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EEOC v. Oglethorpe University

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EEOC v. Oglethorpe University

Keywords

EEOC, Oglethorpe University, 1:06-CV-0711-ODE, Consent Decree, Disparate Treatment, Retaliation, Assignment, Compensation, Hiring, Promotion, Termination, Terms and Conditions, National Origin, Hispanic or Latino, Education, Employment Law, Title VII

MAR 5 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTING
By *[Signature]*

EQUAL EMPLOYMENT)
 OPPORTUNITY COMMISSION,)
)
 Plaintiff,)
)
 and)
)
 ALBA HERNANDEZ, EVA)
 RODRIGUEZ and SANTA LOPEZ,)
)
 Plaintiff-Interveners,)
)
 v.)
)
 OGLETHORPE UNIVERSITY,)
)
 Defendant.)

CIVIL ACTION NO:
1:06-CV-0711-ODE

CONSENT DECREE

This action was instituted by the Equal Employment Opportunity Commission (hereinafter, the "EEOC") against Defendant Oglethorpe University (hereinafter the "Defendant") pursuant to Section 706(f)(a) and (3) of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq. (hereinafter referred to as "Title VII") and the Civil Rights Act of 1991, 42 U.S.C. § 1981(a) to remedy the alleged wrongful employment practices identified in the Complaint filed in this action.

This Court has jurisdiction of the subject matter of this action and of the

parties to this action.

The Commission alleges in the foregoing civil action that the Defendant acted unlawfully by subjecting the Charging Parties to discrimination based upon national origin and retaliation in violation of Title VII. In its Complaint, the Commission sought make whole relief including, but not limited to, compensatory damages, punitive damages, injunctive and other affirmative relief. The Defendant filed its Answer denying the allegations made by the Commission. Defendant disputes and denies any liability to the Commission or to any other person(s). This agreement is not to be deemed or construed to be an admission of liability or wrongdoing by Defendant but constitutes the good faith settlement of a disputed claim.

All of the parties to this action desire to avoid the additional expense, delay and uncertainty which would result from the continuance of this litigation and desire to formulate a plan to be embodied in a Consent Decree which will promote and effectuate the purposes of Title VII.

This Court has reviewed the terms of the proposed Consent Decree in light of the pleadings and the applicable law and regulations, and has approved this Consent Decree as one which will promote and effectuate the purposes of Title VII.

Now, therefore, this Court, being fully advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED:

I. DISCLAIMER OF VIOLATION

It is understood and agreed that the negotiation, execution and entry of this Consent Decree, and the undertakings made by Defendant hereunder, are in settlement and compromise of disputed claims of national origin discrimination and retaliation, the validity of which Defendant denies. Neither the negotiation, execution nor entry of this Consent Decree shall constitute an acknowledgment or admission of any kind by the Defendant that its officers, agents or employees have violated or have not been in compliance with Title VII or any rules and regulations issued under or pursuant to Title VII or any other applicable law, regulation or order.

II. NON-DISCRIMINATION AND NON-RETALIATION

Defendant shall not discriminate against any employee or affected group member in any aspect of employment on the basis of national origin and shall not retaliate against any person because that person is a beneficiary of the Consent Decree, or has provided information or assistance, or has participated in any other manner in any investigation or proceeding relating to this Consent Decree.

Defendant, to ensure equal opportunity in the employment process, shall make all decisions affecting hiring, promotion, compensation, job assignment, sick and disability leave, discharge and other terms, conditions and privileges of

employment, without regard to race, color, sex, religion or national origin. The Defendant shall not retaliate or take any adverse action against other persons in the future because of their opposition to practices they believe are in violation of Title VII or because of their participation in the investigation of the charge or prosecution of this litigation.

III. NOTICES TO BE POSTED: INSTRUCTION TO MANAGEMENT

Defendant shall keep posted the notice required to be posted pursuant to Section 711 of Title VII, and, for at least two (2) years immediately following the entry of this Decree, shall also keep conspicuously posted a copy of the notice attached to this Decree at Defendant's facilities. Within forty-five (45) days from the entry of this decree, Defendant shall instruct its management and supervisory personnel regarding the full meaning of those notices and this Consent Decree. The posting required by this paragraph shall be conspicuously made on bulletin boards or locations selected so that each employee at the facilities will observe at least one such posting when at the facility. Defendant shall certify the completion of the posting and instruction to the Commission within forty-five (45) days from the entry of this Consent Decree. All written certification required by this Section shall be addressed to Robert Dawkins, Regional Attorney, EEOC Atlanta District Office, 100 Alabama Street, Suite 4R30, Atlanta, Georgia 30303.

Defendant shall not withhold the right of the Commission to enter upon

Defendant's premises, with reasonable notice, to monitor compliance with this Section. Should the Notice become defaced, marred, or otherwise unreadable, Defendant shall ensure that a new, readable copy of the Notice is posted in the same manner as heretofore specified.

