

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA

EEOC

480-2017-00965

and EEOC

_____ State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. Tracy Plummer

Home Phone (Incl. Area Code)

Date of Birth

Street Address

City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

Pacific Maritime Association

No. Employees, Members

15+

Phone No. (Include Area Code)

562-495-7600

Street Address

City, State and ZIP Code

300 Oceangate, 12th Floor, Long Beach, CA 90802

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

DATE(S) DISCRIMINATION TOOK PLACE

RACE
 COLOR
 SEX
 RELIGION
 NATIONAL ORIGIN
 RETALIATION
 AGE
 DISABILITY
 GENETIC INFORMATION
 OTHER (Specify)

Earliest: **1/14** Latest: **Present**
 CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Please see attached statement of harm.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

3/27/18

Date



Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA

EEOC

480-2017-00983C

California Department of Fair Employment and Housing

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. Tracy Plummer

Home Phone (Incl. Area Code)

[REDACTED]

Date of Birth

[REDACTED]

Street Address

City, State and ZIP Code

[REDACTED]

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

International Longshore and Warehouse Union (ILWU)

No. Employees, Members

15+

Phone No. (Include Area Code)

415-775-0533

Street Address

City, State and ZIP Code

1188 Franklin Street, 4th Floor, San Francisco, CA 94109-6800

Name

ILWU Local 13

No. Employees, Members

15+

Phone No. (Include Area Code)

310-830-1130

Street Address

City, State and ZIP Code

630 Centre Street, San Pedro, CA 90731

DISCRIMINATION BASED ON (Check appropriate box(es).)

- RACE
 COLOR
 SEX
 RELIGION
 NATIONAL ORIGIN
 RETALIATION
 AGE
 DISABILITY
 GENETIC INFORMATION
 OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

11/14

Latest

present

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Please see attached Statement of Harm.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

3/5/18

Date



Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Plummer v. Pacific Maritime Association, et al. – Amended Statement of Harm
Plummer v. International Longshore and Warehouse Union – Statement of Harm

1. I began working on the Los Angeles/Long Beach Ports (“LA/LB Ports”) as a “casual” dockworker in or around January 2007. During my employment, as described further below, I had one child, in late summer 2015.

2. Because of Respondents’ discriminatory policies and practices with respect to pregnancy, childbirth, and related medical conditions, I have lost significant work hours.

3. As a result, I have been disadvantaged, as compared to my non-pregnant peers who are similar in their ability or inability to work, in accruing the seniority needed to receive raises and qualify for promotion from “casual” status to full-time, Class “B” status and eventual membership in Respondents International Longshore Workers Union (“ILWU”) and ILWU Local 13 (“Local 13”).

The Categories of Workers at the Los Angeles/Long Beach Ports

4. Respondent Pacific Maritime Association (“PMA”) is the bargaining representative on behalf of close to 80 member shipping and terminal companies that use and operate the 29 ports along the West Coast, from San Diego, California to Bellingham, Washington.

5. ILWU is the bargaining representative for workers in those ports.

6. PMA and the ILWU are parties to the Pacific Coast Clerks’ Contract Document (the “Contract”), which governs the employment of longshore workers on the West Coast.

7. The LA/LB Ports are by far the largest of the West Coast Ports, employing close to 14,000 individuals.

8. Several categories of workers are employed at the LA/LB Ports.

9. Class “A” longshore workers are members of the ILWU, which at the LA/LB Ports is represented by Local 13. Class A workers are eligible to obtain additional certifications entitling them to greater income, and to be promoted into supervisory roles.

10. Class “B” workers, in contrast, are not yet members of ILWU, but are permitted to become members after 5 years in Class B status. Class B workers also are guaranteed a minimum weekly income, and enjoy some of the benefits of union membership.

11. Other worker categories, who are members of the ILWU but in different locals at the LA/LB Ports, are Marine Clerks (Local 63), who are Class A or Class B workers who have obtained additional training; Foremen (Local 94), who have supervisory responsibilities; and Watchmen (Local 26), who perform security functions.

12. “Casuals” are the lowest rung on the hierarchy of workers at the LA/LB Ports, and comprise roughly 5,000 individuals. They are not members of ILWU.

13. Under the Contract, casuals do not know from day to day if they will work a shift, let alone a full week of shifts. They are assigned the jobs that remain available each day after the Class A workers, Class B workers, and Marine Clerks all have received their assignments.

