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EEOC. v. Fox News

Judge William H. Pauly

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EEOC. v. Fox News

Keywords

EEOC, Fox News, Consent Decree, 05-CV-9419 (WHP/RLE), Disparate Treatment, Retaliation, Hostile Work Environment, Sexual Harassment, Sex, Female, Media, Employment Law, Title VII

JUL 31 2006
CHAMBERS OF
WILLIAM H. PAULEY

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/8/06

SO ORDERED:
William H. Pauley III
WILLIAM H. PAULEY III U.S.D.J.
8/4/06

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, :

Plaintiff, :

v. :

FOX NEWS NETWORK, LLC, :

Defendant. :
-----x

ECF CASE
05-CV-9419 (WHP/RLE)

CONSENT DECREE

The parties to this Consent Decree are the Equal Employment Opportunity Commission ("EEOC") and Fox News Network, LLC ("Defendant").

WHEREAS, EEOC brought this action on or about November 7, 2005 pursuant to Title VII of the Civil Rights Act of 1964, as amended (Title VII) ("the Action"). EEOC alleged that Defendant discriminated against the Charging Party, Kim Weiler, and a class of similarly-situated women by subjecting them to harassment, a hostile environment and disparate treatment because of their sex, female. EEOC also alleged that Defendant retaliated against Weiler for engaging in protected activity in opposing the discrimination;

WHEREAS, Defendant denied each of the claims and allegations in the EEOC Action;

WHEREAS, the parties hereto desire to settle this action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and their successors or assigns. The parties agree that it is in their mutual interest to resolve this matter fully without the costs, uncertainty, expense and delay of litigation; and

The parties agree that this Decree may be entered into without Findings of Fact and

Conclusions of Law being made and entered by the Court. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all parties to this Consent Decree and approved or ordered by the Court.

NOW THEREFORE, in consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Decree resolves any and all issues, claims and allegations that were raised by EEOC Charge Number 160-2004-02728 and the Action. This Decree in no way affects EEOC's right to process any future charges that may be filed against Defendant and to commence civil actions on any such charges as EEOC sees fit.
2. The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.
3. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Breach of any term of this Decree should be deemed to be a substantive breach of this Decree. Nothing in this Decree shall be construed to preclude a party from bringing proceedings to enforce this Decree in the event that the opposing party fails to perform any of the promises and representations contained herein.
4. Defendant and its managers, officers, agents, successors, or assigns shall not discriminate against or harass any individual because of the individual's sex, or engage in retaliation toward any individual for asserting his or her rights under Title VII. Defendant and its managers, officers and agents shall not retaliate against any individual who has participated in this matter in some way, including giving testimony in this matter. This includes, but is

-
- not limited to, Kim Weiler, Jacqueline Oliver, Kathryn Bougadis and Stephanie Lowenthal.
5. Defendant shall pay the total sum of \$225,000 to Kim Weiler, Jacqueline Oliver, Kathryn Bougadis, Stephanie Lowenthal (collectively, "Claimants"). EEOC shall have sole discretion in the distribution of this sum among the Claimants.
 6. Within ten (10) calendar days of entry of the Consent Decree, EEOC shall inform Defendant in writing of the amount to be distributed to each Claimant, and whether each amount represents backpay or compensatory damages, and shall provide Defendant with each such Claimant's address and Social Security Number. Within ten (10) business days after Defendant's receipt of this information, Defendant shall send to each Claimant a check (or checks, if applicable) in the amount specified by EEOC. A copy of each check shall be forwarded to Raechel L. Adams, Esq., Equal Employment Opportunity Commission, 33 Whitehall Street, 5th Floor, New York, NY 10004, immediately upon issuance of the check.
 7. In connection with each check for backpay, Defendant shall issue to the Claimant an IRS Form W2, and in connection with each check for compensatory damages, Defendant shall issue to the Claimant an IRS Form 1099. All Claimants shall be responsible for any taxes owed by them with respect to these payments.
 8. No later than seven (7) business days from the date of entry of this Decree, Defendant agrees to post EEOC's poster in places visually accessible to employees and applicants in Defendant's principal New York office.
 9. No later than seven (7) business days from the date of entry of this Decree, Defendant agrees to post a remedial Notice pursuant to the Consent Decree, attached hereto as Exhibit A, on all bulletin boards visually accessible to employees and applicants, where notices to employees

are regularly posted.

