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EEOC v. Cintas Corporation

Keywords

EEOC, Cintas Corporation, 04-40132, Consent Decree, Disparate Treatment, Hiring, Recruitment, Female, Sex, Manufacturing, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT)	Civil Case No. 04-40132
OPPORTUNITY COMMISSION,)	
)	Hon. Sean F. Cox
Plaintiff,)	
)	Magistrate Judge R.
v.)	Steven Whalen
)	
CINTAS CORPORATION,)	
)	
Defendant.)	
)	

CONSENT DECREE

The Parties have filed a Joint Motion for Entry of Consent Decree, and the Court being duly advised now grants that Motion and enters the following Consent Decree.

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The Equal Employment Opportunity Commission (“Commission” or “EEOC”) alleges in its Second Amended Complaint that, since at least June 1999, Defendant Cintas Corporation (“Cintas”) has failed to recruit and hire a class of females for the position of route sales driver/service sales representative in Michigan. Cintas denies the EEOC’s allegations.

The Commission and Cintas hereby stipulate to the jurisdiction of the Court over the parties and the subject matter.

The EEOC and Cintas have advised the Court that they desire to resolve the claims in the EEOC’s Second Amended Complaint without the burden, expense, and delay of further litigation.

It is, therefore, the finding of the Court, based 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) implementation of this Decree will advance the purposes and provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17

(“Title VII”), and (3) this Consent Decree resolves the claims in the EEOC’s Second Amended Complaint.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

PART ONE: GENERAL PROVISIONS

Section 101: Scope of Decree

Unless otherwise stated, this Decree applies to all of Cintas’s Rental Division facilities in the state of Michigan, whether now existing or hereafter acquired or opened during the duration of the Decree.

Section 102: Non-Discrimination in Employment

Cintas is enjoined from discriminating against females in hiring for the position of service sales representative (“SSR”).

Section 103: Non-Retaliation

Cintas will not retaliate or discriminate against any of its employees, former employees, or applicants for employment, including but not limited to any individual who assisted or participated in this lawsuit, because the individual has (a) made a

charge or opposed an unlawful employment practice under Title VII or any other law enforced by the EEOC or (b) assisted or participated in any manner in an investigation, proceeding, or hearing under Title VII or any other law enforced by the EEOC.

Section 104: Effective Date

The effective date of this Decree shall be the date of the Court's entry of the Consent Decree. This Decree does not affect the Commission's right to file suit based on charges pending at the administrative level or on any subsequently filed charges even if those charges allege violations occurring prior to the entry of this Decree.

Section 105: Record Retention

Cintas will maintain all applications and employment records as required by Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and 29 C.F.R. § 1602.14. Further, Cintas will retain, throughout the term of this Consent Decree, all applications for the position of SSR submitted to its Rental Division facilities in the state of Michigan, and will continue to maintain applicant data and records pertaining

to the position of SSR. Cintas will maintain these applications and applicant data and records in an electronic format that can be produced in an Excel spreadsheet at any time upon reasonable notice during the term of the Consent Decree.

PART TWO: POSTING, TRAINING, RECRUITMENT, AND HIRING PROCESS

Section 201: Posting

Cintas will post the Employee Notice attached to this Decree as Appendix A in conspicuous locations visible to applicants and employees at each of its Rental Division facilities in the state of Michigan, where notices to employees and applicants are customarily posted. Said Notices shall remain posted throughout the term of this Decree. Cintas will promptly replace any Notice upon discovery that it has become defaced or in any way unreadable.

Section 202: Diversity, harassment, and anti-discrimination training

Cintas will continue to offer and provide diversity, harassment, and anti-discrimination training. The training will, at a minimum, be conducted on an annual basis and made available to all SSRs.

Section 203: Hiring training

Within 180 days of the entry of this Consent Decree, Cintas shall provide training to individuals involved in the selection of SSRs at Cintas's Rental Division facilities in the state of Michigan. This training will cover record retention and what constitutes an unlawful employment practice under Title VII, including sex discrimination in hiring. Prior to the signing of this Consent Decree, Cintas has provided a copy of the material to be used at this training, and the Commission has reviewed the material and has had an opportunity to provide reasonable input on the content of the training.

