed through her participation in the Job Relocation Program. This was the crux of Ms. Wilson's

race discrimination claim—that she, an African-American, was treated differently than a similarly situated white employee.

Charges for Ms. Wilson's discharge from County employment were issued on June 26, 2014. The charges were related to reporting for/fitness for duty; there were no allegations of wrongdoing or disciplinary problems. A hearing was ultimately held before the Personnel Review Board ("PRB") on September 30, 2014. The charges were sustained and Ms. Wilson was terminated, though the PRB decision discussed ways in which the County could potentially do more to place Job Relocation Program participants in alternative positions.

Ms. Wilson's Equal Rights Division ("ERD") complaint was filed on February 12, 2014, alleging disability and race discrimination and failure to accommodate. In October 2014, the ERD found "no probable cause" regarding her disability discrimination claim. Ms. Wilson appealed and a probable cause hearing was held before Administrative Law Judge John C. Gelhard on August 31, 2015. Judge Gelhard issued a decision affirming the "no probable cause" on February 26, 2016. Ms. Wilson timely appealed to the Labor and Industry Review Commission ("LIRC"), which reversed Judge Gelhard in September 2016 and ordered that a hearing on the merits be held. It should be noted that Ms. Wilson received a "probable cause" finding regarding her race discrimination claim and that Ms. Wilson would retain the right to pursue litigation of that matter in federal court but for the proposed settlement of all her claims.

In its decision, the LIRC emphasized several ways in which the County may have failed to reasonably accommodate Ms. Wilson's disability. LIRC therefore concluded that there was probable cause to believe that discrimination had occurred. Had this matter proceeded to a merits hearing, it is likely that Ms. Wilson's counsel would have emphasized the points raised by the LIRC. The County would have been required to show why accommodating Ms. Wilson in the ways discussed by the LIRC imposed an "undue hardship" on the County such that these accommodations were not reasonable. Because the standards for "reasonable" accommodation and "undue hardship" are not definitively established, but rather are subjectively evaluated on a case-by-case basis, it is difficult to say what conclusions the judge would have reached at the merits hearing. The judge certainly could have agreed with the LIRC that the County did not take sufficient steps to reasonably accommodate Ms. Wilson. Additionally, had the County prevailed at hearing, it is very likely that Ms. Wilson would have appealed again, thus further prolonging the litigation and incurring significant additional attorney's fees.

Were Ms. Wilson to prevail at a merits hearing, she would be entitled to recover her attorney's reasonable fees and her back wages. Her attorney, who has been litigating this matter since October of 2014, has claimed attorney's fees totaling

\$85,000.00. Ms. Wilson's claimed back wages (plus twelve percent statutory interest) accruing from when she was last paid by the County in the fall of 2013 through the date of hearing in October 2017 exceed \$180,000.00. The County would have introduced evidence at hearing to establish that Ms. Wilson was not entitled to all of her back wages due to a failure to mitigate her damages; nevertheless, had the judge found in her favor she would likely have been awarded at least two years of back pay plus interest.

This proposed settlement resulted from discussions between the parties' attorneys in the days leading up to the ERD hearing, which was scheduled to commence on October 3, 2017. The settlement provides that Ms. Wilson will receive a total of \$125,000.00, of which \$55,500.00 will be paid by Wisconsin County Mutual Insurance Corporation for attorney's fees and \$69,500.00 will be paid by the Milwaukee County Sheriff's Office's 2017 salary account budget for back wages, minus appropriate payroll deductions. In return, Ms. Wilson will dismiss her ERD and EEOC complaints and provide the County with a full and complete release from any liability. The payment of \$55,500.00 in attorney's fees will be paid entirely by the County Mutual, as the County's \$1.5 million deductible for policy year 2013 has been exceeded.

Corporation Counsel and the Wisconsin County Mutual Insurance Corporation recommend this settlement for approval.



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James M. Carroll, Assistant Corporation Counsel

cc: Kelly Bablitch  
Shanin Brown  
Erica Hayden  
Raisa Koltun