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EEOC v. Adelphi University

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EEOC v. Adelphi University

Keywords

EEOC, Adelphi University, 07CV4001 (TCP) (ETB), Consent Decree, Disparate Treatment, Compensation, Sex, Female, Education, Employment Law, Title VII

PART I GENERAL PROVISIONS

Section 101 Introduction

Plaintiff Equal Employment Opportunity Commission (“EEOC”) and Defendant Adelphi University (“Defendant” or “Adelphi”) have agreed to resolve this action by the terms of this Consent Decree (“Decree”) as set forth below.

On September 25, 2007, EEOC brought this action under the Equal Pay Act of 1963 (“EPA”) and Title VII of the Civil Rights Act of 1964, as amended, (“Title VII”) alleging unlawful employment practices on the basis of sex and to provide appropriate relief to a class of employees as a result of such practices. The EEOC alleged that Defendant paid its female full-time professors at wage rates that are less than the rates paid to its male full-time professors performing substantially equal work. Defendant denied all EEOC’s allegations.

In the interest of resolving the Lawsuit and as a result of comprehensive settlement negotiations, EEOC and Defendant (hereinafter referred to as “the Parties”) have agreed that this action should be resolved by entry of this Decree. This Decree shall not constitute an adjudication and/or a finding on the merits of the Lawsuit. This resolution does not constitute an admission of liability on the part of Adelphi, which expressly denies any violation of law or wrongdoing.

Section 102 Purpose of the Decree

A. The parties, defined as EEOC and Defendant, 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, assigns, affiliates, any entity that acquires Defendant, and any entity into which Defendant may merge or with which it may consolidate.

B. The Decree resolves all issues relating to the allegations in EEOC's Complaint and Judith Cohen's EEOC Charge of Discrimination number 160-2006-00614, which served as the jurisdictional prerequisite in this case and constitutes a complete and final resolution of all claims of gender discrimination under Title VII and the EPA made by the EEOC in this lawsuit. The Decree does not resolve any charge of discrimination currently pending before EEOC, or any charge that may be filed in the future, other than the charge listed above. EEOC reserves all rights to proceed regarding matters not covered in this Decree.

C. The terms of this Decree represent the full and complete agreement of the parties. 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.

Section 103 Prohibited Conduct and Injunction Not to Discriminate

A. Defendant, successors, assigns, and managers, officers, and agents acting on behalf of Defendant are hereby enjoined from discriminating against any of its female full-time professors because of a professor's sex and from retaliating against any individual because that individual is a beneficiary of this Decree, has filed a complaint, or has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter.

B. Defendant, successors, assigns, and managers, officers, and agents acting on behalf of Defendant are hereby enjoined from paying its female full-time professors at wage rates which are less than the rates paid to its male full-time professors for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility except when the payment is made pursuant to a seniority system, a merit system, or a differential based on any factor other than sex.

C. Nothing in this Decree shall be construed to limit or reduce Defendant's obligations to comply with the statutes enforced by EEOC: Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*; Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*; Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, and; Equal Pay Act, 29 U.S.C. §206(d).

Section 104 Consent to Jurisdiction

A. EEOC and Defendant agree that this Court has jurisdiction over the subject matter of this litigation and the parties for the duration of the Decree, that venue is proper, and that all administrative prerequisites have been met. No party shall contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.

B. The Court shall retain jurisdiction over this action for the duration of the Decree for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. In any action to enforce the terms of this Decree, the Court will have full authority to order any remedy the Court deems appropriate and lawful, including, but not limited to, specific performance and/or extension of the Decree beyond the three (3) year term.

Section 105 Applicability of Decree to Successors and Assigns and Upon Acquisition, Merger, or Consolidation

Prior to executing an agreement to sell, assign, consolidate or merge with Defendant, Defendant will provide the entity entering into such agreement with notice of this lawsuit and a copy of this Decree. The successors, assigns, acquiring entities, and any surviving entities upon merger or consolidation shall be fully liable for complying with the terms of the Decree.

Defendant must provide written notice to EEOC within thirty (30) days of any assignment,

succession, acquisition, merger, or consolidation affecting Defendant. See 102(A).

Section 106 Implementation of the Decree

EEOC and Defendant agree to take all steps that may be necessary to fully effectuate the terms of this Decree.

Section 107 Amendments to the Decree

By mutual consent of the parties, this Decree may be amended in the interests of justice and fairness and to facilitate execution of the Decree's provisions. No waiver, modification, or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree, and approved by order of the Court.

