UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DESIREE HOLLER, Plaintiff, v. 3M COMPANY, Defendant.	Case No. 22-cv-998 **AMENDED COMPLAINT** **AND DEMAND FOR JURY TRIAL**

Comes now, Desiree Holler, through her undersigned attorneys, and respectfully alleges the following:

1. Plaintiff Desiree Holler ("Holler") is a female who is employed by Defendant 3M Company ("3M") at their plant location in Aberdeen, South Dakota. During her employment with 3M, Holler has been subjected to discrimination by her coworkers and supervisors based on her gender and has been retaliated against for reporting discriminatory conduct at the plant. Holler's treatment by her coworkers and supervisors and the discipline she has received was in violation of Title VII of the Civil Rights Act of 1964 ("Title VII") and related South Dakota state statutes.

JURISDICTION

2. This Court has jurisdiction over this lawsuit under 28 U.S. Code § 1331 because the action arises under Title VII of the Civil Rights Act of 1964, as amended, hereinafter "Title VII," per 42 U.S.C. § 2000 *et seq*.

3. The Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a).

4. Holler is a resident and citizen of the state of South Dakota.

5. Defendant 3M is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Maplewood, Minnesota.

6. Venue is proper in accordance with 28 U.S.C. § 1391(b)(1), as 3M resides in this District because its principal place of business is in this state, and it is the sole Defendant.

DISCRIMINATION CHARGE FILED WITH EEOC

7. Defendant, through its agents who worked with and supervised Holler, acted with intentional discrimination toward Holler because of her gender in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000 et seq. Holler timely filed a formal discrimination Complaint with the U.S. Equal Employment Opportunity Commission (the "EEOC"). Holler received a Notice of Right to Sue dated January 31, 2022 from the EEOC.

DISCRIMINATION IN VIOLATION OF TITLE VII

8. Holler began working for 3M at their plant in Aberdeen in February 2019 in the HE department, working from midnight to 8 a.m.

9. At the 3M plant, promotions and different job openings are sought by internal candidates by "posting" to another department. In order to "post" to another department, a candidate has to have received the proper certifications, training, and experience. If a candidate has the proper qualifications, then the positions go by seniority.

10. After working a year in the HE department, Holler posted to move to the BMF slitter position, working from 11 p.m. to 7 a.m. The BMF slitter position was given to another employee, a male whom Holler had more seniority over, Layne Gisi.

11. Holler spoke with Gisi about the posting. Gisi told Holler that he would go in and say that since Holler had posted for the position, he did not think it was fair that he was awarded the posting since Gisi started after Holler.

12. After Gisi spoke with the supervisor, Holler was approached numerous times by Dave Rook, who took it upon himself to tell Holler how physically demanding the job was and how the material used would be heavy.

13. Holler was aware of the job requirements. Before signing for a posting, 3M employees are required to read the job description which tells a potential applicant what is required for that position, so Holler already knew and averred she could fulfill the requirements for the posting.

14. Rook also tried to enlist other employees who were on the BMF slitter posting at that time, including John Wingo, to show Holler how hard the job was and how heavy the lifting material was. Rook was trying to persuade Holler to take another posting and give the job to a male employee instead of Holler, who is female.

15. Holler spoke with Rook on numerous occasions, telling him how the BMF slitter position was a position that she wanted to pursue.

16. Rook was at all relevant times the Plant Engineering General Supervisor and oversaw everyone in the Engineering Department.

17. Finally, after consistently advocating for herself to get the BMF slitter position, Holler was approached by her supervisor who gave her two positions to choose from. One was a 4-crew position in CPC (8pm-8am) with a lower pay grade, and the other was BMF slitting (11pm-7am). Holler chose BMF slitting. She was finally awarded the BMF slitter position (June 1, 2020) after making complaints and enlisting other employees to talk to the supervisors for her about the posting.

18. Holler worked the day shift to train on machine 203 for 2 weeks. Then she worked on machine 203 until October 2020. After working on 203 for a few months, Wingo trained Holler on the other two machines in the front, 201 and 202.

19. After Holler completed her training on 201 and 202 with Wingo, she was fully certified in the department.

20. Holler was certified before Wingo was, which Holler felt was not fair to him because he had started in the department before Holler.

21. Although Wingo had been in this department longer than Holler, she had been trained to run the 203 machine before Wingo.

22. After being in the department for some time Holler learned that Wingo had been passed up on his certification.

23. In November 2020, Holler was training Wingo on machine 203 because Wingo was scheduled to run the machine.

24. The supervisor, Kevin Gibson, came in that morning and was upset because Holler was showing Wingo how to operate machine 203. Gibson started yelling at Wingo and Holler in front of their coworkers and several others who had just come in that morning

for their shift. Gibson was yelling so loud that that other employees stopped to see what was going on and try to discern what had happened to make him so angry. Holler did not understand why Wingo was not being trained on the third of the three machines in their area. None of the supervisors explained it to her.

