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EEOC v. Pacific Airport Services, Inc.,

Judge Ramona V. Manglona

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EEOC v. Pacific Airport Services, Inc.,

Keywords

EEOC v. Pacific Airport Services Inc., 09-0039, Sex, Female, Hostile Work Environment, Constructive Discharge

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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE**
17 **NORTHERN MARIANA ISLANDS**

18 U.S. EQUAL EMPLOYMENT
19 OPPORTUNITY COMMISSION,

20 Plaintiff,

21 vs.

22
23 PACIFIC AIRPORT SERVICES, INC.,
24 and DOES 1-10, Inclusive

25 Defendant

} Case No. 09-0039

} **CONSENT DECREE AND**
26 **~~PROPOSED~~ ORDER**

AWM

1 **I. INTRODUCTION**

2 Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) and
3 Defendant Pacific Airport Services, Inc. (“Defendant”) stipulate and agree to entry
4 of this consent decree and order (“Decree”) to resolve the EEOC’s complaint
5 against Defendant in *U.S. Equal Employment Opportunity Commission v. Pacific*
6 *Airport Services, Inc.*, Civil Case No. 09-0039 (the “Action”) filed in the District
7 Court of the Northern Mariana Islands.

8 On September 29, 2009, EEOC brought this Action against Defendant
9 pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §
10 2000e *et seq.* (“Title VII”). In the Action, the EEOC alleged that Defendant
11 subjected the Charging Party and a class of female employees to a sexually hostile
12 work environment and to constructive discharge in violation of sections 703 and
13 707 of Title VII.

14 On January 15, 2010, Pacific Airport Services, Inc. filed an Answer to the
15 EEOC Complaint denying the allegations. Pacific Airport Services now intends to
16 end this litigation and agree to a comprehensive program of training and
17 monitoring to protect its employees from violation of Title VII. Pacific Airport
18 Services enters this agreement voluntarily for the benefit of the company and all of
19 its employees without any admission of the allegations in the complaint.

20 **II. PURPOSES AND SCOPE**

21 A. This Decree is made and entered into by and between the EEOC and
22 Defendant (collectively the “Parties”).

23 B. Any provision intended to bind or be enforceable against or to benefit
24 Defendant shall bind and be enforceable against or benefit Defendant’s successors
25 by stock purchase, and assigns.

26 C. The Parties have entered into this Decree for the following purposes:

- 27 1. To put an end to this litigation;
28 2. To provide monetary and injunctive relief;

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- 3. To ensure Defendant’s employment practices comply with Title VII;
- 4. To ensure that Defendant’s managers, supervisors, and employees are given effective training of their obligations under Title VII;

III. RELEASE OF CLAIMS

A. This Decree fully and completely resolves all issues, claims, and allegations raised or that could have been raised in the complaint filed on September 29, 2009 by the EEOC in *U.S. Equal Employment Opportunity Commission v. Pacific Airport Services, Inc.*, Civil Case No. 09-0039.

B. Nothing in this Decree shall be construed to preclude the EEOC from moving to enforce this Decree in the event that Defendant fails to perform the promises or representations contained herein.

C. Nothing in this Decree shall be construed to limit or reduce Defendant’s obligation to comply with Title VII or any other federal law.

D. This Decree in no way affects the EEOC’s right to bring, process, investigate, or litigate other charges that may be in existence or may later arise against Defendant in accordance with standard EEOC procedures, except for any claims contained in the complaint of this Action.

IV. JURISDICTION AND FINDINGS

A. The Court has jurisdiction over the Parties and the subject matter of this Action. The complaint in this Action asserts claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree.

B. The terms and provisions of this Decree are fair, reasonable, and just.

C. This Decree conforms to the Federal Rules of Civil Procedure and Title VII and does not derogate the rights or privileges of any person.

1 D. The Court shall retain jurisdiction over this Action during the duration
2 of the Decree for the purpose of entering any order, judgment, or decree that may
3 be necessary to implement the relief provided herein.

4 **V. EFFECTIVE DATE AND DURATION**

5 A. The provisions and agreements contained herein are effective
6 immediately upon the date which this Decree is entered by the Court (the
7 “Effective Date”).

8 B. The obligations of Defendant included in this Decree shall remain in
9 effect for two and a half years, (30) months after the Effective Date, provided that
10 Defendant has substantially complied with the terms of this Decree. In the event
11 that Defendant has not substantially complied, the duration of this Decree may be
12 extended by court order upon motion by the EEOC to effectuate the purposes of
13 the Decree.

