

Web form



Office of the Attorney General - Division of Human Rights

202 North Ninth Street • Richmond, VA 23219 • Office: (804) 225-2292 Fax: (804) 225-3294

Complaint Questionnaire

The information requested on this form will help us to help you. The information submitted will determine whether your complaint will be investigated. Filing with this office does not preclude you from filing with other Federal or State Agencies. Please be specific in your responses and indicate the month, day, and year of the alleged discriminatory actions.

Complainant's Date of Birth: November 1988
Month Day Year

Name Katherine Elizabeth Carline
First Middle Last

Address ██████████ ██████████ ██████████
Street Apartment Number

City/County Richmond State Virginia Zip Code ██████████

Home Number (██████████) ██████████ Work Number () ██████████

Contact telephone numbers: Work ██████████ Home ██████████

Time to be contacted: ██████████ Days (check): Mon. Tues. Wed. Thurs. Fri.

Person to contact if you cannot be reached: Nicole Tortoriello

Address ACLU of Virginia, 701 E. Franklin St., Ste. 1412, Richmond VA 23219

Telephone (804) 726-6013

I WISH TO COMPLAIN AGAINST:

Check all that apply: Employer Realtor/Rentor
 Organization Place of Public Accommodation
 Educational Institution

JAN 28 2020

If Employer, how many employees does the company employ? More than five

Name of Company and Address: Garden Creations
P.O. Box 424, Montpelier, VA 23192

Name and Title of Principal Officer (President, Owner, Manager, etc.)
David Seward Owner
Name Title

Telephone Number (804) 559-9595

1. You believe that the action taken against you is based on your (Check all that apply)
 Race National Origin Disability
 Color Sex Pregnancy
 Religion Age Childbirth or Medical Conditions Related to Pregnancy

2. If your complaint involves employment, what was your position and how long did you hold the position?
(Example: Welder, January 2004 – December 2005)
July 14, 2019 - September 6, 2019

3. How do you feel you were discriminated against? (*For example in employment, denied promotion*).
What information do you have to indicate that you were treated differently? Please be specific.

I was terminated after reporting sexual harassment by a colleague, and during my employment was not provided adequate restroom facilities. I have attached a statement of harm describing the discrimination I faced and the events leading up to my termination, as well as the text messages in which I was terminated.

4. Date(s) of alleged discriminations: (Example: 9/26/00)
Termination: September 6, 2019; Sex-based discrimination: throughout August 2019 through termination.

5. What reason(s) (if any) was given for the action taken against you?
I was told via text message "After much soul searching I can't think of a way to insure everyone at Garden Creations can be happy and work with all other employees in the company. With that in mind we need to sever our working relationship." I replied, "So I'm being fired because I came to you guys about a coworker making me uncomfortable, that was never handled properly?" The owner responded, "It's more than that. The dynamics aren't working. I did talk with everyone involved. Something as you described should have been handled person to person."

I have attached this text message conversation for your reference.

6. What remedy are you seeking?
One year's back pay and any other damages available under law.

7. Did you file a complaint with any other state and/or federal agency? Yes No

If so, which agency and the date of filing _____

8. If you have an attorney, please give name, address, and telephone number:

Name Nicole Tortoriello

Address ACLU of Virginia, 701 E. Franklin St., Ste. 1412, Richmond, VA 23219

Telephone Number (804) 726-6013

9. Personal Data

Please check appropriate boxes and fill appropriate space:

A. Sex Female Male

B. Ethnic Group: White/Caucasian African American/Black
 Hispanic American Asian American
 Native American Other (specify) _____

C. Age (current) ³¹ _____

D. E-mail Address [REDACTED]

I understand that by returning this completed questionnaire to your office, I have filed an official complaint with the Division of Human Rights. However, this does not mean that the complaint will be accepted for investigation. If accepted for investigation, The Division will notify the person or organization that I have named in my complaint. I declare under penalty of perjury that the information provided herein is true and correct to the best of my knowledge.

Kate Carlin
Signature

1.28.2020
Date

Carline v. Garden Creations, LLC
Statement of Harm

1. I am filing this Complaint with the Office of the Attorney General's Division of Human Rights against Respondent Garden Creations.

2. I was employed as a Horticulturist with Garden Creations from July 14, 2019 until my termination on September 6, 2019.

3. I earned an associate degree in horticulture with a certificate in sustainable agriculture from J. Sargeant Reynolds Community College in December 2017. Since Spring 2018, I have been pursuing a bachelor's degree in environmental science from J. Sargeant Reynolds. I came to Garden Creations with over seven years of experience working in horticulture at a local nursery and a local botanical garden.

