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## EEOC v. Exelon Generation Co. LLC, (Byron Nuclear Power Station)

Judge Amy J. St. Eve

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# EEOC v. Exelon Generation Co. LLC, (Byron Nuclear Power Station)

**Keywords**

EEOC, Exelon Generation Co LLC, 05 C 5659, Consent Decree, Failure to Accomodate, Disparate Treatment, Termination, Hostile Work Environment, Utilities, Employment Law, ADA

AE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EXELON GENERATION CO. LLC )  
(Byron Nuclear Power Station), )  
 )  
Defendant. )

Case No. 05 c 5660  
Judge SA. LIVE

CONSENT DECREE

THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission (“EEOC”) filed this action alleging that Defendant Exelon Generation Company LLC (f/k/a Commonwealth Edison Company, Nuclear Division) Byron Nuclear Power Station (hereafter “Defendant”) violated Title I of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. § 12101 et seq., by discriminating against Charging Parties Carl Brandt, David P. Gorman, Igor Komarek and Sheila Werland (collectively, “the Charging Parties”) at the Byron, Illinois facility by denying them overtime work, training and/or promotions due to their disabilities. EEOC also alleged that Defendants violated the ADA by commingling employee medical and personnel records, failing to limit access to those records and failing to maintain the confidentiality of those records.

2. In order to resolve this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action shall be finally resolved by entry of this Consent Decree (hereafter “Decree”). This Decree fully and finally

resolves any and all issues and claims arising out of the Complaint filed by EEOC. This Decree is not an admission by Defendant of a violation of the Americans with Disabilities Act or any wrongdoing. Nothing in this Consent Decree shall be deemed to constitute an admission by either party with respect to the claims or defenses of the other.

#### FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of EEOC, Defendant, the Charging Parties and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties, the claimant, and the public.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

#### INJUNCTION AGAINST DISABILITY DISCRIMINATION

4. Defendant and its owners, officers, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them are hereby enjoined from discriminating against Defendant's employees in violation of the Americans with Disabilities Act.

### NON-RETALIATION

5. Defendant, its owners, officers, agents, employees, successors, assigns and all persons acting in concert with them shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under the ADA, filed a Charge of Discrimination under the ADA, or testified or participated in any manner in any investigation, proceeding, or hearing under the ADA.

### SEVERANCE AGREEMENT

6. Defendant and Sheila Werland ("Werland") have contemporaneously entered into a severance agreement whereby Werland will be ceasing her employment with Defendant as of January 6, 2005, and Defendant will pay her \$57,498.27 as a lump sum severance payment, minus lawful deductions and subject to execution of an agreement containing the provisions mutually agreed to by Werland and Exelon. Neither Werland and Defendant's entering into said severance agreement nor Werland's cessation of employment has been made a condition of this Consent Decree by any party, and entry into said severance agreement and the cessation of said employment is entirely voluntary and reflects the personal desire and specific request of Werland to cease her employment with Defendant.

### MONETARY RELIEF

7. In addition to the lump sum severance payment provided for by the severance agreement detailed in Paragraph 6, Defendants shall pay the following amounts as damages to each Charging Party:

Carl Brandt:           \$40,000  
David P. Gorman:     \$40,000  
Igor Komarek:         \$40,000  
Sheila Werland:       \$40,000

No withholdings shall be made from these amounts. Each such payment shall be reported to the IRS on a Form 1099.

8. Upon entry of this Consent Decree, EEOC shall mail to each Charging Party a Release Agreement in the form attached hereto as Exhibit A. The Charging Parties will execute and return the Release Agreement to EEOC, who will then send them to Defendant. Within five (5) days of Defendant's counsel's receipt of each executed Release Agreement, Defendant shall mail to the home address of each Charging Party for whom Defendant received an executed Release Agreement a check(s) for the amounts listed above in Paragraph 7 (and in Paragraph 6, for Werland), made payable to each Charging Party. Defendant shall also mail a copy of all such checks to EEOC at the address set forth in Paragraph 23, below.

