



VT Human Rights Commission
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INVESTIGATIVE REPORT

VHRC Case E18-0009

Complainant: Joseph Quinones

Respondents: Vermont Department of Corrections
Vermont Department of Human Resources

Charge: [REDACTED]
Denial of Parental Family Medical Leave

Summary of Complaint

Joseph Quinones was hired as a Corrections Officer at the Chittenden Regional Correctional Facility (hereinafter "CRCF") in August 2013. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In May 2017, Mr. Quinones' wife suffered complications with her pregnancy which required his assistance. Mr. Quinones requested to take family leave. The request was denied, and Mr. Quinones was forced to take two days of unpaid leave.

Summary of Response

[REDACTED]

[REDACTED] Respondents admit that Mr. Quinones requested family leave and that it was denied but claim that Mr. Quinones was not qualified for the family leave.

Preliminary Recommendations

[REDACTED]

[REDACTED]

[REDACTED]

(2) This investigation makes a preliminary recommendation that the VHRC find that there are **reasonable grounds** to believe that the State interfered with Joseph Quinones' right to use the Parental Family Leave Act for a family medical emergency.

Documents

- Complaint
- Response
- State's Response to First Request for Information
- PFLA Paperwork
- Emails
- State's Response to Second Request for Information
- Doctor's letter about complications with pregnancy dated 5/8/2017
- Doctor's letter about Quinones' illness

- Letter of Recommendation from Steven Belisle regarding Joseph Quinones
- [REDACTED]
- Leave balance of Joseph Quinones as of 7/10/14
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Leave balance of Joseph Quinones as of 5/11/17
- Vermont Department of Labor Parental Leave, Family Leave, and Short-Term Family Leave

Interviews

Joseph Quinones Complainant	12/28/2018
Cheryl Ward Elovirta Previous Superintendent at CRCF	3/18/2019
Christine Trombley Marsh State of Vermont Human Resources	3/18/2019
Samantha Trayah Business/Human Resources Manager at CRCF	3/19/2019
Desiree Crump Corrections Service Specialist II at CRCF	4/17/2019
Dylan Perrier Former Correctional Officer II at CRCF	4/17/2019
Steven Belisle Volunteer Services Coordinator at CRCF Previously CO I and CO II at CFCF	4/17/2019
Isiah Moore Former Corrections Service Specialist at CRCF	4/19/2019
Jason Knight Former Correctional Officer at CRCF	4/30/2019
Michael Bruno	4/30/2019

Former Correctional Officer at CRCF

Todd Smith

5/10/2019

Current Corrections Officer I at CRCF

Jennifer Sprafke

5/15/2019

Assistant Superintendent at CRCF

Roy Catella

7/10/2019

Shift Supervisor at CRCF

Facts

Mr. Quinones was hired as a Corrections Officer I (COI) at the Chittenden Regional Correctional Facility in August 2013. [REDACTED]

[REDACTED]

Throughout Mr. Quinones' employment at CRCF, between 2014 and the present, there have been four different CRCF Superintendents; Ed Adams, Jennifer Sprafke (Interim), Cheryl Elovirta and Theresa Stone.²

[REDACTED]

¹ [REDACTED]
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Interference with Parental Family Medical Leave Act

In early May 2017, Mr. Quinones' wife suffered complications with her pregnancy and had to terminate the pregnancy through a dilation and curettage (D&C) procedure.⁶⁸ Dr. Lauren K. MacAfee, a doctor at the University of Vermont Medical Center, wrote a letter on May 8, 2017 for Mr. Quinones' employer stating the following:

Jennifer Quinones is currently under our care for complications related to pregnancy. She may require care and assistance from her partner, Joseph Quinones, throughout the coming week. If you have any questions or concerns, please don't hesitate to call.⁶⁹

