



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Consent Decrees

Labor and Employment Law Program

10-15-2010

EEOC v. Austin Foam Plastics, Inc.

Judge Lee Yeakel

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/condec>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. Please help support our student research fellowship program with a gift to the Legal Repositories!

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in Consent Decrees by an authorized administrator of DigitalCommons@ILR. For more information, please contact hlmdigital@cornell.edu.

EEOC v. Austin Foam Plastics, Inc.

Keywords

EEOC, Austin Foam Plastics, A-09-CA-180-LY, Consent Decree, Retaliation, Sex, Male, Race, African American or Black, Manufacturing, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

K

EQUAL EMPLOYMENT OPPORTUNITY	§	
COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
	§	Civil Action No. A-09-CA-180-LY
	§	
AUSTIN FOAM PLASTICS, INC.	§	
	§	
Defendant.	§	

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, Austin Foam Plastics, Inc. ("AFP"). This Consent Decree resolves the allegations raised by the EEOC in the above-referenced Civil Action No. A-09-CA-180-LY. The EEOC initiated this lawsuit under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of race, Black; sex (male); and retaliation. AFP denied all allegations and asserted defenses to the lawsuit including, but not limited to, preventing and correcting promptly any alleged sexually or racially harassing behavior and the EEOC's failure to meet all conditions precedent.

The EEOC and AFP wish to settle this action, without the necessity of further litigation, pursuant to the terms delineated in this Consent Decree. This Consent Decree is entered for the sole purpose of avoiding expenses associated with this litigation and is not to be construed as an admission of liability by either party.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties, venue is proper. The parties stipulate to the Court's jurisdiction.

2. This Consent Decree resolves all issues raised in EEOC Charge Nos. 451-2007-00802, 451-2007-00799, and 451-2007-01300, and the determinations issued by the EEOC in these same Charges, and those raised in the EEOC's Complaint in this case. The EEOC waives further litigation of all issues raised in the above referenced Charges, the determinations issued by the EEOC in these same Charges and those raised in the EEOC's Complaint. The EEOC; however, expressly reserves its right to process and litigate any other charges which may now be pending or may in the future be filed against AFP.

3. The duration of this Consent Decree shall be two (2) years from the date of its filing with the Court. This Court shall retain jurisdiction of this case during the term of this Consent Decree to enforce compliance and to take any action necessary and/or appropriate for its interpretation, execution, modification and/or adjudication of disputes. Any violation of the Consent Decree by AFP during the two (2) year term shall toll the running of this two (2) year period as of the date of the violation. If the Court subsequently determines this Consent Decree was violated, the two (2) year period shall recommence and continue from the date of entry of an Order setting out such a violation and continue until the two (2) year term of compliance is completed. This provision is not intended to subject AFP to compliance beyond a two (2) year term. Should the Court find this Consent Decree was not violated, the two (2) year period shall recommence, retroactive to the date of the filing of the pleading alleging that a violation had occurred.

4. During the term of this Consent Decree, AFP, its successors and assigns, are hereby enjoined from discriminating against any employees on the bases of race and/or sex(male), in violation of Title VII.

5. During the term of this Consent Decree, AFP, its successors and assigns, are enjoined from retaliating in any manner whatsoever against any employee for opposing any employment practice made unlawful by Title VII, or for complaining of harassment or other unlawful discrimination, filing a discrimination charge, giving testimony or assistance, or participating in any lawful manner in any investigation, proceeding, hearing or action under Title VII.

6. Within thirty (30) days of the entry of this Consent Decree, AFP will submit to the EEOC its EEO policy that prohibits discrimination on the bases of race, sex (male) and retaliation which violates Title VII, and it shall include all of the following criteria:

- (a) States that AFP: (i) prohibits discrimination against any employee or applicant for employment on the bases of race, sex and retaliation, in violation of Title VII; and (ii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the bases of race, sex and retaliation in violation of Title VII;
- (b) Provides that a complaint of Title VII race or sex (male) discrimination and retaliation must be reported directly to AFP's Human Resources Department. AFP's Human Resources Department shall judge whether unlawful discrimination is alleged and, if so, shall obtain a written complaint or reduce the complaint to writing;
- (c) Provides for the prompt investigation of written complaints of Title VII based on race or sex (male) discrimination and/or retaliation, and for prompt action, which is appropriate and effective, to remedy the discrimination;
- (d) Provides that when Title VII complaints based on race or sex (male) discrimination and/or retaliation are made, AFP's Human Resources Department, will make a written record of each complaint, and make written findings of the results of the investigation and the remedial actions proposed and/or taken, and that the results of the investigation and remedial actions taken are promptly communicated to the complainant;

- (e) Provides for substantial discipline for violating AFP's EEO policy up to and including discharge; and
- (f) Provides that AFP shall not take any reprisal action, in any matter whatsoever, against an employee for having opposed, in good faith, any employment practice involving Title VII retaliation, or for complaining of discrimination on the bases of race, sex and/or retaliation.