IV. INSTRUCTION TO MANAGEMENT

Within forty-five (45) days from the entry of this Decree, Defendant shall certify, in writing, to the EEOC that all management and supervisory personnel who are currently employed at its facility or facilities have been instructed as to the terms of this Consent Decree (other than the monetary amount of the settlement), and the full meaning of the provisions of the Notice to be posted, and that Defendant has reaffirmed with these employees that employment decisions are not to be made on any basis that is prohibited by Title VII. All written certification required by this Section shall be addressed to the Regional Attorney at the EEOC's Atlanta District Office at the above-referenced address.

V. REPORTING REQUIREMENT

For the duration of the term of this Decree, Defendant agrees that any complaint arising at its Georgia location(s), and brought to the attention of management by any employee(s) against any other employee(s) or manager(s) alleging discrimination on the basis of national origin and/or retaliation shall be reported to the Regional Attorney of the EEOC Atlanta District Office. Every six

months for the duration of this Consent Decree, Defendant shall certify, in affidavit form, a summary report to the Regional Attorney specifying whether an employee has complained about national origin discrimination and/or retaliation. If an employee has so complained, the summary report shall state in written affidavit form the following:

- (a) The date of the complaint or report,
- (b) The name of the person making the complaint or report,
- (c) The name and title of the person against whom the complaint or report was made,
- (d) The nature of the complaint or report,
- (e) The name and title of the Defendant's official who learned of the complaint or report,
- (f) What, if any, action was taken by Defendant in response to the complaint or report (e.g. employee discipline), and
- (g) A detailed narrative of how the complaint or report was resolved by Defendant. The report should be addressed to the Regional Attorney in the EEOC's Atlanta District Office at the above-referenced address.

VI. DISCONTINUATION OF ENGLISH-ONLY POLICY

The Defendant agrees that, immediately upon entry of this Consent Decree, it will not require by policy or practice that employees, whose language of national

origin is other than English, speak only English in the course of performing their duties for Defendant.

VII. CHARGING PARTIES' INDIVIDUAL RELIEF:
MONETARY RELIEF

Defendant, in settlement of all alleged claims of injuries sustained due to alleged discriminatory employment practices, shall provide to Charging Party Alba Hernandez the amount of \$15,537.60, in a check made payable to her. Defendant shall provide to Charging Party Eva Rodriguez the amount of \$16,161.60, in a check made payable to her. Lastly, Defendant shall provide to Charging Party Santa Lopez the amount of \$15,080.00, in a check made payable to her. Each Charging Party will be responsible for paying income taxes, if any. Copies of said checks will be mailed within five working days of the initial mailings to each Charging Party to Robert Dawkins, Regional Attorney, EEOC Atlanta District Office, 100 Alabama Street, Suite 4R30, Atlanta Georgia 30303.

VIII. REFERENCES

Defendant agrees that, if it receives legitimate inquiries from persons or prospective employers seeking a reference or other employment related information regarding any of the Charging Parties involved in this case, it shall provide no less than a neutral reference, citing the dates of employment and the position(s) held. Defendant will make no mention to persons or prospective employers seeking a reference of the fact that the Charging Parties filed a charge of

discrimination, that the instant lawsuit was filed, or that they participated in the charge process, or was a claimant in the instant lawsuit. This paragraph does not apply to any inquiries made for the purpose of testing Defendant's compliance with this consent decree.

IX. TRAINING

Defendant shall, in an appropriate location, hold a training session for all of its administrative personnel, including all of its managers and officers employed at the Defendant's Georgia facilities, the cost of which is to be borne by Defendant. Said training session shall address the Defendant's and its employees' equal employment opportunity obligations pursuant to Title VII, including, but not limited to, Defendant's anti-retaliation obligations. The above referenced training shall be completed within one hundred and twenty (120) days of the entry of this Consent Decree. On or before that date, Defendant shall certify to the Regional Attorney that such training has been completed.

Defendant shall notify the EEOC at least five (5) days in advance regarding the date(s) and time(s) the training contemplated by this Section IX will be accomplished. Defendant shall provide written certification to the EEOC of training completed pursuant to this Section IX within thirty (30) days following completion of training. The certification shall include the names and qualifications of the person(s) providing instruction, names and job titles of attendees, length of

training, training topics, and any other pertinent information about the training. If written training materials are utilized, the Commission shall be supplied with a copy prior to the training.

X. PROCEDURE FOR ENFORCING COMPLIANCE

The Commission will attempt to resolve any dispute regarding the enforcement of this Consent Decree by informal mediation and consultation before seeking enforcement through the judicial process. The Commission will notify Defendants in writing by certified mail if it has any reason to believe that any action or omission by Defendant is in violation of the Consent Decree. Defendant shall have thirty (30) days after the receipt of such notification to cure any such alleged deficiency, and to notify the Commission, by written report addressed to the Regional Attorney for the EEOC's Atlanta District Office, of the measures taken to cure the alleged deficiencies. If upon receipt of Defendant's report the Commission concludes that the deficiency has not been satisfactorily cured by the Defendant, the Commission shall seek to resolve the alleged deficiency through good faith conciliation or mediation. If the alleged deficiency is not resolved within thirty (30) days after the initiation of such good faith conciliation or mediation process, then the Commission may seek enforcement of this Consent Decree through the judicial process.