Section 108 Duration of the Decree

A. The EEOC retains the right to petition this Court, prior to the expiration of the Decree as set forth in Section 108(B) below, for an extension of the Decree because of noncompliance, if EEOC determines that Adelphi has not complied with the terms of this Decree. If EEOC determines that Adelphi has not complied with the Decree, the EEOC will provide written notification of the alleged breach to Defendant's counsel of record Patrick W. Shea, Paul, Hastings, Janofsky & Walker LLP and by facsimile at (212) 319-4090 and will not petition the Court for an extension of the Decree sooner than-thirty (30) days after providing written notification unless the public interest requires immediate action. The thirty-day period following written notice shall be used by the parties for good faith efforts to resolve the issue. If EEOC successfully petitions the Court to extend the Decree and the Court finds Adelphi to be in substantial violation of the terms of the Decree, the Court may extend this Decree for a period it deems appropriate.

B. Unless this Decree is extended pursuant to Section 108 (A) above, the Decree will

expire three (3) years after the entry of the Decree, after which Defendant will have no remaining obligations under this Decree. The entry date of the Decree shall be the date it is signed by and receives final approval from the Court.

Section 109 Severability

If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the following will apply to insure that the Decree continues to effectuate the intent of the parties. The provisions of this Decree which are not rendered unlawful, unenforceable, or incapable of performance as a result of such legislative act or court decision will remain in full force and effect, and the parties' responsibilities will not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Decree would be undermined.

Section 110 Breach of Decree

A breach of any term of this Decree by Defendant or the EEOC will be deemed a material and substantive breach of the Decree. The parties agree that they will cooperate to effectuate and implement all terms and conditions of this Decree and exercise good faith efforts to accomplish the terms and conditions of this Decree. Nothing in this Decree is to be construed to preclude EEOC from bringing proceedings to enforce this Decree if Defendant fails to perform any of the terms contained herein. This Decree is to be construed under applicable federal law.

Section 111 Notices

Except as otherwise provided for in this Decree, all notifications, reports, and communications to the parties required under this Decree shall be made in writing and shall be sufficient as hand-delivered, faxed, sent by electronic mail (with confirmation), or sent by

certified, registered, or overnight mail to the following persons (or their designated successors):

For EEOC: Konrad Batog
Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, New York 10004
Fax: (212) 336-3623

For Defendant: Patrick W. Shea
Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street
New York, New York 10022
Fax: (212) 319-4090
E-mail: patrickshea@paulhastings.com

Any party may change such recipients or address by written notice to the other party setting forth a new recipient and/or address for this purpose.

Section 112 Court Retention of Jurisdiction

The Court retains jurisdiction over this action during the duration of the Decree. The matter may be administratively closed but shall not be dismissed during the duration of the Decree. Within thirty (30) days after the expiration of this Decree, the parties shall submit a Stipulation of Dismissal.

Section 113 Non-Payment of Attorneys' Fees and Costs

The Parties agree not to seek any interest, fees, or costs from the Court, and agree to be responsible for the payment of their own attorneys' fees, costs, and disbursements incurred in connection with this action.

PART II SYSTEMIC RELIEF

Section 201 Posting and Distribution of Notices

A. Posting of Notice of Resolution

Within ten (10) days of the effective date of this Decree, Defendant will conspicuously post and maintain a "Notice of Resolution" regarding this lawsuit (attached as Exhibit A) in all prominent places where employee notices are posted. Defendant will certify to EEOC within ten (10) days after Defendant has posted the Notice of Resolution pursuant to this provision. The Notice of Resolution must remain posted.

B. Provision of Notice and Memo to Full-time Faculty

Within ten (10) days of the effective date of this Decree, Defendant will provide a copy of the Notice of Resolution (Exhibit A) and a memo setting forth the requirements of the EPA and Title VII (attached as Exhibit B) to all full-time faculty. Defendant will provide the same Notice of Resolution and memo to all future full-time faculty at the commencement of their employment. Defendant will certify to EEOC in writing that Defendant has distributed the Notice of Resolution and memo to all current full-time faculty within ten (10) days after the effective date of the Decree. Defendant will certify that it has distributed the Notice of Resolution and memo to any new full-time faculty every six months, commencing six months after the effective date of the Decree.

C. Posting of EEO Posters

Defendant must post and maintain EEO posters in places visually accessible to all applicants and employees of Defendant as required by federal regulations. Defendant will ensure that such EEO posters are appropriately posted within ten (10) days of the effective date of this Decree. Defendant will certify to EEOC within ten (10) days that it has posted EEO posters

pursuant to this provision.