14. Other than a clean disciplinary record, the sole criterion for being “elevated” from casual to Class B worker is the accrual of work hours.

15. There is no single “hours-accrued” threshold for such elevation; nor does such elevation occur at regular intervals. Rather, casuals are elevated whenever Respondents decide that a

sufficient number of workers have left the ranks and/or the docks are sufficiently busy to demand more.

16. This policy results in a lengthy waiting period for casuals to achieve the full-time employment and benefits promised by Class B status: for instance, on information and belief, when 102 casuals were elevated to Class B status on April 9, 2016, it was the first such promotion in a decade – since 2006 – and was based on accrued hours dating back more than 30 years.

17. On information and belief, the lowest number of hours among those promoted was 5,286.25, translating roughly to 2.5 years of full-time work, i.e., 52 weeks at 40 hours each.

18. On December 22, 2017, another 280 casuals were elevated to Class B status, also based on hours accrued since 1984.

19. On information and belief, the lowest number of hours among those promoted on that date was 7,120.25, translating roughly to 3.5 years of full-time work, i.e., 52 weeks at 40 hours each.

20. There is another benefit to accruing seniority: according to a “Memorandum of Understanding” appended to the Contract, casuals are entitled to wage increases according to their aggregate hours, *i.e.*, “Work Experience Group,” dating from the third payroll quarter of 1984 through the present. As of July 1, 2017, those rates are:

1,000 hours = \$29.49/hour;

1,001 – 2,000 hours = \$30.49/hour;

2,001 – 4,000 hours = \$32.49/hour; and

4,001 hours or more = “Basic S/T,” i.e., basic straight-time, \$40.93/hour

21. Accordingly, any occasion on which a casual is unable to accept an available shift means falling behind his or her peers in accumulating hours toward Class B elevation, and ultimate union membership, and toward a higher Work Experience Group wage.

Work conditions on the docks

22. Longshore work is extremely dangerous for everyone, but especially for pregnant and breastfeeding workers.

23. Due in large part to their reliance on diesel fuel for all of the trucks and other cargo equipment on the docks, the LA/LB ports are the largest source of air pollution in Southern California.

24. Workers routinely drive utility tractors, or UTRs. UTRs in use on the LA/LB docks contain a warning: “ENGINE EXHAUST, SOME OF ITS CONSTITUENTS, AND CERTAIN VEHICLE COMPONENTS CONTAIN OR EMIT CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS AND OTHER REPRODUCTIVE HARM. IN ADDITION, CERTAIN FLUIDS CONTAINED IN VEHICLES AND CERTAIN PRODUCTS OF COMPONENT WEAR CONTAIN OR EMIT CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS AND OTHER REPRODUCTIVE HARM.” (Emphasis in original.)

25. Shipping containers weigh several tons and can be accidentally dropped by cranes, or can leak, spilling hazardous materials.

26. Workers also frequently engage in heavy labor, including lifting, bending, climbing, crawling, and “lashing” (the process of attaching shipping containers to one another).

Respondents’ policies and procedures regarding pregnancy, childbirth, and related medical conditions

27. On information and belief, in acknowledgment of the importance of accruing work hours, Respondents have negotiated for credit to be awarded in at least two categories of absences experienced by casuals: when a casual is unable to work due to an on-the-job illness or injury, or due to military service.

28. Respondents further maintain a policy regarding accommodation of ADA-qualifying disabilities, but the policy is silent as to whether ADA-covered casuals who require a leave of absence as a reasonable accommodation will accrue seniority during that period.

29. In contrast, the Contract makes no provision for work hours credit when a female casual is absent due to pregnancy, childbirth, and related medical conditions. Nor does it provide any procedure for requesting accommodation of pregnancy or breastfeeding through job modifications.

30. Accordingly, Respondents’ policies assure that female casuals affected by pregnancy, childbirth, and related medical conditions lose accrued hours under three circumstances:

- When a pregnant casual requests some accommodation or “modified duty” for an assigned shift as a result of physical limitations due to pregnancy, but is denied, necessitating that she decline the shift, she does not receive any work hours credit;
- During the period of incapacity that follows childbirth – which is recognized under California’s Pregnancy Disability Leave law to last as long as 4 months, if necessary – she does not receive any work hours credit; and

- When a female casual is ready to return to work after recovering from childbirth but still is breastfeeding, she is denied access to a sanitary, private space in which to pump breastmilk during her shift – prompting her either to stop breastfeeding long before she may want to or her baby may have received all of the potential health benefits of breast milk, or to forgo working altogether, during which time she does not receive any work hours credit.