This training will be given to (i) managers and supervisors at all of Cintas's Rental Division facilities in the state of Michigan who screen, hire, interview, or recommend for hire applicants for the

SSR position and (ii) all human-resource employees with responsibility for any part of Cintas's Rental Division facilities in the state of Michigan that employ SSRs. The training will also be given to any individual promoted or newly hired into a decision-making position. These individuals will be trained within thirty days of hire or promotion. For those individuals who are hired into a decision-making position within the first year of this Consent Decree, the training will be repeated once approximately a year after the first training given to those individuals. Only those who have completed this training may screen, interview, or be involved in the decision-making process for SSRs.

Section 204: Recruitment

Cintas will continue to picture and feature females on its marketing and advertising materials pertaining to the SSR position.

Cintas will conduct outreach recruitment in an effort to attract qualified women for SSR openings.

Even though this Consent Decree addresses the Rental Division facilities in Michigan, SSRs in Michigan will have access to SSR openings nationwide on Cintas's electronic career website.

Cintas will continue to maintain a system that allows all Rental Division employees nationwide to preregister their interest in an SSR position so that they will be notified electronically when an opening occurs in the geographies for which they post.

Section 205: Hiring Practice or Process

Within 90 days of the effective date of this Consent Decree, Cintas will hire an outside expert to revalidate (1) the criteria used to screen, interview, and select SSRs and (2) the interview guides used in the SSR hiring process. Cintas has provided the name of the outside expert to the Commission.

Within 90 days of receiving a final recommendation from the outside expert, all persons who screen, interview, or are otherwise involved in the decision-making process for SSRs will use the validated processes and interview guides.

Section 206: Enforcement of Hiring Practice or Process

Within 90 days of receiving a final recommendation from the outside expert (Section 205), Cintas will notify decisionmakers of its intent to coach and discipline for failing to use the validated SSR hiring criteria and interview guides.

PART THREE: MONETARY RELIEF FOR CLASS MEMBERS

Section 301: Eligibility as Class Members

Women who applied to work at a Cintas rental facility in the state of Michigan but were not hired as a SSR from January 1, 1999, through March 31, 2005, are eligible for monetary relief under this Decree.

Section 302: Amount of Back Pay and Interest

Cintas shall pay \$1,500,000 in back pay to the class members. Cintas will not condition the receipt of individual relief on an agreement from any individual to (a) maintain as confidential the terms of this Decree or the facts or allegations underlying the litigation, (b) waive her statutory right to file a charge with any federal or state anti-discrimination agency, or (c) waive her right to

apply for a position at Cintas. However, to receive payment under this Consent Decree, an individual must sign a release (Appendix B) and provide all information requested by the Claims Administrator.

Section 303: Determination of Individuals Who Will Get Relief

The individuals who will receive monetary relief are those listed on the Commission's Submission of April 23, 2015 (ECF No. 1132), except for those individuals who are male. The EEOC will determine the amount that the individuals receive, except that the EEOC agrees that it will not set an amount for any individual less than \$100.00. The Commission's determinations may be subject to review at a fairness hearing conducted by the Court. Cintas will not challenge the Commission's determinations made in compliance with this Consent Decree.

PART FOUR: CLAIMS PROCESS AND FAIRNESS HEARING

Section 401: Claims Administrator

The EEOC will retain the services of a third-party claims administrator ("Claims Administrator"). Cintas will pay up to

\$50,000 for the services and costs of the Claims Administrator. The Claims Administrator will request from each class member, and provide said information to Cintas, all information necessary for Cintas to determine the amount of appropriate monetary withholding for federal income tax, Federal Insurance Contributions Act (FICA), and any other required tax.