On May 8, 2017, Mr. Quinones spoke with the Department of Corrections Business/Human Resources Manager, Samantha Trayah, to let her know that his wife was going to have to abort her pregnancy.⁷⁰ Mr. Quinones told Ms. Trayah that he did not have enough sick leave and asked if he could take another type of leave.⁷¹ Mr. Quinones tried to provide Ms. Trayah with documentation related to his need to care for his wife during this time.⁷² Ms. Trayah told Mr. Quinones that she did not need his documentation and did not accept it.⁷³ Ms. Trayah told Mr. Quinones to contact Cheryl Elovirta, Superintendent of CRCF.⁷⁴

On May 9, 2018, Ms. Trayah sent the paperwork required for PFLA leave requests via email to Mr. Quinones.⁷⁵ On the same day (an hour and a half later), Mr. Quinones sent an email to Ms. Elovirta and copied Ms. Trayah. The email went into great detail about his wife's illness and his own recent medical issues. Mr. Quinones included in his email that he was contacting Ms.

⁶⁸ Email from Quinones to Elovirta on May 9, 2014.

⁶⁹ Doctor's note dated 5/18/2017

⁷⁰ Interview of Joseph Quinones

⁷¹ Interview of Joseph Quinones

⁷² Complaint

⁷³ Interview of Samantha Trayah.

⁷⁴ Interview of Samantha Trayah

⁷⁵ Email from Quinones to Elovirta

Elovirta because Ms. Trayah did not believe his request to care for his wife fell under PFLA because the “procedure” (D&C) had not been completed.⁷⁶ Mr. Quinones asked Ms. Elovirta to consider the request. He attached multiple documents to the email. One email was the doctor’s note referenced above and doctor’s notes about his absence due to illness (a few days prior) and documents about his wife’s pregnancy complications.⁷⁷

On May 11, 2017, Ms. Elovirta wrote Mr. Quinones back and said that “Unfortunately this does not qualify as PFLA and annual or other non-sick leave will not be authorized. Hopefully you and your family are on the mend.”⁷⁸ Because of the two-day lag in response, Mr. Quinones had already taken May 8 and May 9 off and coded it as “unpaid unauthorized off payroll” on his time sheet.”⁷⁹ Mr. Quinones was not disciplined for taking the leave but was not paid for the two days of work he missed. If he had been able to take his annual leave in conjunction with family leave, his unauthorized leave would have been excused and he would have been paid for those two days.

Ms. Elovirta provided no further explanation to Mr. Quinones for why leave was denied. During this investigation she stated that Mr. Quinones did not fill out the paperwork as required.⁸⁰ However, this was not communicated to Mr. Quinones, so after being denied family leave by the Superintendent (after he received the paperwork from Ms. Trayah) it seems reasonable that he did not fill out and submit the paperwork because he had already been denied by the Superintendent.

Ms. Elovirta stated during her interview that she did not believe that Mr. Quinones qualified for family leave through PFLA because the Doctor’s note said that his wife “may require care or assistance,” which in her view did not mean that he needed to take care of his wife. Ms.

⁷⁶ Email from Quinones to Elovirta

⁷⁷ Email from Quinones to Elovirta

⁷⁸ Email from Elovirta to Quinones

⁷⁹ State’s Response to First Request for Information

⁸⁰ Interview with Cheryl Elovirta

Elovirta did not follow up with Mr. Quinones or the doctor to see what the doctor meant in the note.⁸¹

During this investigation, the State provided Mr. Quinones' leave balance from May 11, 2017 indicating that he had 3.91 hours of sick leave and 18.90 hours of annual leave remaining when he requested PFLA leave.⁸² Mr. Quinones took two days off to take care of his wife. He did not have enough sick time to cover his absence, and he was not allowed to use his annual leave.⁸³ After he returned to work, his wife called him every hour to let him know she was all right. He stated that he was incredibly worried about her well-being during this time.⁸⁴ He stated that both he, his wife, and their young daughter would have benefited from him being able to take a few additional days off.⁸⁵

Analysis

[REDACTED]

[REDACTED]

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⁸¹ [REDACTED]
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Year	Country	Population (millions)	Population (millions)	Population (millions)
1990	1990	1990	1990	1990
2000	2000	2000	2000	2000
2010	2010	2010	2010	2010
2020	2020	2020	2020	2020
2030	2030	2030	2030	2030
2040	2040	2040	2040	2040
2050	2050	2050	2050	2050
2060	2060	2060	2060	2060
2070	2070	2070	2070	2070
2080	2080	2080	2080	2080
2090	2090	2090	2090	2090
2100	2100	2100	2100	2100

1. **Identify the main idea or thesis statement.** This is the central point the author is trying to make.