10. Beginning in January 2007, Defendant will provide four (4) hours of training in federal laws prohibiting discrimination in employment for all current employees. The training will be provided by Rossein Associates. The agenda for the training, which has been reviewed and approved by EEOC, is attached hereto as Exhibit B. The training will be repeated beginning in July of 2008. Each training cycle will be completed within twelve (12) months of commencement.
11. Beginning in January 2007, Defendant will provide four (4) hours of training in federal laws prohibiting discrimination in employment for all current management/supervisory employees. The training will be provided by Rossein Associates. The agenda for the training, which has been reviewed and approved by EEOC, is attached hereto as Exhibit C, with a module specifically designed for management and supervisory employees. The training will be repeated beginning in July of 2008. Each training cycle will be completed within twelve (12) months of commencement.
12. In addition to participating in the management/supervisory training described in Paragraph 11 above, Defendant will provide an individualized training session for the vice president/supervisor of the Advertising and Promotions Department in May 2007. The training will be provided by Rossein Associates. This training will be repeated in November 2008.
13. Defendant will forward to EEOC a copy of an attendance sheet for each training session within thirty (30) days of the completion of each training session.
14. Defendant agrees to maintain the anti-discrimination policy attached hereto as Exhibit D, which includes an anti-harassment policy, an anti-retaliation policy and a complaint procedure. The anti-discrimination policy has been reviewed and approved by EEOC.

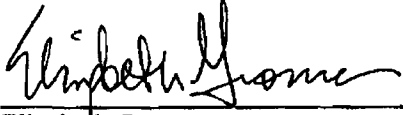

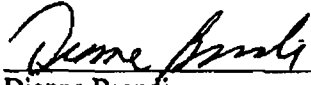
Defendant further agrees to distribute the approved anti-discrimination policy to all employees within thirty (30) days of the entry of the Consent Decree and at the time the employees are trained pursuant to Paragraphs 10-12, above.

15. Each party shall bear its own attorney fees and costs incurred in this action.
16. This Decree constitutes the complete understanding among the parties. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.
17. This Decree will remain in effect until December 31, 2009.
18. Defendant agrees to make available for inspection and copying any records reasonably related to the enforcement of this Decree, upon seven (7) business days written notice by EEOC, which notice shall specify those records that EEOC seeks to inspect.

SO ORDERED, ADJUDGED AND DECREED this _____ day of _____,
2006.

U.S. District Judge

APPROVED IN FORM AND CONTENT:

<p>FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION</p> <p> Elizabeth Grossman Regional Attorney</p> <p>Judy Keenan Acting Supervisory Trial Attorney</p> <p>Raechel L. Adams Senior Trial Attorney</p> <p>33 Whitehall Street 5th Floor New York, NY 10004 (212) 336-3707 Fax (212) 336-3623</p>	<p>FOR FOX NEWS NETWORK, LLC</p> <p> Blythe E. Lovinger Kasowitz, Benson, Torres & Friedman LLP 1633 Broadway New York, NY 10019-6799 (212) 506-1707 Fax (212) 506-1800</p> <p> Dianne Brandt General Counsel Fox News Network, LLC</p>
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THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____

**ROSSEIN ASSOCIATES
BUILDING RESPECT IN THE WORKPLACE**

**Training Outline for Providing Four Hours of Training
For all Employees in Federal Laws Prohibiting Discrimination and Harassment**

- I. INTRODUCTION and OVERVIEW

 - II. WHY EMPLOYERS MUST BE PROACTIVE
IN PREVENTING HARASSMENT AND DISCRIMINATION
 - A. Liability
 - B. Collegiality
 - C. Productivity
 - D. Disruption