Section 402: Notice of Proposed Distribution

Within ninety days of entry of the Decree, the EEOC will file with the Court a proposed distribution, itemizing the amount of monetary relief for each class member. The Court will then issue a Notice of Proposed Distribution (Appendix C). At the direction of the Commission, the Claims Administrator (Section 401) will send, via U.S. mail, a copy of that Notice and a Release (Appendix B) to each class member at her last known address along with a brief explanation stating how the amount for that individual was calculated. If any notices are returned as undeliverable, the Claims Administrator will attempt to find a more current address for those

individuals. If a more current address is found, the Claims Administrator will re-mail the Notice to the more current address.

Section 403: Class Members Eligible for Relief

Any individual for whom the Claims Administrator or EEOC is unable to find a current address will not be eligible for relief under this Consent Decree.

Section 404: Letters of Disagreement

Individuals may submit to the Court letters indicating any disagreement with the proposed distribution, including any disagreement they may have with not being listed among the individuals who will receive an award or as to the size of any payment.

This procedure will be the sole means by which individuals may challenge the proposed distribution under this Consent Decree, but this limitation does not prevent an individual from retaining counsel, at her own expense, to represent her in this matter.

Section 405: Fairness Hearing

If no letters of disagreement (Section 404) have been submitted to the Court within 60 days of the last mailing of the notice of proposed distribution (Section 402), the Court will issue a final order of distribution.

If a letter of disagreement has been submitted to the Court within 60 days of the last mailing of the notice of proposed distribution, then the Court will schedule a fairness hearing. The Court will serve notice of the fairness hearing on the parties and any individuals who have submitted a letter of disagreement to the Court. At the fairness hearing, individuals who have submitted letter objections will have an opportunity to be heard. After presiding over the fairness hearing, the Court will render any appropriate rulings, including a final order of distribution.

Section 406: Payments to Class Members

After the EEOC or Claims Administrator receives a signed Release for an individual, the Claims Administrator will pay the class member in accordance with the Court's final order of

distribution (Section 405). Neither Cintas nor the Claims Administrator will deduct from any payment the employer's share of any costs, taxes, or Social Security required by law to be paid by the company. Cintas or the Claims Administrator will prepare and furnish appropriate tax forms to the class members. After an individual receives payment, the EEOC or Claims Administrator will provide the original of that person's signed Release to Cintas.

PART FIVE: CONTINGENCY FOR REMAINING FUNDS

If for whatever reason any part of the monetary amount of \$1,500,000 is unable to be paid as designated above, the remainder shall be split evenly among the class members who receive an award under this Decree. The Claims Administrator shall make such payments no later than sixty days after payment pursuant to the Court's final order on distribution.

PART SIX: REPORTING REQUIREMENTS

Section 601: Procedure

All reports shall be sent to the attention of Laurie A. Young or her successor, Regional Attorney, Equal Employment Opportunity

Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4239.

Section 602: Initial Report

Cintas will submit a report to the EEOC detailing compliance with this Decree within 180 days of the date of the Decree. Cintas will certify to the EEOC's Regional Attorney that it has complied with Sections 201 through 205 of this Decree and will provide the Commission with a current copy of its diversity, harassment, and anti-discrimination training materials.

Section 603: Annual Reports

Cintas shall submit two annual reports to the EEOC, the first due by December 15, 2016, the second by December 15, 2017. In each report, Cintas shall include the following information for the previous 12-month period:

- (i) the date range and topics of all training programs offered pursuant to Sections 202 and 203;
- (ii) a copy of all written materials used at those training programs;

- (iii) the name and position of each employee who attended those training programs;
- (iv) a description of, and explanation for, any changes made to the SSR hiring process at the corporate level;
- (v) good faith effort recruiting logs;
- (vi) a copy of any unprivileged material from any audits made of a facility's SSR hiring or recruiting methods or practices should an audit be done;
- (vii) an Excel spreadsheet containing applicant data and records which includes for each individual who applied to be an SSR at a Rental Division facility in the state of Michigan, the name, sex (if provided), location number where the individual applied, date of application, and decision made regarding the application (including at what point in the process the individual was excluded, if that is the case);
- (viii) a copy of any unprivileged reports on SSR hiring provided to Cintas's human relations, diversity committee, or upper management, should any reports be created;

(ix) the expert's revalidation findings and report pursuant to Section 205; and

(x) a copy of the notice sent to decisionmakers in compliance with Section 206.