#### POSTING OF NOTICE

9. Within ten (10) business days after entry of this Decree, Defendant shall post copies of the Notice attached as Exhibit B to this Decree on the bulletin boards usually used by Defendant for communicating with its employees at the Byron Nuclear Power Station. The Notice shall remain posted for two (2) years from the date of entry of this Decree. Defendant shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Defendant shall certify to EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. Defendant shall permit a

representative of EEOC to enter its premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

#### RECORD KEEPING

10. Defendant shall maintain and make available for inspection and copying by EEOC records (including names, social security numbers, addresses, and telephone numbers) of each of Defendant's employees who complain of disability discrimination at the Byron facility. With respect to complaints of disability discrimination, such report shall indicate the date the complaint was made, who made it, what was alleged, and what actions were taken to resolve the matter.

11. Defendant shall make all documents or records referred to in Paragraph 10 above available for inspection and copying within ten (10) business days after EEOC so requests. In addition, Defendant shall require supervisory personnel within its employ whom EEOC requests for purposes of verifying compliance with this Decree to cooperate with EEOC and to be interviewed and shall encourage non-supervisory employees within its employ whom EEOC requests for purposes of verifying compliance with this Decree to cooperate with EEOC and to be interviewed.

#### REPORTING

12. Defendant shall furnish to EEOC the following written reports every six (6) months for a period of two (2) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. Each such report shall contain:

a. A summary of the information recorded by Defendant pursuant to Paragraph 10;

b. A certification by Defendant that the Notice required to be posted pursuant to Paragraph 9 remained posted during the entire six (6) month period preceding the report; and

c. A list of Defendant's employees who have received the training required pursuant to Paragraph 14 below and the dates on which they received such training.

ADOPTION AND DISTRIBUTION OF POLICY  
AGAINST DISABILITY DISCRIMINATION

13. Defendant's shall adopt and distribute, consistent with its normal practices, to all current and future employees at the Byron Nuclear Power Station a policy against disability discrimination within thirty (30) days after the entry of this Consent Decree which shall, at a minimum, include the terms summarized in subparagraphs (a) through (g) below:

(a) Specific prohibition of all discrimination on the basis of disability against Defendant's employees.

(b) Inform Defendant's employees that they are entitled to a reasonable accommodation of their disability in accordance with the terms of the ADA.

(c) Inform Defendant's employees that complaints of disability discrimination, whether formal or informal, written or oral, may be made to any person in the chain of command above an employee or directly to human resources personnel. Provide the phone number for and name of a person in the Human Resources Department to whom complaints of discrimination may be made. State that the complaining employee is not required to complain to any person to whom it believes is responsible for the discrimination. State that all supervisors and managers who become aware of disability discrimination, either through a complaint or otherwise, have an obligation to report such information to their immediate supervisor and to the person designated in Human Resources to accept such complaints.



(d) Inform Defendant's employees that all complaints of disability discrimination will be investigated thoroughly and promptly and provide that employees who violate the policy are subject to discipline up to and including discharge. Provide that the employer will protect the confidentiality of discrimination complaints to the extent possible.

(e) Provide that employees who make complaints of harassment and/or discrimination or provide information related to such complaints will be protected against retaliation.

(f) Provide that, in determining whether an employee is eligible for overtime or promotion, Defendant shall consider the employee's actual physical or mental condition(s), rather than solely the employee's restrictions (whether temporary or permanent), and shall conduct an individualized assessment of each employee, taking into consideration the employee's private physicians' opinions and recommendations.

(g) Provide that, in determining whether an employee should be provided a reasonable accommodation and the nature of the accommodation, Defendant shall conduct an individualized assessment of each employee, taking into consideration the employee's private physicians' opinions and recommendations.

Defendant shall forward a copy of the Policy to EEOC within thirty (30) business days after entry of this Decree. Within ten (10) business days of distributing the Policy, Defendant shall certify in writing that they distributed the policy to all of its employees. The inclusion of Paragraph 13 in the Decree does not mean that EEOC or the Court approves of Defendant's policy against disability discrimination.