Section 202 Annual Training of Adelphi Hiring and Supervisory Officials

On or before one hundred twenty (120) days of the entering of this Decree, and within one hundred twenty (120) days of each anniversary of the entering of this Decree, Defendant shall provide two (2) hours of training regarding interviewing, screening, hiring, compensation, anti-retaliation and promotion procedures to all supervisory employees who are or may become responsible for these functions with respect to full-time faculty. Each training program will include the following: (a) a detailed agenda with proposed training materials, (b) curricula vitae(s) for the individual(s) who will conduct the training, and (c) a plan to ensure that all specified employees receive the required training. The training programs will be conducted by an outside consultant selected by Adelphi and approved by EEOC, with copies of the consultant's curriculum vitae sent to the EEOC no later than forty-five (45) days from the entering of this Decree. The agenda for the first training program, attached hereto as Exhibit C, has been reviewed and approved by the EEOC. Within fifteen (15) days of each training session, Defendant shall provide EEOC a dated attendance sheet with the printed names and signatures of those in attendance.

Section 203 Reporting and Review

A. Reporting Requirements for Salary Information

Every year beginning thirty (30) days after the start of the school year, Defendant will provide EEOC with information regarding the salary, rank, years in rank, date of hire, department and salary increase of all full-time faculty members in a format such as Excel so that EEOC can conduct analysis.

B. Review by EEOC

EEOC may review Defendant's compliance with the Decree through the inspection of Defendant's premises and records, and interviews with Defendant's officers, agents, employees, and contractors at reasonable times. The EEOC must provide fifteen (15) days notice prior to any inspection or request for interview unless the public interest requires immediate action. Defendant must make available for inspection and copying any non-privileged records related to the Decree upon reasonable notice by the EEOC.

Section 204 Compliance with Record-keeping Requirements

Defendant agrees to maintain such records as are necessary to demonstrate its compliance with the Decree and 29 C.F.R. §1602 *et seq.* and to verify that the reports submitted pursuant to the Decree are accurate.

Section 205 Explanation of Pay Policy

Defendant will provide to all full-time faculty members the provision of the Collective Bargaining Agreement between the Board of Trustees of Adelphi University and the Adelphi University Chapter American Association of University Professors currently in effect through August 31, 2009 that sets forth the factors that are used to determine compensation for a full-time faculty member.

PART III MONETARY AND OTHER RELIEF FOR FULL-TIME FACULTY

Section 301 Monetary and Other Relief

A. Salary Increases

Defendant agrees to increase the salary of certain individuals retroactive to September 1, 2008 in the amounts listed in Exhibit D. Payment of the salary increases will be made in accordance with Adelphi's normal payroll schedule commencing on the first regular payroll date which falls at least fifteen days from the Individual Payment Effective Date, as defined below in Section 301C.

B. Other Monetary Relief

Defendant agrees to issue checks for payment of back pay to each individual listed in Exhibit E. A check for back pay will be issued in accordance with Adelphi's normal payroll schedule on the first regular payroll date which falls at least fifteen days after the Individual Payment Effective Date. A copy of the check shall be forwarded to EEOC immediately upon issuance of the check. Defendant shall make applicable withholdings for federal, state, and local income taxes and for employee social security taxes pursuant to the Federal Insurance Contribution Act ("FICA") as well as the employer contributions to the Social Security account.

C. Individual Payment Effective Date

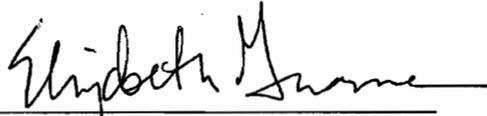
"Individual Payment Effective Date" is defined as (i) the date counsel for Defendant, as set forth in Section 111, receives the applicable release (see release forms attached hereto as Exhibit F for Judith Cohen and Exhibit G for the other individuals listed on Exhibits D and E) executed by that individual or (ii) the entry of the Decree, whichever is later.

PART IV SIGNATURES

Each signatory to this Decree represents that each is fully authorized to execute this Decree and to bind the parties on whose behalf each signs.

APPROVED IN FORM AND CONTENT:

By Plaintiff EEOC:



Elizabeth Grossman
Regional Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York, 10004

For Defendant Adelphi University:



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SO ORDERED this 17th day of March, 2009.

United States District Judge