PART SEVEN: ADMINISTRATION OF THE DECREE

Section 701: Role of EEOC

The EEOC may review compliance with this Decree. As part of such review, the EEOC may request, examine, and copy documents upon reasonable notice.

Section 702: EEOC Monitoring

In the event that the EEOC alleges that a violation of this Decree has occurred, EEOC shall give notice to Cintas in writing specifically identifying the alleged violation. Cintas will have sixty days in which to investigate and respond to the allegation.

Section 703: Court Enforcement

If the parties are unable to resolve a dispute pursuant to Section 702, Cintas or the EEOC may petition the Court to order compliance. If the Court finds that Cintas or the EEOC has failed to

comply with a provision of the Consent Decree, the Court may order appropriate relief.

Section 704: Successor Liability

The terms of this Decree shall be binding upon the present and future successors and assigns of Cintas. If Cintas is sold, or one of its Rental Division facilities in the state of Michigan subject to this Decree is sold in whole or part, Cintas will provide sufficiently in advance of the sale to effect meaningful notice (a) to the buyer, notice of this Decree along with a copy of the Decree and (b) to the EEOC, notice of the sale.

PART EIGHT: COSTS

Except as provided in Section 703, the Commission and Cintas will bear their own costs and attorney fees.

PART NINE: RETENTION OF JURISDICTION

Section 901: Term of the Decree

The term of this Consent Decree shall extend until the later of twenty-eight months following the date of entry of the Decree or March 15, 2018.

Section 902: Retention of Jurisdiction and Enforcement of Decree

(a) The Court will retain jurisdiction of this cause for purposes of monitoring compliance with the Consent Decree and entry of such further orders or modifications as may be necessary or appropriate, through and including 90 days following the end of the term of the Consent Decree (Section 901).

(b) There is no private right of action to enforce Cintas's duties and obligations under the Decree; only the EEOC or its successors or assigns may enforce compliance herewith.

PART TEN: OTHER PROVISIONS

Section 1001: Complete Financial Obligations

This Decree constitutes the complete agreement between the EEOC and Cintas regarding the financial obligations imposed on Cintas and the complete release and settlement of EEOC's claims arising from Charge No. 230A00845 and Civil Action No. 2:04-cv-40132.

Section 1002: Severability

If one or more provisions of this Decree are rendered unlawful or unenforceable by an act of Congress or by a decision of the Sixth Circuit Court of Appeals or the United States Supreme Court, the Parties shall attempt to agree upon what, if any, amendments to this Decree to propose to the Court (Section 1003) to effectuate the purposes of this Decree. In any event, the unaffected provisions will remain enforceable to the maximum extent permitted by law.

Section 1003: Amendment

This Decree may not be amended or modified except upon written agreement of the Parties and approval of the Court. Any proposed amendment to this Decree must be signed by a duly authorized representative of each Party. Such amendment must then be presented to the Court by joint motion of the Parties.

Section 1004: Computation of Time Periods

In computing any period of time prescribed or allowed by this Decree, unless otherwise stated, such computation shall be made consistent with the Federal Rules of Civil Procedure.

SO ORDERED.

Dated: November 25, 2015

s/ Sean F. Cox
HONORABLE SEAN F. COX
U.S. DISTRICT JUDGE

EMPLOYEE NOTICE

This Notice is being distributed and posted pursuant to a Consent Decree entered by the U.S. District Court for the Eastern District of Michigan in a case between Cintas Corporation and the United States Equal Employment Opportunity Commission, Civil Action No. 2:04-cv-40132. In that case, the EEOC alleged that Cintas unlawfully refused to recruit and hire females as Route Sales Drivers/Service Sales Representatives throughout the State of Michigan because of their sex.

