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EEOC v. The Hershey Company

Judge Robert S. Lasnik

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EEOC v. The Hershey Company

Keywords

EEOC, The Hershey Company, 2:17-cv-1092RSL, Consent Decree, failure to accommodate, hospitality, employment law, Title VII

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

THE HERSHEY COMPANY,

Defendant.

CIVIL ACTION NO. 2:17-cv-1092RSL

~~PROPOSED~~ CONSENT DECREE

I. INTRODUCTION

1. This action originated when Kristina Williams (“Ms. Williams”) filed a charge of discrimination dated October 8, 2015 with the Equal Employment Opportunity Commission (“EEOC” or “Commission”). Ms. Williams alleged that The Hershey Company (“Defendant” or “Hershey”) discriminated against her when it denied her a reasonable accommodation of her disability for her part-time Retail Sales Merchandiser (“RSM”) position in May 2015, did not allow her to return to work, and then discharged her on August 19, 2015.

2. On May 11, 2017, the EEOC issued a Letter of Determination with a finding of reasonable cause to believe that Defendant violated the Americans with Disabilities Act of 1990,

~~PROPOSED~~ CONSENT DECREE - Page 1 of 14 (2:17-cv-1092RSL)

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
909 First Avenue, Suite 400
Seattle, Washington 98104-1061
Telephone: (206) 220-6883
Facsimile: (206) 220-6911
TDD: (206) 220-6882

1 as amended (ADA), when it did not accommodate Ms. Williams starting on May 19, 2015, and
2 when Defendant discharged her on August 19, 2015. Thereafter, EEOC attempted to conciliate
3 the charge. However, conciliation was unsuccessful.

4 3. The Commission filed its Complaint on July 19, 2017, in the United States
5 District Court for the Western District of Washington. The Complaint alleges that Defendant
6 discriminated against Ms. Williams, a qualified individual with a physical disability, when it: (a)
7 denied her a reasonable accommodation of her disability (herniated L4/L5 lumbar discs) by not
8 providing an adjustment of her break time or work modification for her part-time Retail Sales
9 Merchandiser position during the period May 20, 2015 to August 19, 2015 (“reasonable
10 accommodation”); and (b) terminated her from her part-time RSM job on August 19, 2015. The
11 EEOC sought monetary and non-monetary relief for Ms. Williams.
12

13 4. Defendant does not admit that it has violated any federal, state or local law, and
14 this Consent Decree shall not be deemed an admission or adjudication of liability. However, in
15 acknowledgement of the costs and risks associated with continued litigation faced by both sides,
16 the parties want to conclude fully and finally all claims arising out of the EEOC’s Complaint and
17 Ms. Williams’s charge of discrimination filed with EEOC. The EEOC and Hershey enter into
18 this Consent Decree to further the objectives of equal employment opportunity in the ADA.
19
20

21 II. SETTLEMENT SCOPE

22 5. This Consent Decree is the final and complete resolution of all allegations of
23 unlawful employment practices contained in Ms. Williams’s discrimination charge, in the
24
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1 EEOC's administrative determination, and in the EEOC's Complaint filed herein, including all
2 claims by the EEOC and Hershey for attorney fees and costs.

3 6. No waiver, modification or amendment of any provision of this Consent Decree
4 shall be effective unless made in writing and approved by the Parties to this Decree, and any
5 substantive change, modification or amendment of any provision of this Consent Decree shall
6 also require approval by the Court.
7

8
9 III. MONETARY RELIEF

10 7. In settlement of this lawsuit, Hershey agrees to pay Ms. Williams the total amount
11 of \$25,000.00 within ten (10) business days of the date of entry of this Consent Decree by
12 delivering the following to Ms. Williams's home address by certified mail with proof of
13 delivery:

14 a. A check in the amount of \$4,205.00 which constitutes back pay for Ms.
15 Williams. The check shall be reduced by any applicable deductions for the employee's
16 portion of FICA and applicable federal and applicable state income tax withholdings
17 related to the payment of wages. Hershey shall pay the employer's portion of FICA.
18 Hershey shall include a statement of payments and deductions; and
19