4. Garden Creations terminated me because of my sex, and in retaliation for reporting the sexual harassment I was facing from another employee.

5. As a horticulturist, I worked on a landscaping crew with two male colleagues. We would ride in a work truck to different job sites and maintain the landscaping at residential houses, which included tasks like pruning, weeding, and mowing lawns.

6. I was the only female employee at Garden Creations during my employment.

7. The other employees included David Seward, the owner; Dustin Wooten, my manager; Joe Hunt, horticulturist; Christian (last name unknown), horticulturist; and two male college students employed seasonally. Upon information and belief, a new part-time employee was hired in approximately late August 2019, prior to my termination, but did not begin working until after my termination.

8. For most of my employment, I enjoyed good working relationships with my co-workers and supervisors, and received no negative reports regarding my performance.

9. Joe Hunt, another horticulturalist at Garden Creations, offered to complete repair work in my apartment in late July. Initially, I appreciated the offer. When he came over to complete the work, however, he lingered, seemed to take unnecessarily long, and possibly seemed to be interested in spending time at my apartment rather than his own home. It made me uncomfortable and frustrated to be in my apartment alone with him for several hours. Eventually, I told him I would complete the rest of the repair work myself in order to encourage him to leave my apartment. He seemed displeased, but left the apartment at that time.

10. In early August 2019, Joe Hunt began to sexually harass me. There were numerous unwanted incidents over several weeks that made me uncomfortable, including:

- a. When driving to work sites, Joe, Christian, and I would sit three across in the work truck's seat. I always sat in the middle because I was the smallest of the three of us. Joe frequently sat unnecessarily close to me, so that our legs would touch, until I asked him to move over to give me some space.
- b. While working throughout the summer, Joe would make moaning sounds similar to sounds made during an orgasm. One day in or about early August, while eating lunch in the truck with a seasonal employee and me, he made orgasm noises so loud while looking at his phone that the seasonal employee asked him to stop because it was making us feel uncomfortable.
- c. Joe frequently changed his shirt or took off and adjusted his belt while standing immediately next to me, rather than giving me a reasonable amount of personal space. Rather than getting ready for work at home, he would drive to the shop where we met each morning and park. He would get out of his car and proceed to change his shirt and apply deodorant within several feet of me, sometimes as

close as a foot or two away. In order to defuse the awkwardness I felt in these situations, I would not look at him, and several times asked him to change on the other side of the truck or not to change so close to me.

- d. At a work event swimming at David Seward's pool, Joe and Dustin were discussing my learning to drive the riding mower or a tractor, which is difficult. During the discussion, Joe made a sexually explicit joke about "riding him hard," or something to that effect.
- e. At the same event, Joe also went swimming in his underwear, and behaved flirtatiously toward me. He rested his hand on mine and did not apologize or remove it until I pulled away. After the event, I had to drive the work truck back to the shop because of his intoxication, and during the ride he touched my arms and legs flirtatiously until I told him to stop.
- f. Joe took an unwanted photograph of me at the rented space where we would start every work day. I was petting a horse at the space, as I did regularly, when Joe called out to me. I looked up, and he snapped a photo of me, which he sent to me via text message on August 8. It made me uncomfortable that he was taking a photograph of me that I did not ask for, nor did I want.
- g. Whenever I asked Joe to stop his flirtatious or inappropriate behavior, his demeanor toward me would change, and he would become distant or frustrated.

11. After many of these instances, I was so uncomfortable that I sought advice from friends and loved ones about how to handle the situation.

12. Over the course of my employment, Joe sent me text messages about the repair work in my apartment, and with offers of other landscaping jobs. I remained polite and cordial in my

responses to these messages, in order to maintain a positive working relationship. However, I did not want to communicate with him outside of work hours after the harassment started, so I tried to end the conversations as quickly as possible.

13. Additionally, my male colleagues would not let me leave work sites to go to the restroom. They would urinate or defecate outside at the work sites. As a female, this was not an option for me. Dustin told Christian and Joe that I was to be permitted to take the work truck to leave a site when I needed to use the restroom. In practice, this was difficult to do. I tried to tell my colleagues when I was menstruating so they would know I would need more frequent restroom access on those weeks, but Joe did not want to hear such information. When I told Joe or Dustin that I needed to use the restroom, they would pressure me to stay on the work site until we finished the work, rather than leaving the site to change my tampon or use the restroom. Especially when menstruating, this was not a reasonable request. On at least two occasions, they made me wait approximately 30 minutes before leaving, while I bled through my clothing. On one occasion I had to change my tampon behind a tree, with no access to toilet paper or anywhere to wash my hands. I was concerned I would get fired if I simply took the keys to the truck and left. Some days I would even limit how much water I drank while working so that I would not need to use the restroom.