14 **VI. MODIFICATION AND SEVERABILITY**

15 A. This Decree constitutes the complete understanding of the Parties with
16 respect to the matters contained herein.

17 B. By mutual written agreement of the Parties, this Decree may be
18 amended or modified in the interests of justice and fairness in order to effectuate
19 its provisions.

20 C. No waiver, modification, or amendment of any provision of this
21 Decree will be effective unless made in writing and signed by an authorized
22 representative of each of the Parties.

23 D. If one or more of the provisions of this Decree is rendered unlawful or
24 unenforceable, (1) the Parties shall make good faith efforts to agree upon
25 appropriate amendments in order to effectuate the purposes of the Decree, and (2)
26 the remaining provisions will remain in full force and effect unless, despite the
27 Parties’ best efforts, the purposes of this Decree cannot be achieved.

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VII. COMPLIANCE AND RESOLUTION

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2 A. The Parties expressly agree that if the EEOC has reason to believe that
3 Defendant has failed to comply with any provision of this Decree, the EEOC may
4 file a motion before this Court to enforce the Decree. Prior to initiating such
5 action, the EEOC will notify Defendant and/or its legal counsel of record, in
6 writing, of the nature of the dispute. This notice shall specify the particular
7 provision(s) that the EEOC believes Defendant has breached.

8 B. The Parties agree to cooperate with each other and use reasonable
9 efforts to resolve any dispute referenced in the EEOC’s notice.

10 C. Absent a showing by either party that the delay will cause irreparable
11 harm, Defendant shall have thirty days to attempt to resolve or cure the putative
12 breach. If thirty days pass without resolution or agreement to extend the time
13 further, the EEOC may petition this Court for resolution of the dispute, seeking all
14 available relief, including an extension of the term of the Decree for such period of
15 time as Defendant is shown to be in breach of the Decree, as well as the EEOC’s
16 costs and attorneys’ fees incurred in securing compliance with the Decree.

VIII. MONETARY RELIEF

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18 A. In settlement of this lawsuit, Defendant shall pay a total of sixty five
19 thousand dollars \$65,000.00 (the “Settlement Fund”) to the Claimants. Allocation
20 of the settlement amount among the Claimants shall be at the EEOC’s sole
21 discretion.

22 B. On or after the Effective Date, the EEOC shall inform Defendant the
23 amount of the Settlement Fund to be allocated to each of the Claimants; and the
24 mailing address of each Claimant. Within thirty days of having been provided by
25 the EEOC of the allocation amount and the mailing address of each Claimant,
26 Defendant shall send a check to each of the Claimants via registered mail in the
27 amounts specified by the EEOC.

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1 C. The EEOC has deemed that all of the Settlement Amount shall be
2 designated as non-wage compensation under Title VII, and no tax withholding
3 shall be made. Defendant shall prepare and distribute a 1099 tax reporting form to
4 the Claimants and shall make appropriate reports to the Internal Revenue Service
5 and other tax authorities, if necessary.

6 D. Within five business days of the issuance of the checks, Defendant
7 shall submit a copy of the checks and related correspondence to Anna Y. Park,
8 EEOC Regional Attorney, 255 East Temple Street, 4th Floor, Los Angeles,
9 California, 90012.

10 **IX. GENERAL INJUNCTIVE RELIEF**

11 A. Non-Discrimination Policy

12 Defendant and its successors and assigns are enjoined from engaging in any
13 employment action, policy, and/or practices that discriminate against persons
14 employed by Defendant in violation of Title VII, including sex / sexual
15 discrimination / harassment.

16 B. Non-Retaliation Policy

17 Defendant and its successors and assigns shall not retaliate against any
18 current or former employee or applicant because such employee or applicant has in
19 the past, or during the term of this Decree:

- 20 1. Opposed any practice made unlawful under the Title VII;
- 21 2. Filed a charge of discrimination alleging such practice;
- 22 3. Testified or participated in any manner in any investigation
23 (including, without limitation, any internal investigation
24 undertaken by Defendant) or proceeding in connection with this
25 case or relating to any claim of an Title VII violation;
- 26 4. Has been identified as a possible witness or claimant in this
27 Action;
- 28 5. Asserted any rights under this Decree; or

1 6. Sought and/or received any relief in accordance with this
2 Decree.