20 b. A separate check in the amount of \$20,795.00 as compensatory damages
21 payable to Ms. Williams. Hershey will issue Ms. Williams an IRS form 1099 for this
22 payment.
23
24
25

1 c. Hershey shall transmit a copy of any checks made payable to Ms. Williams,
2 together with an accounting of employee deductions and employer contributions made, to
3 the EEOC at the same time that payment is made to Ms. Williams as described above to:

4 Damien A. Lee
5 U.S. Equal Employment Opportunity Commission
6 Seattle Field Office
7 909 First Avenue, Ste. 400
8 Seattle, WA 98104
9 damien.lee@eeoc.gov

8 8. Hershey will not condition the receipt of monetary relief by requiring Ms.
9 Williams to: (a) maintain as confidential the facts and/or allegations underlying her charge, the
10 EEOC's Complaint and the terms of this Decree; (b) waive her statutory right to file a future
11 charge with any government agency; (c) agree to a non-disparagement and/or confidentiality
12 agreement; or (d) release any claims beyond the ADA claims at issue in this action and which
13 this Consent Decree resolves.
14

15
16 **IV. INJUNCTIVE AND OTHER RELIEF**

17 **A. General Provisions**

18 9. Hershey, its officers, agents, managers, supervisors, and human resource staff in
19 the Seattle and Portland Sales Districts (herein referred to as "Pacific Northwest"), and all human
20 resources/employee relations staff in Hershey, PA who provide advice and support to managers,
21 supervisors and employees in the Pacific Northwest, and its successors and assigns, are enjoined
22 from engaging in practices which unlawfully discriminate under the ADA against employees on
23 the basis of disability who request reasonable accommodation and/or who are terminated.
24
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1 10. During the duration of this Consent Decree, Hershey will provide prior written
2 notice to any potential purchaser of its businesses, or a purchaser of all or a portion of Hershey's
3 assets, and to any other potential successor, of the EEOC's lawsuit, the allegations raised in the
4 EEOC's Complaint, and the existence and contents of this Consent Decree. In recognition of its
5 obligations under the ADA, Hershey shall institute the policies and practices set forth below.
6

7
8 B. Anti-Discrimination Policies and Procedures

9 11. Hershey shall implement anti-discrimination policies, procedures and training for
10 all management personnel, supervisors and employees in the Pacific Northwest, and for all
11 human resources/employee relations staff in Hershey, PA who provide advice and support to
12 managers, supervisors and employees in the Pacific Northwest, including the human
13 resource/employee relations staff responsible for reviewing requests for reasonable
14 accommodation from employees in the Pacific Northwest.
15

16 12. EEO Policies and Procedures. Hershey shall ensure it has written policies and
17 procedures that: (a) prohibit disability discrimination; (b) explain to employees their rights and
18 responsibilities under the ADA; (c) describe the process by which an employee can file an
19 internal complaint based on disability, and how Hershey will investigate and resolve such a
20 complaint; and (d) periodically update these policies and procedures to reflect changes in anti-
21 discrimination laws. The policies and procedures will state that that they are promulgated at the
22 direction of and with the endorsement by the highest level of Hershey management. These
23 policies and procedures shall be provided to the EEOC for review and comment no later than
24 thirty (30) days after execution of the Consent Decree. Within fourteen (14) days of receipt, the
25

1 EEOC will advise Hershey of any comments. EEOC agrees to review the version of these
2 policies and procedures in good faith.

3 13. Hershey's anti-discrimination policy will describe the process by which a Hershey
4 employee can request a reasonable accommodation under the ADA, what factors will be
5 considered in approving or denying the requested accommodation, the type of information that
6 an employee must submit to support his/her requested accommodation and the time frame for
7 approval or denial.

8 14. Not later than sixty (60) days after entry of this Consent Decree, Hershey shall
9 distribute a written copy of its EEO policies to all employees, both management and non-
10 management. Hershey will confirm that it distributed its written EEO policies to all employees
11 within ninety (90) days of entry of this Decree. The EEO policies will also be distributed to
12 every employee hired or re-hired during the duration of this Decree.