XI. COMPLIANCE OFFICIAL

Defendant's Director of Human Resources shall be responsible for compliance with this Consent Decree, and shall also be responsible for coordinating and overseeing Defendant's compliance with this Consent Decree.

XII. TERMS OF DECREE - PERIOD OF JURISDICTION

This Consent Decree shall continue to be effective and binding upon the parties to this action for a period of twenty-four (24) calendar months immediately following the entry of the Decree, provided that all remedial benefits required hereby have been received or offered prior to its expiration and provided further, that all required reports and certifications are submitted at least thirty (30) days before the expiration date of the Consent Decree. If required reports are not submitted within thirty (30) days of the expiration date or if the remedial benefits are not received or offered, the Consent Decree will be automatically extended until these provisions are completed.

This Court shall retain jurisdiction over this action for the purposes of clarifying and enforcing this Consent Decree and for any other appropriate or equitable purposes for twenty-four (24) calendar months from the date of entry of this Consent Decree, unless the Court acts or the EEOC has, prior to the expiration of said twenty-four (24) month period, moved to enforce compliance with the Consent Decree. If this Court acts or the EEOC has moved to enforce compliance

with this Consent Decree within this period, this Court shall retain jurisdiction of this action until all issues relating to all such motions which are made during the twenty-four (24) month period have been resolved. Therefore, this Court shall retain jurisdiction over this action as described above and shall dismiss this cause with prejudice in accordance with Court procedures.

XIII. OTHER ACTIONS

The EEOC shall not commence or prosecute Defendant for any action or other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities which arise out of EEOC Charge Numbers 110-2004-00041, 110-2004-00045, 110-2004-00046, and 110-2004-01955, the EEOC's investigation of the charges, or this lawsuit. This Consent Decree in no way affects the EEOC's right to process any pending or future charges that may be filed against Defendant or its owners in accordance with standard EEOC procedures, and to commence civil actions pursuant to Section 706 (f) of Title VII on any such charge. Nothing in this Consent Decree shall be construed to limit or reduce Defendant's obligation to fully comply with Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Americans with Disabilities Act of 1990; or the regulations promulgated pursuant thereto. Nothing herein shall preclude the EEOC from bringing an action to enforce the provisions of this Consent Decree.

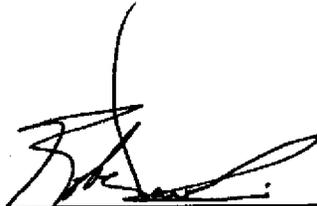
XIV. COSTS AND ATTORNEY FEES

The EEOC and Defendant shall each bear their own respective costs and attorneys fees for this action.

The parties hereto and undersigned attorneys of record for the EEOC and Defendant in the above-styled action hereby consent to the entry of the foregoing Consent Decree.

BY CONSENT:

Counsel for Plaintiff:



Robert K. Dawkins
Regional Attorney
Michigan Bar No. P-38289

EEOC - ATLANTA DISTRICT
OFFICE
100 Alabama Street, SW
Suite 4R30
Atlanta, Georgia 30303
(404) 562-6932 - phone
(404) 562-6905 - fax

Defendant:



Lawrence Schall
President, Oglethorpe University

Counsel for Defendant:



Burton F. Dodd, Esq.
Fisher & Phillips LLP
1500 Resurgens Plaza
945 East Paces Ferry Road
Atlanta, GA 30326

The Clerk is directed to administratively close the file. OC

APPROVED, DONE, and SIGNED this 2 day of March, 2007.

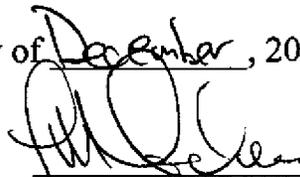


District Judge
U.S. District Court of Georgia
Northern District of Georgia, Atlanta Division

NOTICE

1. This notice to all employees of Oglethorpe University (hereinafter the "Company") is being posted as part of an agreement between the Company and the Equal Employment Opportunity Commission (hereinafter the "EEOC").
2. Federal Law requires, in general, that there be no discrimination against any employee or applicant for employment because of the person's race, color, religion, sex, pregnant condition, national origin, disability or age with respect to hiring, firing, compensation or other terms, conditions or privileges of employment.
3. The Company supports and will comply with such Federal Law in all respects and will not take any action against employees because of their sex, pregnant condition, race, color, religion, national origin, disability or age or because they have exercised their rights under the law.
4. The Company has taken and will continue such remedial action as is required by the agreement between the Company and the EEOC.
5. This notice will remain posted for twenty-four (24) months, until December 2008.

Signed this 14th day of December, 2006.



Defendant Official

DO NOT REMOVE THIS NOTICE UNTIL
December 2008