## TRAINING

14. Defendant shall implement a training program regarding disability discrimination and the ADA, which shall be in effect for at least the two (2) year period of this Consent Decree and shall be conducted in accordance with subsections (a) through (c) below:

(a) All of Defendant's Byron management, supervisory, Human Resources and Occupational Health Services (OHS) employees, and all medical personnel (whether or not employed by Defendant) who are involved in the reasonable accommodation process, evaluating or determining an employee's work restrictions, and/or determining whether an employee's physical or mental conditions are temporary or permanent (so as to permit qualification for overtime work or promotion), shall participate in mandatory training regarding disability discrimination and the ADA, including the Act's confidentiality provisions, with such training sessions to begin within sixty (60) days and to be completed within three hundred (300) days after entry of this Decree. The training may differ depending upon the trainee's position, with the expectation that training will be more detailed for Human Resources, OHS and medical personnel than for managers and supervisors.

(b) The training shall include, but not be limited to, a detailed discussion regarding disability discrimination and reasonable accommodation, including: (1) the process for determining whether an employee is eligible for overtime or promotion, which shall consider the employee's actual physical or mental condition(s), rather than solely the employee's restrictions (whether temporary or permanent), and shall include an individualized assessment of each employee, taking into consideration the employee's private physicians' opinions and recommendations; and (2) the process for determining whether an employee should be provided a reasonable accommodation and the nature of the accommodation, which shall include an

individualized assessment of each employee, taking into consideration the employee's private physicians' opinions and recommendations.

(c) Defendant shall provide comparable training to any new employees or medical personnel, as described above, who begin working at or for Defendant's Byron facility after the training sessions have taken place within ninety (90) days of the beginning of their work for Defendant.

15. Defendant will undertake the training at its own expense and will advise EEOC of the identity of its trainer in advance and provide training materials upon request. Defendant presently anticipates that training will be conducted by Exelon Corporation's Legal Department. Should Defendant wish to use any trainer other than Exelon Corporation's Legal Department, Defendant shall obtain EEOC's approval of such proposed trainer prior to the training session. Defendant shall submit the name, address, telephone number, resume and training proposal of the proposed trainer to EEOC at least fifteen (15) days prior to the proposed date(s) of the training. EEOC shall have five (5) calendar days from the date of receipt of the information described above to accept or reject the proposed trainer. In the event EEOC does not approve Defendant's designated trainer, Defendant shall have five (5) calendar days to identify an alternate trainer. EEOC shall have five (5) calendar days from the date of receipt of the information described above to accept or reject the alternate trainer. If the parties cannot through this process agree on a trainer, then they may seek the Court's assistance under Paragraph 19.

16. Defendant shall certify to EEOC in writing within ten (10) business days after the training has occurred that the training has taken place and that the required personnel have attended. Such certification shall include: (i) the date, location and duration of the training; and

(ii) a copy of the registry of attendance, which shall include the name and position of each person in attendance.

17. Defendant shall also provide EEOC with any and all copies of pamphlets, brochures, outlines or other written material(s) provided to the participants of the training session(s).

#### MEDICAL RECORDS

18. Defendant recognizes the confidential nature of employee medical records and the need to protect its employees' medical records and information from improper use or disclosure. Defendant will therefore maintain the confidentiality of information about its employees' medical conditions or histories in accordance with the ADA. Nothing in this paragraph shall be interpreted to prohibit Defendant from adopting reasonable medical confidentiality policies and practices to comply with law, including the federal Health Insurance Portability and Accountability Act and similar state laws.

#### DISPUTE RESOLUTION

19. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party twenty (20) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within twenty (20) business days, the complaining party may apply to the Court for appropriate relief.

### DURATION OF THE DECREE AND RETENTION OF JURISDICTION

20. Unless otherwise noted, all provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following entry of the Decree, provided, however, that if, at the end of the two (2) year period, any disputes under Paragraph 19, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

### MISCELLANEOUS PROVISIONS

21. Each party to this Decree shall bear its own expenses and costs. EEOC and Defendant shall bear its own attorneys' fees.

22. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of Defendant in their capacities as representatives, agents, directors and officers of Defendant, and not in their individual capacities.