 - III. WHAT IS UNLAWFUL HARASSMENT AND DISCRIMINATION?
Discussion of scenarios (*see e.g.* Training Module)
 - A. Types of conduct that create a hostile environment
 - B. Types of conduct that constitutes unlawful discrimination
 - C. Range of responses available to both the victim and managers
 - D. Ways to address problems informally and formally

 - IV. DEFINITION OF HARASSMENT
 - A. Adverse Tangible Employment Action (*quid pro quo*)
 - B. Hostile or Abusive Environment
 - 1. Unwelcome
 - 2. Pervasiveness or Severity
-

-
- 3. Alteration of working conditions
 - 4. Objective/Subjective
 - C. Supreme Court Decisions
 - D. EEOC Guidelines on Harassment
 - E. Confidentiality
 - F. Corrective Actions
 - V. Federal Laws Prohibiting Discrimination Because of Sex, Race, National Origin, Color, Religion, Age and Disability
 - A. Different Treatment
 - B. Employment actions based on job related factor
 - VI. Retaliation
 - A. What is Retaliation—The Law
 - B. Review of Supreme Court Decision
 - C. Examples of Retaliation
 - VII. Fox News Network's Equal Employment Opportunity and Unlawful Harassment Policy
 - A. Review Policy
 - B. Review Complaint Mechanism
 - VIII. Conclusion
 - A. Employees', Managers' and Supervisors' Responsibilities
 - B. The Benefits of Promoting Respect in the Workplace

**ROSSEIN ASSOCIATES
BUILDING RESPECT IN THE WORKPLACE**

**Training Outline for Providing Four Hours of Training
For Managers and Supervisory Employees in Discrimination and Harassment Law**

- I. INTRODUCTION and OVERVIEW

- II. WHY EMPLOYERS MUST BE PROACTIVE
IN PREVENTING HARASSMENT AND DISCRIMINATION
 - A. Liability
 - B. Collegiality
 - C. Productivity
 - D. Disruption

- III. WHAT IS UNLAWFUL HARASSMENT AND DISCRIMINATION?
Discussion of scenarios (see, e.g. training module for managers)
 - A. Review of types of conduct that create a hostile environment
 - B. Types of conduct that constitutes unlawful discrimination
 - C. Range of responses available to both the victim and managers
 - D. Ways to address problems informally and formally

- IV. DEFINITION OF HARASSMENT (Review)
 - A. Adverse Tangible Employment Action (quid pro quo)
 - B. Hostile or Abusive Environment
 - 1. Unwelcome
 - 2. Pervasiveness or Severity
 - 3. Alteration of working conditions

-
- 4. Objective/Subjective
 - C. Supreme Court Decisions
 - D. EEOC Guidelines on Harassment
 - E. Confidentiality
 - F. Corrective Actions
 - V. Federal Laws Prohibiting Discrimination Because of Sex, Race, National Origin, Color, Religion, Age and Disability
 - A. Different Treatment
 - B. Employment actions based on job related factor
 - VI. Retaliation
 - A. What is Retaliation—The Law
 - B. Review of Supreme Court Decision
 - C. Examples of Retaliation
 - VII. Fox News Network's Equal Employment Opportunity and Unlawful Harassment Policy
 - A. Review Policy
 - B. Review Complaint Mechanism
 - C. Review Managers and Supervisory Employees Responsibilities
 - D. Review Various Case Studies
 - VIII. Conclusion
 - A. Employees', Managers' and Supervisors' Responsibilities
 - B. The Benefits of Promoting Respect in the Workplace

Fox News Network, LLC

Equal Employment Opportunity and Unlawful Harassment Policy

Equal Employment Opportunity Statement

Fox News Channel maintains a strong policy of equal employment opportunity for all employees and applicants for employment. The Company hires, trains, promotes and compensates each employee based upon job-related factors such as the individual's ability, work quality, attitude, competence and potential, as well as the Company's operational needs, without regard for race, color, religion, sex, sexual orientation, national origin, citizenship, age, marital status or disability, as well as all other classifications protected by applicable laws (collectively, the "Protected Classifications").