14. On the morning of Friday, August 16, I told Dustin about Joe's unwanted, inappropriate behavior while I was in the work truck with Dustin about to leave for a work site. Dustin immediately called David while we were still in the truck. Dustin put David on speakerphone, and told me they would talk to Joe and provide us all with harassment guidelines and forms.

15. After I told Dustin and David about Joe's harassing behavior, I waited for them to take action to improve my work environment. I feared creating even more stress in my work

environment as a result of speaking up, but I also dreaded going to work while I did not know what, if any, actions were being taken.

16. The end of the following week, on or about August 22 or 23, David provided me with an employee handbook that contained work policies. I had never seen this handbook prior to this date. The sexual harassment policy was a brief paragraph, and recognized sexual harassment as an offense that warranted discharge. The policy included a description of sexual harassment as “Any unwelcome conduct based on or because of a person’s gender, not just ‘sexual conduct.’” It continued, “Sexual harassment can take many forms including, but not limited to, sexual innuendoes, suggestive statements, propositions, threats, threatening conduct, or unwanted physical contact.” As I had expressed to Dustin and David on August 16, Joe’s conduct toward me was unwanted and appeared to be based on my sex. I thought it fell within this policy.

17. I am not aware of David or Dustin providing the handbook to any other employees. Upon information and belief, neither Dustin nor David talked to Joe about my concerns until approximately Wednesday, September 4.

18. On September 4, I went to a work site with Joe, Christian, and Dustin. Around lunch time, Joe left the work site with Dustin in Dustin’s personal car. About an hour after they left, Dustin texted Christian to say they would not be returning to the work site. Christian and I continued working until we completed the job. After completing the job, we returned the work truck back to the shop. Dustin and Joe were in the shop, but I did not speak to either of them. This was my last work day.

19. On Friday, September 6, I received a text message from David stating “After much soul searching I can’t think of a way to insure [*sic*] everyone at Garden Creations can be happy and

work with all other employees in the company. With that in mind we need to sever our working relationship.”

20. I responded via text message, saying, “So I’m being fired because I came to you guys about a coworker making me uncomfortable, that was never handled properly?”

21. David responded, saying “It’s more than that. The dynamics aren’t working. I did talk with everyone involved. Something as you described should have been handled person to person.”

22. I responded in agreement, saying, “Yeah, it should have been.”

23. To my knowledge, Joe was never disciplined nor was he terminated.

24. Rather than remedy the harassment I faced and provide a work environment in which a female employee could succeed, Garden Creations chose to terminate my employment.

25. As outlined above, Garden Creations violated the Virginia Human Rights Act by terminating me because of my sex.

26. Also, as outlined above, Garden Creations violated the Virginia Human Rights Act by terminating me in retaliation for reporting sexual harassment from a co-worker.

27. Also, as outlined above, Garden Creations’ treatment of me as a female worker violated the Virginia Human Rights Act by subjecting me to unlawful discrimination in the terms and conditions of my employment in the form of sexual harassment and failing to provide me with adequate restroom access.

28. As a result of the discriminatory termination from Garden Creations, I have suffered and continue to suffer lost income and other benefits.



David >

Fri, Sep 6, 4:23 PM

Katie,
 After much soul searching I can't think of a way to insure everyone at Garden Creations can be happy and work with all other employees in the company. With that in mind we need to sever our working relationship. I'd be happy to have an exit interview if you'd like. Please get me your hours so I can get your final paycheck to you next Friday.
 Thanks for you help and I'm sorry it didn't work out.
 David

So I'm being fired because I came to you guys about a coworker making me uncomfortable, that was never handled properly?

I can email you my hours

It's more than that. The dynamics



iMessage



Verizon

2:52 PM

17%



David

we need to sever our working relationship. I'd be happy to have an exit interview if you'd like. Please get me your hours so I can get your final paycheck to you next Friday. Thanks for you help and I'm sorry it didn't work out. David

So I'm being fired because I came to you guys about a coworker making me uncomfortable, that was never handled properly?

I can email you my hours

It's more than that. The dynamics aren't working. I did talk with everyone involved. Something as you described should have been handled person to person.

Yeah, it should have been.

Delivered



iMessage

