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## EEOC v. Britthaven, Inc.

Judge Thomas D. Schroeder

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## EEOC v. Britthaven, Inc.

### **Keywords**

EEOC, Britthaven, 1:07CV00408, Consent Decree, Disparate Treatment, Terms and Conditions, Termination, Sex, Female, Healthcare, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:07CV00408
	)	
BRITTHAVEN, INC.,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**CONSENT DECREE**

The Equal Employment Opportunity Commission (the "Commission") instituted this action pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

The Commission and the Defendant, Britthaven, Inc. (the "Defendant") stipulated to jurisdiction of the court over the parties and agreed that the subject matter of this action is properly before the court.

The parties have advised this court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this court, made on the pleadings and the record as a whole, that: (1) the court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of the Consent Decree; and

(3) this Decree resolves all matters in controversy between the parties as provided in paragraphs 1 through 16 below:

1. Defendant shall not discriminate against any person on the basis of sex, pregnancy, or any other protected category within the meaning of Title VII.

2. Defendant shall not discriminate or retaliate against any person because of opposition to any practice made unlawful under Title VII of the Civil Rights Act of 1964 or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing under that statute.

3. Defendant shall pay the sum of Three Hundred Thousand Dollars (\$300,000.00), in settlement of the claims raised in this action. Defendant shall make payment by issuing checks payable to each individual identified in Exhibit A. Within five (5) days of entry of the Decree by the Court, Plaintiff shall supply Defendant with a list indicating the amounts to be paid to each person identified on Exhibit A, along with the address to which each individual's check should be mailed. Payment shall be made within fifteen (15) days after the list is provided, and Defendant shall mail the checks to each of the individuals identified in Exhibit A at the address provided by the Commission. Within ten (10) days after the check has been sent, Defendant shall mail to Lynette A. Barnes, Regional Attorney, at the Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C., 28202,

a copy of the check and proof of its mailing by certified mail, return receipt requested to each of the individuals identified in Exhibit A.

4. Within ten (10) days of the entry of this Decree by the Court, Defendant shall eliminate from the employment records of Katherine Hance any and all documents, entries, or references of any kind relating to the facts and circumstances which led to the filing of EEOC Charge Number 145-2004-00497C and the related events that occurred thereafter. These items will consist of any medical notes and/or medical leave paperwork relating to pregnancy, any statement summarizing the policy and/or practice of requesting a release to duty note from Ms. Hance, any termination paperwork that resulted from Ms. Hance's inability to present a release or otherwise related to her pregnancy, and any and all correspondence to and/from the EEOC regarding Ms. Hance's EEOC Charge. Within fifteen (15) days of the entry of this Decree by the court, Defendant shall report compliance with this provision to the EEOC.

5. Within fifteen (15) days of the entry of this Decree by the Court, Defendant shall provide each individual in Group 1 on the attached Exhibit A, with a positive letter of reference, a master copy of which is attached hereto, marked as Exhibit B, that will be personalized for each individual in Group 1 on Exhibit A. In addition, if Defendant receives any inquiries regarding the employment of the individuals identified in Group 1 on Exhibit A attached, in lieu of an oral response, Defendant shall provide a

copy of the aforementioned letter. Within ten (10) days of responding to any inquiry regarding the employment of the individuals identified in Group 1 on Exhibit A, Defendant shall report compliance to the Commission, including the name and address of the person or entity to which the letter was provided.

6. Within ninety (90) days of the entry of this Decree by the Court, Defendant shall adopt, implement, and distribute a formal, written anti-discrimination policy, which shall include but not be limited to the following: an explanation of the requirements of the federal equal employment opportunity laws, including Title VII and its prohibition against discrimination based on pregnancy; procedures for reporting discrimination; and a procedure for the thorough and immediate investigation of employee complaints of discrimination.

Within ninety (90) days of the entry of this Decree by the court, Defendant shall revise its "Modified Duty Policy" to expressly provide that Defendant is not permitted to ask an employee who has suffered a non-work related temporary medical condition, including pregnancy, to provide a release to full duties from a health care provider unless: (1) the employee notifies the facility that they are not able to perform the full duties of their position. Defendant must document that the employee has notified the facility with a written acknowledgment form signed and dated by the employee; or (2) the facility has documented evidence,

including specific examples, of the employee's inability or failure to perform the full duties of their position.