13 15. Policy Modifications. In the event that Hershey modifies any of the policies
14 identified in paragraphs 12 through 13 above during the duration of the Decree, Hershey shall
15 submit to the EEOC the proposed modifications no later than thirty (30) days before adoption.
16 EEOC will notify Hershey within fourteen (14) days of receipt of the proposed modifications if it
17 has any comments. EEOC agrees to review the proposed modifications in good faith.
18

19
20
21 C. Equal Employment Opportunity Training

22 16. Hershey shall provide two (2) hours of EEO training to the managers, supervisors
23 and employees in the Pacific Northwest and for all human resources/employee relations staff in
24 Hershey, PA who provide advice and support on ADA issues to managers, supervisors and
25

1 employees in the Pacific Northwest, including the human resource/employee relations staff
2 responsible for reviewing requests for reasonable accommodation from employees in the Pacific
3 Northwest for the first year of the Consent Decree, and then two (2) hours of such training in the
4 second year of the Consent Decree. This anti-discrimination training shall be developed and
5 administered by a third-party provider with expertise in anti-discrimination matters and include,
6 at a minimum, an overview of the ADA with special emphasis on employee rights and
7 responsibilities in requesting a reasonable accommodation, employer obligations in responding
8 to requests for reasonable accommodation, the interactive process, and the employer's ongoing
9 obligation to ensure the effectiveness of reasonable accommodations, if granted. Defendant
10 shall ensure that the format of the training is computer-based and interactive. Training materials
11 must be submitted to the EEOC no later than forty (40) days prior to the training session to allow
12 the EEOC the opportunity to comment on the training, and for Defendant to revise the training
13 materials accordingly. Within fourteen (14) days of receipt, the EEOC will advise Defendant of
14 any comments. The EEOC agrees to review the proposed policies and procedures in good faith.
15
16

17 17. After incorporating revisions to resolve any concerns raised by the EEOC to the
18 foregoing training session, Hershey shall provide the EEO training noted in Paragraph 16 no
19 later than one-hundred-and-eighty (180) days after entry of this Consent Decree.

20 18. Hershey shall notify the EEOC in writing of the completion of the training
21 seminar and shall specify the names and job titles of the managers, supervisors and employees
22 who participated in and completed the training. This information shall be provided as part of the
23 annual reports required by Paragraphs 23-24 of this Consent Decree.
24
25

1 D. Non-Disclosure of Information, File Expungement and Positive Reference

2 19. Hershey shall not disclose any information or make reference to any charge of
3 discrimination or this lawsuit in responding to requests for information about Ms. Williams.
4 Hershey shall expunge from its personnel records any information relating to Ms. Williams's
5 request for an accommodation and Hershey's response. Those records will be preserved in a file
6 separate from Ms. Williams's personnel records. Consistent with Hershey's usual policies and
7 practices regarding responding to requests for references for all former employees, Defendant
8 shall only confirm Ms. Williams' years of employment with Hershey and her position during her
9 employment to any prospective employer.
10

11
12 E. Policies Designed to Promote Accountability

13 20. Hershey shall advise all managers and supervisors, hiring officials, and human
14 resources personnel of their duty to ensure compliance with its EEO policies. Hershey shall
15 impose discipline, up to and including termination of employment, upon any manager,
16 supervisor, hiring official, and human resource personnel who it determines has discriminated
17 against an applicant or employee based on disability.
18

19 21. In conducting performance reviews, Hershey shall hold each manager, and
20 supervisor accountable for EEO enforcement and compliance.
21

22 F. Reporting

23 22. Hershey shall submit a report to the EEOC for each year of this Consent Decree.
24 The first report shall be submitted to the EEOC twelve (12) months after the entry of this
25

1 Consent Decree, and a subsequent report will be submitted within twelve (12) months after the
2 first report is submitted.

3 23. Each report shall contain the following information and attachments:

4 a. A certification that Hershey has:

- 5 1. Implemented its written EEO policies and procedures and distributed
6 copies of its EEO policy as described in Paragraphs 11 and 15;
- 7 2. Complied with the training provisions enumerated in this Consent Decree
8 in Paragraphs 16-18;
- 9 3. Enforced its policies and procedures to promote EEO accountability by
10 managers and supervisors, as required by Paragraph 20; and
- 11 4. Complied with all other provisions of this Consent Decree.