25. On February 4, 2021, Wingo had asked Holler if they could "double team" because he had hurt his shoulder lifting the 50lb roll by himself. Holler jumped in and helped him because Wingo was hurt and there had never been a problem with employees working in teams to get their work done.

26. However, when Gibson saw that Holler and Wingo were "double teaming" he asked Wingo why they were "double teaming" the machine. Wingo said that he had hurt his shoulder lifting the roll and had asked Holler to help. Gibson told Wingo to come to his office and told Holler to go back to her machine.

27. It is Holler's understanding that Wingo was disciplined for how he and Holler were working together in tandem on February 4, doing something that many employees had done before.

28. In April 2021, Holler witnessed Wingo be accosted by other employees. Wingo was working in the back on the slitter machine 203. While Holler was there, Kue Moo and Yanai Soe came from their departments which are in the front of the plant. They saw it was just Holler and no one else back in the department with Wingo, so they walked up to Wingo and threatened to fight him. Holler saw the two men threaten him, cuss at him, and call him a "n____r."

29. Holler felt threatened and uncomfortable. She moved away from the men and went to the back of her machine. Later Holler told Gibson about what she had witnessed, and she wrote a statement. Gibson said he would do an investigation.

30. Holler never heard back about the results of the investigation. Instead, she was disciplined for reporting the discriminatory conduct.

31. On June 3, 2021, Holler received a documented verbal warning stating that she was instructed to return to her scheduled machine instead of tag teaming 203. Holler did not understand the discipline, as "double teaming" machine 203 is something that everyone does because the machine has issues that make it hard to work with just one person.

32. Wingo had asked Holler for help on 203 because the machine knives were not measuring correctly and he could not get them aligned. This was the machine that Holler had trained Wingo on and she was trying to show him how to use it. Supervisor Gibson came back to 203 and told Holler to return to the front and not to assist Wingo on fixing the issues with the machine.

33. For this, an action many other employees had done on a regular basis, Holler was written up. This write up came only after Holler complained to 3M supervisors about the treatment Wingo had been experiencing in the department and at the plant.

34. On June 10, 2021, Holler and Wingo were working up front in the department after Wingo had told Holler that his shoulder was in pain and he needed some help lifting the roll and also that he was being harassed by Moo and Soe again.

35. Working together made sense because to Holler and Wingo because it would allow them to finish Wingo's work early by reaching the goal for his machine and then they we could report to my machine in the back and get away from Moo and Soe so they would leave him alone.

36. Holler and Wingo had to conspire to figure out how to avoid the employees who were continually and repeatedly racially harassing Wingo. Their supervisors were fully aware of the harassment. Instead of helping, their supervisors did nothing to the offenders, and instead wrote up Wingo, Holler, and others.

37. While Wingo and Holler were working in the front they continued to be harassed by Moo and Soe. Wingo and Holler were working on 201, John's assigned machine. Even after they took their lunch break from 2:30 to 3:00 a.m., Moo and Soe continued to harass Wingo and Holler. Moo and Soe made threats, inappropriate gestures, and called Wingo racial slurs.

38. During this time Rook and Gibson were present and aware of Wingo and Holler being harassed. Holler thought – as supervisors of 3M and in charge of enforcing harassment policy and laws – that they would do something about the harassing conduct towards Wingo and Holler, but nothing was done.

39. Wingo and Holler went to the back after getting the quota for 201 completed so they could work on 203 and escape the treatment from Moo and Soe. Instead of addressing the harassing conduct of Moo and Soe, supervisor Gibson hid under and behind a machine sitting on the ground, trying to hide and watch Wingo and Holler work.

The two did not notice themselves but were notified by a coworker that Gibson was sitting and hiding on the floor behind a machine watching them work.

40. After Gibson was seen watching Wingo and Holler, Gibson approached Wingo and told him to report back to the front. Wingo explained that his shoulder was hurting and he did not feel safe because of Moo and Soe coming over and harassing him, calling him racist things. Wingo told Gibson that if they tried anything he would not be able to defend himself because of his shoulder being hurt. Gibson then told Wingo and Holler that he would be talking to Rook and that they were to report to Rook's office after work.

41. At the meeting, Holler explained to Rook and Gibson that she and Wingo were being harassed and that racial slurs were being used. Holler again expressed to them how uncomfortable she felt and that was why she and Wingo were working together.

42. Instead of helping Holler and Wingo with the harassment, Holler was written up. She received a level 1 violation for violating the 3M Break Policy and received a level 2 violation for failing to report to her scheduled machine at the start of her shift.

43. Rook and Gibson never addressed these racial harassment issues sufficient to see any tangible benefit. Upon information and belief, Moo and Soe were not disciplined. Instead, Holler and other coworkers such as Wingo were disciplined.

44. After reporting the incidents that occurred at work and being a part of the harassment in some cases, Holler received additional backlash and retaliation from coworkers and higher-ups due to her reporting the harassment.

45. On December 21, 2021, Holler's supervisor Aaron Bigalow told her that he had received an email from Gibson saying that Holler was taking breaks that were too long.

In the email, Gibson stated what time Holler went to break and what time she came back, and that the break return was one minute late. A coworker told Holler that Gibson was watching Holler.