Country	Year	Population (millions)	Urban population (millions)	Urban population (%)
Algeria	1990	10.2	4.8	47.1
Algeria	2000	11.5	6.2	53.9
Algeria	2005	12.5	7.2	57.6
Algeria	2010	13.5	8.2	60.7
Algeria	2015	14.5	9.2	63.4
Algeria	2020	15.5	10.2	65.8
Algeria	2025	16.5	11.2	67.9
Algeria	2030	17.5	12.2	69.7
Algeria	2035	18.5	13.2	71.3
Algeria	2040	19.5	14.2	72.8
Algeria	2045	20.5	15.2	74.1
Algeria	2050	21.5	16.2	75.3
Algeria	2055	22.5	17.2	76.4
Algeria	2060	23.5	18.2	77.4
Algeria	2065	24.5	19.2	78.4
Algeria	2070	25.5	20.2	79.2
Algeria	2075	26.5	21.2	80.0
Algeria	2080	27.5	22.2	80.7
Algeria	2085	28.5	23.2	81.4
Algeria	2090	29.5	24.2	82.0
Algeria	2095	30.5	25.2	82.6
Algeria	2100	31.5	26.2	83.2
Algeria	2105	32.5	27.2	83.7
Algeria	2110	33.5	28.2	84.2
Algeria	2115	34.5	29.2	84.6
Algeria	2120	35.5	30.2	85.1
Algeria	2125	36.5	31.2	85.5
Algeria	2130	37.5	32.2	85.9
Algeria	2135	38.5	33.2	86.2
Algeria	2140	39.5	34.2	86.6
Algeria	2145	40.5	35.2	86.9
Algeria	2150	41.5	36.2	87.2
Algeria	2155	42.5	37.2	87.5
Algeria	2160	43.5	38.2	87.8
Algeria	2165	44.5	39.2	88.1
Algeria	2170	45.5	40.2	88.4
Algeria	2175	46.5	41.2	88.6
Algeria	2180	47.5	42.2	88.8
Algeria	2185	48.5	43.2	89.1
Algeria	2190	49.5	44.2	89.3
Algeria	2195	50.5	45.2	89.5
Algeria	2200	51.5	46.2	89.7
Algeria	2205	52.5	47.2	90.0
Algeria	2210	53.5	48.2	90.3
Algeria	2215	54.5	49.2	90.6
Algeria	2220	55.5	50.2	90.8
Algeria	2225	56.5	51.2	91.0
Algeria	2230	57.5	52.2	91.3
Algeria	2235	58.5	53.2	91.5
Algeria	2240	59.5	54.2	91.7
Algeria	2245	60.5	55.2	92.0
Algeria	2250	61.5	56.2	92.2
Algeria	2255	62.5	57.2	92.4
Algeria	2260	63.5	58.2	92.6
Algeria	2265	64.5	59.2	92.8
Algeria	2270	65.5	60.2	93.0
Algeria	2275	66.5	61.2	93.2
Algeria	2280	67.5	62.2	93.4
Algeria	2285	68.5	63.2	93.6
Algeria	2290	69.5	64.2	93.8
Algeria	2295	70.5	65.2	94.0
Algeria	2300	71.5	66.2	94.2
Algeria	2305	72.5	67.2	94.4
Algeria	2310	73.5	68.2	94.6
Algeria	2315	74.5	69.2	94.8
Algeria	2320	75.5	70.2	95.0
Algeria	2325	76.5	71.2	95.2
Algeria	2330	77.5	72.2	95.4
Algeria	2335	78.5	73.2	95.6
Algeria	2340	79.5	74.2	95.8
Algeria	2345	80.5	75.2	96.0
Algeria	2350	81.5	76.2	96.2