12 b. Copies of the following documents shall be included with each annual report
13 submitted to the Seattle Field Office of the EEOC:

- 14 1. A copy of Hershey's EEO policy and procedures developed and
15 implemented in accordance with the provisions of this Consent Decree;
- 16 2. A summary of all medical/disability reasonable accommodation requests
17 made by RSMs in the Pacific Northwest, the disposition of the request,
18 and the reason for the disposition, along with the following information:
- 19 i. The initials of the individual who made the reasonable accommodation
20 request. EEOC agrees to review these accommodation requests in
21 good faith and Hershey agrees to cooperate with the EEOC in good
22 faith to address any concerns raised by the EEOC with regard to those
23 accommodation requests. If the parties cannot reach an agreement to
24 address the EEOC's concerns regarding the accommodation requests
25 reported pursuant to this section, at the written request of the EEOC,
Hershey will provide the full address and telephone numbers of the
individual.
- ii. Name(s) and title(s) of the individual(s) who received, addressed and
resolved the request for reasonable accommodation.

1
2 VII. DURATION AND TERMINATION

3 28. This Consent Decree shall be in effect for two (2) years from the date of entry of
4 the Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court
5 finds Hershey to be in violation of the terms of the Consent Decree, the Court may extend the
6 duration of this Consent Decree.
7

8
9
10 Respectfully submitted this ____ day of ____, 2018.

11 BY: 

12
13 ROBERTA L. STEELE
Regional Attorney

14 JOHN F. STANLEY
Supervisory Trial Attorney

15 DAMIEN A. LEE
Senior Trial Attorney

16 TERI L. HEALY
Senior Trial Attorney

17
18
19 Attorneys for Plaintiff Equal Employment Opportunity Commission

20
21 BY: 

22 Michael J. Puma (admitted *pro hac vice*)
23 Eric C. Kim (admitted *pro hac vice*)
24 **MORGAN, LEWIS & BOCKIUS LLP**
1701 Market Street
Philadelphia, PA 19103
25 (215) 963-5000 Phone

1 (215) 963-5001 Fax

2 Sheryl J. Willert
3 **WILLIAMS KASTNER**
4 601 Union Street, Suite 4100
5 Seattle, WA 98101-2380
6 (206) 628-2408 Phone
7 (206) 628-6611 Fax

8 Attorneys for The Hershey Company
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NOTICE TO EMPLOYEES

This notice has been e-mailed to you as part of a settlement approved by the federal district court for the Western District of Washington, Case No. 2:17-cv-1092 RSL, resolving a lawsuit brought by the Equal Employment Opportunity Commission (EEOC) on behalf of a former employee against The Hershey Company (the "Lawsuit"), in which the EEOC asserted claims of disability discrimination under the Americans With Disabilities Act (ADA). The Hershey Company denies violating the ADA or any federal, state, or local law, and believes its actions were consistent with its obligations under the ADA. However, in acknowledgement of the costs and risks associated with continued litigation faced by both sides, the parties agreed to fully and finally settle all claims in the Lawsuit. The EEOC and Hershey agree to provide this Notice to further the objectives of equal employment opportunity in the ADA.

Federal law prohibit discrimination against any individual because of his or her disability. These protections extend to employees who request reasonable accommodation. The Hershey Company has anti-discrimination policies that tell employees how to make a reasonable accommodation request. The policies explain what factors The Hershey Company will consider in approving or denying a reasonable accommodation request, the information an employee must submit to support the request, and the time frame for approval or denial. With these policies, The Hershey Company is committed to a meaningful interactive process for all employees who request an ADA reasonable accommodation.

Federal law also prohibits retaliation against any individual by an employer because the individual complains of discrimination, cooperates with any company or Government Investigation of a charge of discrimination, participates as a witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under the law.

For any complaints of disability discrimination, you should contact the Employee Relations department using the Concern Line at 1.800.362.8321.

Employees also have the right to bring complaints of disability discrimination to the U.S. Equal Employment Opportunity Commission, Seattle District Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, 206.220.6884, 1.800.669.4000.