The Company's equal employment opportunity philosophy applies to all aspects of employment with the Company, including, but not limited to, recruiting, hiring, training, transfer, promotion, employee benefits and compensation, termination, educational assistance, leave of absence, and social and recreational activities.

Fair Work Environment

It is the Company's policy to promote a fair and collegial working environment for all our employees. In keeping with this policy, sexual, racial, religious, ethnic, sexual orientation, age, national origin or other harassment of any employee by anyone is contrary to Company policy and will not be condoned. The Company will endeavor to keep the work place free of any conduct that creates an intimidating, hostile or abusive work environment.

Accommodation For Disabilities

The Company endeavors to provide equal employment opportunities to otherwise qualified individuals with disabilities. Opportunities include, to the extent practical, providing reasonable accommodations.

In general, it is an employee's responsibility to notify the Company of the need for an accommodation. If an employee communicates to his or her supervisor that an accommodation is required, the supervisor may ask the employee for input about the type of accommodation necessary, or the functional limitations caused by the disability.

Unlawful Harassment

The Company opposes harassment of others on the basis of sex, sexual orientation, age, race or any other Protected Classification. Harassment includes making derogatory remarks about an employee's characteristics, using negative epithets, making "jokes" about ethnic or other groups, and other verbal or physical behavior.

All employees are expected to cooperate in maintaining this work environment. Any forms of unlawful harassment, whether verbal or physical, will not be tolerated by the Company at any level.

While all forms of harassment are prohibited, be they based on one's race or ethnicity, the Company wishes to emphasize the special problems of sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when;

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with the affected individual's work performance or creating a intimidating, hostile or offensive work environment.

Sexual harassment is prohibited whether directed toward men or women, and regardless of whether the employee accepts or rejects the advance.

The Company does not wish to interfere with the personal lives of its staff. However, conduct of a sexual nature directed toward Company employees that is not welcome and creates a hostile or abusive work environment can be unlawful sexual harassment, whether committed by supervisory or non-supervisory personnel. Examples of conduct that could constitute sexual harassment include:

- Sexual touching, advances, or propositions;
- Verbal abuse, epithets, derogatory statements or slurs;
- Graphic or suggestive comments about an individual's dress or body;
- Sexually degrading words to describe an individual; and
- The display in the workplace of sexually suggestive objects or pictures, including nude photographs.

The Company policy also applies to sexually improper conduct toward the Company's staff or clients, customers or other non-employees. If an employee informs the Company that he or she has been subject to sexual or other harassment in the workplace by a non-employee, that individual will be informed of the Company's policy and appropriate corrective action and preventative steps will be taken.

Please keep in mind that each of the concepts described in the preceding discussion of "sexual harassment" applies with equal force to all other types of prohibited harassment.

Discrimination And Harassment Complaints

The Company respects the right of each employee who complains about illegal discrimination of any kind, including sexual or other workplace harassment, or who provides information in connection with any such complaint. Retaliation against any employee for engaging in these protected activities is contrary to Company policy and will not be condoned. An employee who believes that he or she has experienced illegal discrimination or retaliation should report that immediately to the Human Resources Department or, if that is problematic, to the Company's Senior Deputy General Counsel, or other appropriate Company representative.

Your Supervisor

The Company is dedicated to having professional supervisors at all levels that can serve as sensitive and informed resources for their employees. Your supervisor should be your primary resource for information about your job, current developments and important changes within the Company. He/she should also be the person most capable of understanding any problems or issues you may have, and discussions and resolution of these matters should go through your supervisor first.

Your supervisor is also charged with reviewing your performance, counseling you, and seeing that you receive the direction, training and assistance necessary to be successful on the job. Your supervisor will work with you and help you to develop and achieve your career goals.

In exchange, your supervisor needs to hear from you. You should feel free to openly share with your supervisor your questions or concerns regarding any phase of your work or employment, and your ideas and suggestions for making improvements.