Defendant shall distribute to each current employee a copy of the policy within the aforementioned 90 day time period. Within one hundred (100) days of the entry of this Consent Decree, Defendant shall report compliance to the Commission. During the term of this Decree, Defendant shall distribute the policy to all new employees and review it with them at the time of hire.

7. During the term of this Decree, Defendant shall post a copy of the policy described in paragraph 6, *supra*, in all of their facilities in a place where it is visible to employees. If the policy becomes defaced or unreadable, Defendant shall replace it by posting another copy of the policy. Within one hundred (100) days after the Consent Decree is entered, Defendant shall post the policy and notify the EEOC that it has been posted.

8. During the term of this Decree, Defendant shall provide an annual training program to all of its managers, supervisors and employees in all of their facilities. Each training program shall include an explanation of the requirements of Title VII of the Civil Rights Act of 1964, and its prohibition against pregnancy discrimination and retaliation in the workplace. Each training program shall also include an explanation of Defendant's policy referenced in paragraph 6 above, and an explanation of the rights and responsibilities of employees and managers under the policy.

The first training program shall be completed within ninety

(90) days after entry of this Decree by the court. Each subsequent training program shall be conducted at approximately one-year intervals. At least fifteen (15) days prior to each program, Defendant shall provide the Commission with an agenda for the training program. Within ten (10) days after completion of each training program, Defendant shall certify to the Commission the specific training which was undertaken and shall provide the Commission with a roster of all employees in attendance. If Defendant chooses to train by video, the Commission shall review and approve, if it meets the requirements set forth herein, a video training session. Such video shall be submitted to the Commission at least fifteen (15) days prior to each program with no corresponding requirement of submitting an agenda for the training program. If the same video will be used for any subsequent training program, Defendant must give notice of this to the Commission at least fifteen (15) days prior to each program with no corresponding requirement of submitting an agenda for the training program.

9. Beginning within thirty (30) days after the entry of this Decree by the court, and continuing for the three year period following the entry of this Decree, Defendant shall conspicuously post the attached Employee Notice, marked Exhibit C, hereby made a part of this Decree, in a place where it is visible to employees at each of its facilities. If the Notice becomes defaced or



unreadable, Defendant shall replace it by posting another copy of the Notice.

10. During the term of this Decree, Defendant shall provide the Commission with reports at six (6) month intervals, with the first being due four (4) months after approval by the court of this Decree. The reports will include the following information:

- A. A list of all employees who notified Defendant that they were not able to perform the full duties of their position because of a non-work related temporary medical condition, including pregnancy, and from whom Defendant requested a release to full duties from a health care provider, including by way of identification each person's name, address, telephone number, position and social security number. Defendant will also provide a copy of the written acknowledgment form signed and dated by the employee;
- B. A list of all employees from whom Defendant requested a release to full duties from a health care provider because Defendant has documented evidence, including by way of identification each person's name, address, telephone number, position and social security number and including specific examples of the employee's inability or failure to perform the full duties of their position;
- C. A list of all employees from whom Defendant requested a release to full duties for any reason, except those individuals who are required to provide a release to full duties upon their return from Workers' Compensation leave or from non-pregnancy Family and Medical Leave (FMLA), including by way of identification each person's name, address, telephone number, position and social security number;
- D. For each individual identified in 10.A., 10.B, and 10.C. above, a narrative summary of the outcome of such request, stating whether the employee provided a release or other certification from a health care provider, stating the nature of the release or other certification from the health care provider, and stating the action taken with regard to the

employee's employment as a result, including whether the employee was terminated, reassigned, or placed on a leave of absence, and an explanation of the reason for the action taken.

11. The Commission may review compliance with this Decree. As part of a review for compliance with the policy posting and notice posting provisions in paragraphs 7 and 9, the Commission may inspect Defendant's facilities without notice. In reviewing compliance with any provision of this Decree, the Commission may interview employees, and examine and copy documents with 24 hours notice by email to Erik Lindberg at erikl@corplawoffice.com.

12. If anytime during the term of this Decree, the Commission believes that Defendant is in violation of the Decree, the Commission shall give notice of the alleged violation to Defendant. Defendant shall have ten (10) days in which to investigate and respond to the allegations. Thereafter, the parties shall then have a period of ten (10) days or such additional period as may be agreed upon by them, in which to engage in negotiation and conciliation regarding such allegations before the Commission exercises any remedy provided by law.