3 C. Equal Employment Opportunity Consultant

4 1. Defendant shall retain a Consultant or Monitor ("Monitor")
5 approved by the EEOC within thirty (30) days of the Effective Date with
6 demonstrated experience in the area of employment discrimination, EEO laws, and
7 consent decree compliance to implement and monitor Defendant's compliance
8 with Title VII and the provisions of this Decree.

9 2. For the term of the Decree, the Monitor's responsibilities shall
10 include:

- 11 a. ensuring that all employees, including management,
12 supervisory, and human resource employees, are trained
13 on their rights and responsibilities under Title VII and
14 this Decree, including the responsibility to provide a
15 workplace free of sex / sexual discrimination,
16 harassment, and retaliation;
- 17 b. ensuring that all employees, including management,
18 supervisory, and human resource employees, are trained
19 on Defendant's Policy against discrimination, including
20 of sex / sexual discrimination, harassment, and
21 retaliation. While the Monitor can delegate trainings to
22 another trainer approved by the EEOC, the Monitor shall
23 be responsible for the content and implementation of the
24 training in compliance with this Consent Decree;
- 25 c. monitoring any investigation of any complaint of of sex /
26 sexual discrimination, harassment, and retaliation to
27 ensure compliance with Title VII and this Decree;
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- d. ensuring that Defendant properly communicates with complainants as required by this Decree;
- e. ensuring that Defendant creates a centralized system of tracking of sex / sexual discrimination, harassment, and retaliation complaints, as required by this Decree;
- f. ensuring that Defendant’s performance and discipline policies hold employees and managers accountable for failing to take appropriate action regarding complaints of sex / sexual discrimination, harassment, and retaliation, or for engaging in conduct prohibited under Title VII or this Decree;
- g. preparing a semi-annual report on Defendant’s compliance with Title VII and this Decree; and
- h. ensuring that Defendant accurately compiles and timely submits all reports by required this Decree.

D. Revision of Anti-Harassment Policy and Complaint Procedure for Discrimination, Harassment, and Any Subsequent Retaliation

Within sixty (60) days of the Effective Date, Defendant, with the assistance of its Monitor, shall review and, if necessary, revise its policy against and complaint procedure for discrimination in violation of Title VII, including sex / sexual discrimination, harassment, and retaliation. The policy and complaint procedure shall include:

- 1. a clear explanation of prohibited conduct under Title VII, which includes sex / sexual discrimination, harassment, and retaliation (“prohibited conduct”);

1 2. an assurance that employees who make complaints of the
2 prohibited conduct or provide information related to such complaints will be
3 protected from retaliation;

4 3. a clearly described process for complaints of the prohibited
5 conduct that provides accessible avenues of complaint against co-workers and the
6 complainant's supervisors, that allows for complaints to be initiated verbally,
7 although it may require that the substance of the complaint be recorded later in
8 writing;

9 4. an assurance that Defendant will protect the confidentiality of
10 complaints of the prohibited conduct to the extent possible from being disclosed to
11 those who do not need to know;

12 5. a complaint process that provides a prompt, thorough, and
13 impartial investigation;

14 6. a requirement that any employee in a supervisory position who
15 receives a complaint of the prohibited conduct, whether formal or informal,
16 written or verbal, report such complaint to the human resources department within
17 24 hours of receiving said complaint;

18 7. an assurance that Defendant's disciplinary policies hold
19 employees, managers, supervisors and human resources accountable for failing to
20 take appropriate action or for engaging in conduct prohibited under this Decree;

21 8. a procedure for communicating with the complainant in writing
22 regarding the status of the complaint / investigation of the prohibited conduct,
23 results of the investigation, and if any remedial action was taken; and

24 9. assurance that Defendant will take immediate and appropriate
25 corrective action when it determines that the prohibited conduct has occurred.
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1 E. Distribution of Defendant's Anti-Harassment Policy and Complaint
2 Procedure for Sex-Based Discrimination, Harassment and Any
3 Subsequent Retaliation

4 1. Within ninety (90) days of the Effective Date, Defendant shall
5 post for the duration of the Decree a full-sized copy of its policy against and
6 complaint procedure for discrimination, with an emphasis on sex / sexual
7 discrimination, harassment, and retaliation. The posting shall be in a clearly
8 visible location frequented by employees (i.e. break rooms or bulletin boards with
9 other employee notices).