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■ **_____** **_____** **_____**

1. **Identify the main topic or purpose of the text.**
 2. **Summarize the key points or findings.**
 3. **Discuss the implications or significance of the results.**
 4. **Provide a conclusion or recommendation.**

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) During the leave, at the employee's option, the employee may use accrued sick leave or vacation leave or any other accrued paid leave, not to exceed six weeks. Utilization of accrued paid leave shall not extend the leave provided herein.

To prevail on a claim of interference with his PFLA rights, Mr. Quinones must establish the following prima facie case:

- (1) that he is an eligible employee under the PFLA;
- (2) that the State is an employer as defined by the PFLA;
- (3) that he was entitled to take leave under the PFLA;
- (4) that he gave notice to the defendant of his intention to take leave; and
- (5) that he was denied benefits to which he was entitled under the PFLA.¹⁰⁶

To be eligible for PFLA, an employee must work an average of 30 hours per week over the course of a year. During any 12-month period, the worker is entitled to 12 weeks of unpaid leave.¹⁰⁷ The worker must give reasonable written notice of intent to take family leave, including the anticipated dates the leave will start and end. For short-term family leave, a worker must give notice as early as possible, "at least seven days before the leave is to be taken unless waiting seven days could have a significant adverse impact on the employee's family member."¹⁰⁸ A worker may choose to use sick leave, or vacation leave, or any other accrued paid leave during the time of leave up to six months.¹⁰⁹ There was no dispute in Mr. Quinones' case that he worked enough hours to qualify and had not exhausted his PFLA leave time for the year.

While the State does not dispute that Mr. Quinones was qualified for PFLA leave based on the above criteria, the State does dispute that his wife's medical issues were sufficient reason for Mr. Quinones to take medical leave. Ms. Elovirta believed that the Doctor's language was passive

¹⁰⁶ *Graziadio v. Culinary Inst. of Am.*, 817 F.3d 415 (2d Cir. 2016)

¹⁰⁷ *Graziadio v. Culinary Inst. of Am.*, 817 F.3d 415 (2d Cir. 2016)

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

by saying that Mr. Quinones may need to care for his wife.¹¹⁰ However, she failed to follow up with the Doctor or Mr. Quinones to find out more information as to whether he was needed at home. Ms. Elovirta and Ms. Trayah could not provide any other explanations for denying the PFLA leave.

There is no dispute that the State is an employer under PFLA. Also, the leave was for the serious illness of a spouse which is covered under the Vermont PFLA leave policy.¹¹¹

Next, Mr. Quinones gave notice to his employer that he needed to take leave. Even if he did not mention PFLA in his request, it still qualifies as giving notice.¹¹² Mr. Quinones made Ms. Trayah and Ms. Elovirta aware of his need for leave due to the serious illness of his wife.¹¹³

Further if serious illness is claimed the employer *may* require certification from a physician.¹¹⁴ Under the PFLA, an employee seeking leave does not need to submit medical certification and unless and until one is specifically requested by his employer.¹¹⁵ Thus, Mr. Quinones did not even have to provide the doctor's note that Ms. Elovirta did not find sufficient, but certainly if additional medical documentation was needed the burden was on the Respondent to ask for it. Upon notice of an emergency incident, "the employer will be expected to obtain any additional required information through informal means."¹¹⁶

Mr. Quinones provided reasonable notice.¹¹⁷ If it is an emergency, the worker must give notice as soon as possible.¹¹⁸ For short-term family leave that is seven days unless waiting seven

¹¹⁰ Interview of Cheryl Elovirta

¹¹¹ 21 V.S.A. §472

¹¹² *Brown v. The Pension Boards*, 488 F. Supp.2d 395,408 ("The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed").