31. Thus, female casual longshore workers affected by pregnancy, childbirth, and related medical conditions face barriers to achieving Class B status, and by extension, union membership, that their colleagues not so affected but similar in their ability or inability to work do not.

32. Female casual longshore workers affected by pregnancy, childbirth, and related medical conditions also face barriers to higher wages that their colleagues not so affected but similar in their ability or inability to work do not, in that they are delayed in reaching the hours threshold for the next “Work Experience Group.”

My employment on the LA/LB docks

33. In November 2014, having worked on the docks for nearly 8 years, I became pregnant with my first child.

34. Because Respondents do not offer modified duty work for pregnant workers and because I did not believe I could work safely without accommodation, I stopped regularly reporting for work and instead worked only the minimum number of hours required to maintain good standing as a casual worker, until having my baby in late summer 2015.

35. I returned to work in November 2015 and attempted to breastfeed by taking breaks in my car, but found my breaks too unpredictable, and the location of my job assignments

too far from the parking lot, so I stopped working regular hours in order to continue breastfeeding at home.

36. I returned to work in late summer 2016. Accordingly, unlike my colleagues who were unable to work due to occupational injuries or military service, (a) from November 2014 until late summer 2015, I accrued only the minimum number of work hours, (b) between late summer 2015 and late summer 2016, I did not accrue any work hours, except for the few weeks in November 2015 when I attempted to breastfeed on the job.

37. Based on the hours accrued by my “casual,” non-pregnant peers during the same time period, I estimate that I lost approximately 1,500 hours due to pregnancy, childbirth, and related medical conditions.

38. These losses not only place me at a disadvantage with respect to the next round of Class B elevations, but also in achieving the next wage increases to which I will be entitled under the Work Experience Group wage scale. As of December 22, 2017, the date on which Respondents elevated 280 more casuals to Class B status, I have accrued roughly 2,557 hours.

Allegations of discrimination on behalf of me and the class of similarly-situated women

39. Respondents engaged and continue to engage in a pattern or practice of discrimination against me, and a class of employees similarly affected by pregnancy, childbirth, and related medical conditions employed at any time by Respondents as casual longshore workers since June 23, 1984 and continuing through the present (the “Class”), on the basis of sex in violation of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 and the

Pregnancy Discrimination Act (“Title VII”), by refusing to extend the same seniority accrual policy to me and other workers absent due to pregnancy, childbirth, and related medical conditions as Respondents do to other, non-pregnant workers similar in their ability or inability to work.

40. Respondents engaged and continue to engage in a pattern or practice of discrimination against me and the Class on the basis of sex in violation of Title VII by refusing to accommodate my pregnancy, and that of other women in the Class, by either temporarily reassigning or modifying job duties to duties consistent with needs due to pregnancy or breastfeeding or, if such accommodation poses an undue burden, then by allowing us to go on leave with the same seniority accrual policy as is applied to other, non-pregnant workers similar in their ability or inability to work.

41. Respondents engaged and continue to engage in a pattern or practice of discrimination against me and the Class on the basis of sex in violation of Title VII by refusing to accommodate my pregnancy-related condition of lactation and my consequent need to pump breast milk at work, and that of other women in the Class, by either providing reasonable breaks and a hygienic, private space in which to pump or, if such accommodation poses an undue burden, then by allowing us to go on leave with the same seniority accrual benefits as is applied to other, non-pregnant workers similar in their ability or inability to work.

42. Respondents have not articulated a sufficiently strong reason to justify the significant burden posed by its failure to provide workplace accommodations and by its refusal to extend the

same seniority accrual benefits as it provides to other, non-pregnant workers similar in their ability or inability to work.

43. On information and belief, Respondents' policy or practice of limiting seniority accrual to workers absent due to on-the-job injuries and military service had and continues to have a disparate impact on me and the Class as compared to seniority accrued by other, non-pregnant workers similar in their ability or inability to work. Such disparate impact cannot be justified by business necessity.