Federal law prohibits discrimination against any employee, former employee, or job applicant because of the individual's sex, race, color, religion, national origin, disability, age (over 40), or genetic information.

Federal law also prohibits retaliation of any kind against any person who has opposed any practice made unlawful under federal law or because an individual has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

Cintas supports and will comply with federal law in all respects and will not take any actions against employees because they have exercised their rights under the law. Cintas will not discriminate against women in hiring SSRs, will conduct a training program on Title VII of the Civil Rights Act of 1964, and will not retaliate against an individual who opposes discrimination or files a charge of discrimination.

If you have any complaint of discrimination, you may contact Cintas through its 24 hour hotline at 1-888-⟨⟩. You may also contact the EEOC at the address or telephone number given below. 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 the U.S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204-4239

477 Michigan Ave., Room 865
Detroit, Michigan 48226
Telephone (800) 669-4000
TTY (800) 669-6820

APPENDIX A

Release

In consideration for \$_____ paid to me in connection with the resolution of *EEOC v. Cintas Corporation*, I waive my right to recover under Title VII of the Civil Rights Act of 1964 for any claim of sex discrimination for failing to hire me as a service sales representative that I had against Cintas Corporation prior to the date of this release and that was included in the claims alleged in the EEOC's complaint in *EEOC v. Cintas Corporation*, 2:04-cv-40132.

Date: _____

Signature: _____

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT)	Civil Case No. 04-40132
OPPORTUNITY COMMISSION,)	
)	Hon. Sean F. Cox
Plaintiff,)	
)	Magistrate Judge R.
v.)	Steven Whalen
)	
CINTAS CORPORATION,)	
)	
Defendant.)	
)	

NOTICE OF PROPOSED DISTRIBUTION

The Equal Employment Opportunity Commission (“EEOC”) has alleged in its Second Amended Complaint in this case that it was seeking to correct alleged unlawful employment practices on the basis of sex. Specifically, the EEOC alleged that Cintas Corporation (“Cintas”) unlawfully discriminated against females in recruiting and hiring Route Sales Drivers/Service Sales Representatives throughout the state of Michigan from June 1, 1999, through March 31, 2005. The EEOC and Cintas moved that

the Court enter a consent decree to resolve the Commission's claims against Cintas. The Court entered its Consent Decree on <date>. Among other things, the Consent Decree provides for (i) monetary relief to a class of females who were not hired as service sales representatives from January 1, 1999, through March 31, 2005, and (ii) equitable and injunctive relief against Cintas that is designed to correct any alleged past sex discrimination and prevent future sex discrimination.

Pursuant to Sections 301 and 303 of the Consent Decree, the Equal Employment Opportunity Commission has compiled a list of class members, itemizing the amount of monetary relief for each individual. The Court now ORDERS that the list of class members, this Notice of Proposed Distribution, and an explanation as to how the individual's amount was calculated, be served on each class member for whom the EEOC has a current address.

If any individual class member has an objection to the proposed distribution of funds, that class member shall send to the Court, within 30 days of this Notice, her objection, specifically explaining the objection and the grounds for it.

Any objection shall include the Civil Action Number for this case (2:04-cv-40132) and be sent to the following address:

Clerk for the United States District Court
Theodore Levin U.S. Courthouse
231 W. Lafayette Blvd, Room 564
Detroit MI 48226

Those class members who have no objection to the proposed distribution should NOT send anything to the Court.

In order to receive any money in this case, an individual will have to sign a release in substantially the same form as the example enclosed.

Any individual may direct questions to the EEOC at the following address or telephone number:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis IN 46204-4239
(317) 226-7226
(800) 407-1490
email: eeoclitigation@eoc.gov

Individuals are cautioned, however, that the only way to preserve a disagreement with the proposed distribution is to submit a letter to the Court as set forth above.

SO ORDERED.

Dated: _____

HONORABLE SEAN F. COX
United States District Court
Eastern District of Michigan