¹¹³ Interview of Joseph Quinones

¹¹⁴ Vermont Department of Labor Parental Leave, Family Leave, and Short-Term Family Leave

¹¹⁵ See 29 C.F.R. Section 825.305(a) as cited in *Graziadio v. Culinary Institute of America*, 817 F.3d 415.426 (2nd Cir. 2016)

¹¹⁶ *Brown. v. The Pension Boards*, 488 F. Supp. 2d 395, 408 (S.D.N.Y. 2007)

¹¹⁷ Email from Joseph Quinones to Cheryl Elovirta

¹¹⁸ Vermont Department of Labor Parental Leave, Family Leave, and Short-Term Family Leave

days could have a significant adverse impact on the employee's family member.¹¹⁹ When the need for PFLA is not foreseeable the employee should give notice to the employer of the need for leave as soon as practicable under the facts and circumstances of the case.¹²⁰ Mr. Quinones found out that there was an issue with his wife's pregnancy on May 6, 2017.¹²¹ Mr. Quinones told his supervisors Zorzi and Villarel on May 7, 2017 that he may have to take time off because of his wife's complications with her pregnancy.¹²² Mr. Quinones' wife had an appointment to find out more on May 8, 2017. After the appointment on May 8, 2017, Mr. Quinones contacted Ms. Trayah about the need to be out to care for his wife when he found out that a D&C procedure would be necessary.¹²³ He spoke again to Ms. Trayah on the morning of the 9th and contacted Ms. Elovirta the same morning.¹²⁴

Finally, Mr. Quinones was denied benefits that he was entitled to under PFLA. If Mr. Quinones had been granted PFLA leave he could have used his sick and leave time to cover his leave while continuing to be paid.¹²⁵ He also may have opted to take a few more days of leave, which would have been beneficial for both he and his family. Therefore, the State has interfered with Mr. Quinones' right to take PFLA leave in violation of 21 V.S.A. § 472 (b).

¹¹⁹ Vermont Department of Labor Parental Leave, Family Leave, and Short-Term Family Leave

¹²⁰ *Brown. v. The Pension Boards*, 488 F. Supp. 2d 395, 408 (S.D.N.Y. 2007)

¹²¹ Joseph Quinones email to Cheryl Elovirta, Michael Miller and Samantha Trayah on May 9, 2017

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ 21 V.S.A. § 472 (b)

Conclusion

1) [REDACTED]
[REDACTED]
[REDACTED]

2) This investigative report recommends that the VHRC find that there are **reasonable grounds** to believe that Respondent interfered with Mr. Quinones' right to use the Parental Family Leave Act for a family medical emergency, in violation of 21 V.S.A. § 472 (a)(2) and (b).


Melissa Horwitz, Administrative Law Examiner

9/3/19
Date

Approved by:


Bor Yang, Executive Director
& Legal Counsel

9/3/2019
Date

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Joseph Quiñones,)	
Complainant)	
)	
)	
v.)	HRC Complaint No. E18-0009
)	
)	
Chittenden Regional Correctional)	
Facility & Department of Corrections,)	
Respondent)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

The following vote was taken on a motion to find that there are **reasonable grounds** to believe that Chittenden Regional Correctional Facility & Department of Corrections, the Respondents, unlawfully interfered with Joseph Quiñones', the Complainant's, right to use the Parental Family Leave Act, in violation of Vermont's Fair Employment Practices Act.

Kevin Christie, Chair	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Joan Nagy	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Absent <input type="checkbox"/> Recused <input type="checkbox"/>
Dawn Ellis	For <input type="checkbox"/> Against <input type="checkbox"/> Absent <input checked="" type="checkbox"/> Recused <input type="checkbox"/>

Entry: ☒ Reasonable grounds ☐ Motion failed

Dated at Montpelier, Vermont, this 26th day of September, 2019.

By: VT HUMAN RIGHTS COMMISSION

Kevin B. Christie
Kevin Christie, Chair

Nathan Besio
Nathan Besio

Joan Nagy
Joan Nagy

(absent)
Dawn Ellis

Donald P. Vickers
Donald Vickers