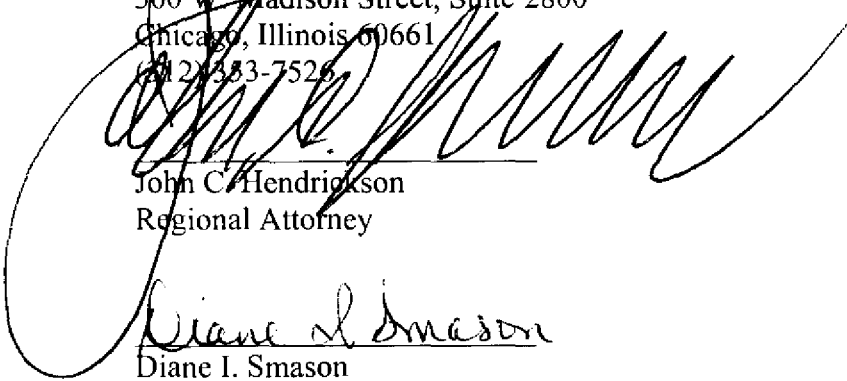
23. When this Decree requires the submission by Defendant of reports, certifications, notices, or other materials to EEOC, they shall be mailed to: Exelon ADA Settlement, Equal Employment Opportunity Commission, 500 W. Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by EEOC of materials to Defendant, they shall be mailed to: Susan H. Rider, Associate General Counsel for Labor and Employment, Exelon Business Services Company, 10 S. Dearborn, 35<sup>th</sup> Floor, Chicago, IL 60603.

For the EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1801 L Street, N.W.  
Washington, D.C. 20507

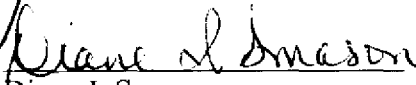
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Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

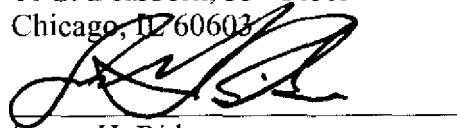
Equal Employment Opportunity Commission  
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Susan H. Rider  
Associate General Counsel for Labor and Employment

ENTER

  
\_\_\_\_\_  
Judge

Date: 10-5-05

**EXHIBIT A**

**RELEASE AGREEMENT**

I, \_\_\_\_\_, for and in consideration of the sum of \$40,000 payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Exelon Generation Company LLC (Byron Nuclear Power Station), (N.D. Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge Exelon Generation Company LLC (Byron Nuclear Power Station) ("Defendants"), and all past and present shareholders, officers, agents, employees, and representatives of Defendant, as well as all successors and assignees of Defendant, from any and all claims and causes of action of any kind which I now have or ever have had under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Exelon Generation Company LLC (Byron Nuclear Power Station), (N.D. Ill.). I understand that nothing in this Release Agreement or in the Consent Decree is an admission of a violation of the Americans with Disabilities Act or of wrongdoing by Defendant.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**NOTICE TO ALL DEFENDANT'S EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Exelon Generation Company LLC (Byron Nuclear Power Station), Case No. \_\_\_\_\_, resolving a lawsuit filed by the U.S. Equal Employment Opportunity Commission ("EEOC") against Exelon Generation Company LLC (Byron Nuclear Power Station) ("Defendant").

In its suit, EEOC alleged that Defendant violated the Americans with Disabilities Act ("ADA").

To resolve the case, Defendant and EEOC have entered into a Consent Decree which provides appropriate relief to the employee and, among other things, that:

- 1) Defendant will not discriminate against any employee on the basis of that employee's disability in accordance with the terms of the ADA;
- 2) Defendant will not retaliate against any person because (s)he opposed any practice made unlawful by the ADA, filed an ADA charge of discrimination or participated in any ADA proceeding; and
- 3) Defendant will distribute to all of its employees a policy against disability discrimination and will provide training regarding disability discrimination and its policy against disability discrimination to its managerial, supervisory, Human Resources and OHS employees, and all medical personnel; and
- 4) Defendants will maintain all employee medical records and information in files that are separate and distinct from employee personnel files.


The EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age or disability. If you believe you have been discriminated against, you may contact EEOC at (312) 353-8195. EEOC charges no fees and has a TTD number.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

**This Notice must remain posted for two years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: Exelon Settlement, EEOC, 500 West Madison Street, Suite 2800, Chicago, IL 60661.**

Date

10-5-05

  
United States District Court Judge