If AFP's EEO policy meets these requirements, the EEOC will acknowledge in writing, within fifteen (15) days of its receipt, that this requirement has been met.

7. For the term of this Consent Decree, AFP shall conduct, within sixty (60) days prior to each annual anniversary of the entry of this Consent Decree, an annual audit of its Pflugerville location of the previous ten (10) month period (the "Audit Period") and submit a written report (the "Audit Report") to the EEOC containing the following information for each complaint of sex (male)-based or race-based discrimination and/or retaliation that was reported through AFP's Human Resources Department and/or that was investigated during the period;:

- (a) Name of complainant;
- (b) Date of complaint;
- (c) Type/Nature of complaint;
- (d) Status of complaint; and
- (e) Disposition of complaint and date of disposition, if applicable.

The EEOC shall have thirty (30) days from receipt of each Audit Report in which to inspect the non-privileged records and documents reviewed or relied upon by AFP in compiling the Audit Report. Any such request for inspection by the EEOC shall be directed in writing to AFP's legal counsel. If, after reviewing the Audit Report and/or AFP's records and documents, the EEOC believes that AFP had violated any provision of this Consent Decree during the term hereof, it shall notify AFP's legal counsel in writing of the alleged violation as provided for in Paragraph twelve (12) above, including providing AFP's legal counsel with information

regarding the provision(s) EEOC believes it has violated and the underlying facts supporting the alleged violation and EEOC shall attempt in good faith to resolve any such violation.

8. Within one hundred and twenty (120) days of the entry of this Consent Decree, AFP shall provide, through Inez McBride of HOLLAND & HOLLAND, L.L.C., or another attorney board certified in labor and employment law licensed in the State of Texas, two (2) hours of Equal Employment Opportunity ("EEO") training for all of AFP's employees and managers at AFP's facility in Pflugerville, Texas. This training shall cover what constitutes unlawful employment practices under Title VII of the Civil Rights Act of 1964, including but not limited to Title VII's prohibitions against discrimination on the basis of sex, race and retaliation. Within thirty (30) days of the first anniversary of the date of entry of the Consent Decree, AFP shall provide, through its Human Resources Department, not less than one (1) hour of EEO training to all of AFP's employees and managers at AFP's facility in Pflugerville, Texas. At least thirty (30) days prior to each training program, AFP shall provide the EEOC with a copy of the training syllabus and materials for review and approval. AFP shall maintain a list of individuals, identified by name and title/position, who attended each training program and the date of their attendance. The attendance records will be provided to the EEOC within twenty (20) days after each training program.

9. AFP shall post a notice regarding its practices, policies, and intent not to discriminate against any employee in violation of Title VII at its Pflugerville, Texas location. Such notice shall be as set forth in Exhibit A, which is attached to this Consent Decree. A copy of Exhibit A shall be posted at AFP's facility in Pflugerville, Texas, on employee bulletin boards where employees are likely to congregate. The notice shall be posted within ten (10) days of the entry of this Consent Decree and shall remain posted for the duration of the Consent Decree.

10. Within fifteen (15) days after the entry of this Consent Decree, AFP, in settlement of this dispute, shall pay the sum total of \$600,000 (SIX HUNDRED THOUSAND DOLLARS) to be apportioned as follows:

a. Scott Rivera

AFP shall pay Scott Rivera \$110,000 (ONE HUNDRED AND TEN THOUSAND DOLLARS) of which \$1,600 (ONE THOUSAND SIX HUNDRED DOLLARS) is subject to applicable withholdings. Payment shall be by certified check and mailed directly to Scott Rivera at 18213 Stevie Ray Drive, Pflugerville, Texas 78660. Scott Rivera shall be responsible for payment of any applicable federal taxes.

b. Felix Trejo

AFP shall pay Felix Trejo \$110,000 (ONE HUNDRED AND TEN THOUSAND DOLLARS). Payment shall be by certified check and mailed directly to Felix Trejo at P.O. Box 735, Taylor, Texas 76574. Felix Trejo shall be responsible for payment of any applicable federal taxes.

c. Marcus Tyler

AFP shall pay Marcus Tyler \$110,000 (ONE HUNDRED AND TEN THOUSAND). Payment shall be by certified check and mailed directly to Marcus Tyler at 13021 Lofton Cliff Dr., Del Valle, Texas 78617. Marcus Tyler shall be responsible for payment of any applicable federal taxes.

d. Curtis Brown

AFP shall pay Curtis Brown \$30,000 (THIRTY THOUSAND DOLLARS). Payment shall be made by certified check and mailed directly to Curtis Brown at 2016 Kass Cove, Round Rock, Texas 78664. Curtis Brown shall be responsible for payment of any applicable federal taxes.