46. Holler was discriminated against based on her gender, and in retaliation for making complaints about the discriminatory conduct of her coworkers and supervisors towards herself and towards Wingo.

47. Holler experienced a hostile work environment that is contrary to the Civil Rights Act during her employment with 3M. Her supervisors did nothing to help alleviate the working conditions, and in fact, encouraged and turned a blind eye to the treatment Holler received. All of this was done in violation of Title VII.

48. As a direct and proximate result of Defendant's discriminatory and retaliatory treatment of Holler, she has suffered actual and consequential damages. Defendant's discriminatory practices have caused Holler injury, including, but not limited to, lost earnings (past and future), lost benefits, emotional pain and suffering, mental anguish, humiliation, embarrassment, loss of enjoyment of life, court costs, litigation expenses (including reasonable attorneys' fees) and other damages as will be proven at trial.

49. Holler is entitled to equitable relief and damages for Defendant's discriminatory practices as permitted under law.

COUNT I
DISCRIMINATION IN VIOLATION OF TITLE VII

50. Plaintiff reincorporates by reference paragraphs 1 through 49 and incorporates them herein.

51. Defendant 3M's actions as set forth above constitute discrimination against Plaintiff in violation of Title VII, as amended, 42 U.S.C.§2000e-(a)(1).

COUNT II
RETALIATION UNDER TITLE VII

52. Plaintiff reincorporates by reference paragraphs 1 through 49 and incorporates them herein.

53. Defendant 3M's actions as set forth above constitute retaliation against Plaintiff in violation of Title VII, as amended, 42 U.S.C.§2000e-3(a).

COUNT III
DISCRIMINATION IN VIOLATION OF STATE LAW
SECTION 20-13-10 – UNFAIR OR DISCRIMINATORY PRACTICES

54. Plaintiff realleges paragraphs 1 through 49 and incorporates them herein.

55. Defendant's actions as set forth above constitute discrimination against Plaintiff based on her sex in violation of the South Dakota Human Rights Act, South Dakota Code § 20-13-22, in that as Plaintiff's employer, 3M, through their agents as detailed above, discharged and accorded adverse or unequal treatment to Plaintiff as an employee of 3M with respect to her training, promotion, upgrading, compensation, employment, and other terms or conditions of her employment. These actions were taken on account of Plaintiff's sex.

COUNT IV
STATE CLAIM OF RETALIATION

56. Plaintiff reincorporates by reference paragraphs 1 through 49 and incorporates them herein.

57. Plaintiff was discriminated against based on her gender and in retaliation for making reports of discriminatory conduct in violation of the South Dakota Human Rights Act.

58. Defendant's actions as set forth above constitute retaliation against Plaintiff in violation of the South Dakota Human Rights Act, South Dakota Code § 20-13-26, in that 3M, by and through its agents as detailed above, did engage in reprisal against Plaintiff by reason of her reporting the discriminatory conduct of her coworkers and supervisors.

COUNT V
NEGLIGENT INFLICTION
OF EMOTIONAL DISTRESS

59. Plaintiff reincorporates by reference paragraphs 1 through 49 and incorporates them herein.

60. Defendant 3M's actions as set forth above constitute negligent infliction of emotional distress under state law.

COUNT VI
NEGLIGENT SUPERVISION

61. Plaintiff reincorporates by reference paragraphs 1 through 49 and incorporates them herein.

62. Defendant 3M's actions as set forth above constitute negligent supervision of its employees at the Aberdeen plant in violation of state law.

COUNT VII
INTENTIONAL DISCRIMINATION
IN VIOLATION OF 42 US Code § 1981

63. Plaintiff realleges paragraphs 1 through 49 and incorporates them herein.

64. As alleged above, Plaintiff was harassed and eventually terminated as a result of intentional racial discrimination in violation of 42 U.S.C. §1981.

COUNT VIII
CONCEALMENT, AIDING, AND INDUCEMENT
OF DISCRIMINATORY CONDUCT

65. Plaintiff realleges paragraphs 1 through 49 and incorporates them herein.

66. Defendant 3M's actions and lack of action amount to unlawful concealment, unlawful aiding, and inducement of unlawful discriminatory conduct South Dakota Statute § 20-13-26.

Wherefore, Plaintiff respectfully requests that Defendant's actions be declared unlawful and enter judgment in her favor and against Defendant and award:

1. Compensatory damages, including for emotional distress, as the evidence at trial may show;
2. Damages against Defendant including but not limited to those damages allowed by Title VII, the South Dakota Human Relations Act, and any other pertinent and applicable statute, rule or regulation;
3. For Plaintiff's damages, including but not limited to, lost wages and benefits.
4. For Plaintiff's costs, disbursements, and expenses.
5. For Plaintiff's attorney's fees.

6. Pre- and post-judgment interest, costs, expert witness fees and such other relief as the court deems proper; and
7. For such other relief as the court deems just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL CLAIMS.

Dated this 12th day of July, 2022.

McCOLLUM CROWLEY P.A.

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