13. The term of this Decree shall be for three (3) years from its entry by the court.

14. All reports or other documents sent to the Commission by Defendant pursuant to this Decree shall be sent to: Lynette A. Barnes, Regional Attorney, at the Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C., 28202.

15. Each party shall bear its own costs and attorney's fees.

16. This court shall retain jurisdiction of this cause for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

/s/ Thomas D. Schroeder  
United States District Judge

March 31, 2009

The parties jointly request that the court approve and enter the Consent Decree:

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, Plaintiff

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

/s/ Lynette A. Barnes  
Lynette A. Barnes  
Regional Attorney  
129 West Trade Street, Suite 400  
Charlotte, N.C. 28202  
Tel: (704) 344-6878

Tracy Hudson Spicer  
Supervisory Trial Attorney  
1801 L. Street NW, Suite 400  
Washington, D.C. 2000  
Tel: (202) 419-0711

/s/ Zoë G. Mahood  
Zoë G. Mahood  
Senior Trial Attorney  
1309 Annapolis Drive  
Raleigh, N.C. 27608  
Tel: (919) 856-4080

BRITTHAVEN, INC., Defendant

/s/ Debra Dewar

Debra Dewar, Esq.

Gregory McGuire, Esq.

Ogletree Deakins Smoak Nash & Stewart, P.C.

301 Sugar Bush Road, Suite 600

Raleigh, North Carolina 27612

Tel: (919) 787-9700

EXHIBIT A

**GROUP 1**

**Hance, Katherine**  
**Barnes, Frances**  
**Canada, Lisa**  
**Clinton, Stephanie**  
**Funderburk, Lakisha**  
**Glenn, Nina**  
**Golden, Valarie**  
**Hodges, Rebecca**  
**Lasane, Toshika**  
**Meadows, Antanice**  
**Point, Violet**  
**Raspberry, Edna**

**GROUP 2**

**Clark, Katrina**  
**Johnson, Kandace**  
**Kendall, Misty**  
**Newkirk, Angela**  
**Reynolds, Amanda**  
**Rhodes, Alicia Petty**  
**Shuping, Brenda**  
**Walker, Janette N.**  
**Wright, Melanie**

EXHIBIT B

[Defendant's letterhead]

[Date]

TO WHOM IT MAY CONCERN:

We are pleased to provide the following reference on behalf of our [former or current] employee, \_\_\_\_\_.

\_\_\_\_\_ was employed by Britthaven, Inc. as a \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_. Her ending salary was \$\_\_\_\_\_ per hour. During her employment with Britthaven, she satisfactorily performed the duties of her position. \_\_\_\_\_ is eligible for rehire at Britthaven subject to successful completion of all standard hiring criteria.

We hope that this information about \_\_\_\_\_ is helpful to you in considering her for employment.

Sincerely,

Glenn Potter  
Britthaven, Inc.

EXHIBIT C  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
 CIVIL ACTION NO. 1:07CV00408

EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	NOTICE
BRITTHAVEN, INC.,	)	
	)	
Defendant.	)	
	)	
	)	
_____	)	

1. This Notice is posted pursuant to a settlement between the U.S. Equal Employment Opportunity Commission and Britthaven, Inc. in a case of discrimination based on pregnancy. Specifically, the EEOC alleged that Britthaven, Inc. subjected a class of female employees to pregnancy discrimination in violation of Title VII of the Civil Rights Act of 1964 by requiring a fitness for duty exam in order to work while pregnant. As part of the settlement, Britthaven, Inc. agreed to pay monetary damages to the aggrieved parties and to take other action set out in the Consent Decree resolving this matter.
2. Federal law requires that employers not discriminate against any employee or applicant for employment because of the individual's race, color, religion, sex, national origin, age (40 or older) or disability. Title VII specifically prohibits pregnancy discrimination.
3. Britthaven, Inc. will comply with such federal law in all respects. Furthermore, Britthaven, Inc. will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U. S. Equal Employment Opportunity Commission.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact their local U. S. Equal Employment Opportunity Commission field office for the purpose of filing a charge of employment discrimination. To locate the nearest field office, contact:

Equal Employment Opportunity Commission  
 1801 L Street, N.W.  
 Washington, DC 20507  
 TEL: 1-800-669-4000  
 TTY: 1-800-669-6820

This Notice will remain posted for at least three (3) years by agreement with the U.S. Equal Employment Opportunity Commission.

DO NOT REMOVE THIS NOTICE UNTIL: \_\_\_\_\_, 2012.