e. Richard Johnson

AFP shall pay Richard Johnson \$50,000 (FIFTY THOUSAND DOLLARS). Payment shall be made by certified check and mailed directly to Richard Johnson at 5910 Autumn Lake, San Antonio, Texas 78222. Richard Johnson shall be responsible for payment of any applicable federal taxes.

f. Brent Marion

AFP shall pay Brent Marion \$60,000 (SIXTY THOUSAND DOLLARS). Payment shall be made by certified check and mailed directly to Brent Marion at 713 Burkett Street, Taylor, Texas 76574. Brent Marion shall be responsible for payment of any applicable federal taxes.

g. Ricky Sterling

AFP shall pay Ricky Sterling \$70,000 (SEVENTY THOUSAND DOLLARS). Payment shall be made by certified check and mailed directly to Ricky Sterling at Ricky Sterling, 3410 Lynridge, Apartment B, Austin, Texas 78723. Ricky Sterling shall be responsible for payment of any applicable federal taxes.

h. Cameron Thorn

AFP shall pay Cameron Thorn \$60,000 (SIXTY THOUSAND DOLLARS). Payment shall be made by certified check and mailed directly to Cameron Thorn at 202 Mossy Rock Drive, Hutto, Texas 78634. Cameron Thorn shall be responsible for payment of any applicable federal taxes.

None of the amounts paid above are for lost/back wages for which payroll deductions would be allowed with the exception of the \$1,600 to Scott Rivera.

A copy of the settlement checks and any accompanying transmittal documents shall be forwarded to the EEOC to the attention of Judith G. Taylor, Supervisory Trial Attorney, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

11. If the EEOC has reason to believe that AFP has not complied with any term or provision of this Consent Decree, it shall provide written notice of the alleged non-compliance within thirty (30) days following the discovery of the alleged non-compliance prior to taking any action thereon (the "Notice of Alleged Violation"). The Notice of Alleged Violation shall include the Paragraph(s) of this Consent Decree alleged to be violated and a statement of the specific facts and circumstances relied upon as the basis of the EEOC's claim of non-compliance. AFP shall have thirty (30) days from receipt of the Notice of Alleged Violation to respond to the EEOC regarding the alleged violation, during which time the EEOC shall not

undertake any enforcement action. The thirty (30) day period may be extended by written agreement executed by the EEOC and AFP, and neither party will unreasonably withhold an agreement to extend. If the EEOC and AFP are unable to resolve their dispute regarding the alleged violation, then the EEOC may seek enforcement of this Consent Decree with respect to the alleged violation in the United States District Court for the Western District of Texas, Austin Division.

12. AFP shall bear the costs associated with administering and implementing the provisions of this Consent Decree.

13. The terms of this Consent Decree shall be binding upon the EEOC and AFP, their representatives, successors, and assigns, as to the issues resolved herein.

14. The parties to this Consent Decree shall bear their own costs and attorney's fees incurred in this action as of the date of entry of this Consent Decree by the Court.

15. When this Consent Decree requires the submission by AFP of documents or other materials to EEOC, such documents or other materials shall be mailed to Judith G. Taylor, Supervisory Trial Attorney, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229. When this Consent Decree requires the submission by EEOC of notice, documents or other materials to AFP, such notice, documents or other materials shall be mailed to Michael Holland, 1250 N.E. Loop 410, Suite 808, San Antonio, Texas 78209.

SO ORDERED flfIMHHHfr this A ^ ^ a y of C^btZfrbc**' , -2010.


HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

P. DAVID LOPEZ
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

/s/ Robert A. Canino w/permission
by *Judith G. Taylor*

ROBERT A. CANINO
Regional Attorney
Oklahoma Bar No. 011782

/s/ *Judith G. Taylor*

JUDITH G. TAYLOR
Supervisory Trial Attorney
Texas State Bar No. 19708300

/s/ Inez McBride w/permission
by *Judith G. Taylor*

MICHAEL L. HOLLAND
Texas State Bar No. 09850750
E-mail: mholland@hollandfirm.com

INEZ MCBRIDE
Texas State Bar No. 13331700
E-mail: imcbride@hollandfirm.com

HOLLAND & HOLLAND, L.L.C.
North Frost Center
1250 N.E. Loop 410, Suite 808
San Antonio, Texas 78209
Telephone: (210) 824-8282
Facsimile: (210) 824-8585

ATTORNEYS FOR DEFENDANT

/s/ David Rivela w/permission
by *Judith G. Taylor*

DAVID RIVELA
Senior Trial Attorney
Texas State Bar No. 00797324
E-mail: David.Rivela@eeoc.gov
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78229
Telephone: (210)281-7619
Facsimile: (210)281-7669

ATTORNEYS FOR PLAINTIFF