10 2. Within ninety (90) days of the Effective Date, Defendant shall
11 distribute its policy against and complaint procedure for discrimination, with an
12 emphasis on sex / sexual discrimination, harassment, and retaliation to all of its
13 employees.

14 3. For the remainder of the term of this Decree, all new employees
15 hired shall receive within thirty (30) days of hire Defendant's policy against and
16 complaint procedure for discrimination with an emphasis on sex / sexual
17 discrimination, harassment, and retaliation; and shall be provided with an in-person
18 overview, individually or as a group, of the policy and procedures with a member
19 of Defendant's human resources department or administrative staff.

20 4. For the remainder of the term of this Decree, all employees
21 promoted from non-managerial to managerial positions shall receive within thirty
22 days of promotion any policies and procedures of Defendant's against and about
23 discrimination, including sex / sexual discrimination, harassment, and retaliation
24 applicable to managerial employees; and shall be provided with an in-person
25 overview of the policy and procedures with a member of Defendant's human
26 resources department at its facilities that are operational in California during the
27 term of the Decree.

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1 F. Training

2 1. Within sixty (60) days of the Effective Date, the Defendant
3 shall review with its Monitor and revise, if needed, its training of its policy against
4 and complaint procedure for discrimination, including sex / sexual discrimination,
5 harassment, and retaliation. No later than fourteen days before each training,
6 Defendant agrees to send to the EEOC a copy of any written materials and
7 Powerpoint Presentations to be used during the training.

8 2. Within ninety (90) days of the Effective Date, the Defendant,
9 with the assistance of the Monitor, shall provide live, in-person training(s) of at
10 least 1 hour in duration about conduct that constitutes sex / sexual discrimination,
11 harassment, and retaliation in violation of Title VII; and about its policy against
12 and complaint procedure for sex / sexual discrimination, harassment, and
13 retaliation for its non-managerial staff/hourly employees.

14 3. Within ninety (90) days of the Effective Date, the Defendant,
15 with the assistance of the Monitor, shall provide live, in-person training(s) of at
16 least 2 hours in duration about conduct that constitutes sex / sexual discrimination,
17 harassment, and retaliation in violation of Title VII; and about its policy against
18 and complaint procedure for sex / sexual discrimination, harassment, and
19 retaliation for its managerial and human resources employees. Additionally, the
20 training of managerial and human resources employees shall include training on
21 their responsibilities under Title VII, including how to receive, investigate, or
22 report to designated officials complaints of discrimination including sex / sexual
23 discrimination, harassment, and retaliation, about how to take preventive and
24 corrective measures against discrimination including sex / sexual discrimination,
25 harassment, and about the prohibition against any subsequent retaliation.

26 4. After the initial trainings described in paragraphs 2 and 3 of this
27 section, Defendant shall conduct annual live, in-person training every twelve (12)
28

1 months thereafter for the duration of the Decree on the same topics and in the same
2 manner as described in paragraphs 2 and 3 of this section.

3 5. For any employees who miss the scheduled training described
4 in this section, the Defendant shall show a videotape of the scheduled training to
5 these employees within thirty (30) days of the scheduled training.

6 6. All employees required to attend such training shall verify their
7 attendance in writing.

8 G. Record Keeping and Reporting

9 1. Document Preservation: For the duration of the Decree,
10 Defendant shall maintain such records as are necessary to demonstrate their
11 compliance with this Decree, including the following:

12 a. Defendant's policy and procedures are reviewed and
13 revised to be in compliance with Title VII and the Decree;

14 b. the form signed by each employee employed at any time
15 during the term of the Consent Decree acknowledging that he or she has received,
16 read, and understood Defendant's Policy;

17 c. the training materials and outline of the training to be
18 provided to Defendant's employees as required by the Decree; and

19 d. attendance sheets or verification signed by each
20 employee showing that he or she has attended the trainings as required by the
21 Decree;

22 e. documentation in a centralized tracking system of any
23 complaint of any sex / sexual discrimination, harassment, and/or retaliation; the
24 subsequent investigation; and the resolution of such complaints.

25 f. documentation of Defendant's efforts in holding
26 managers and supervisors accountable in regular performance evaluations for
27 understanding and complying with Defendant's policy and procedure against
28 discrimination and retaliation.

1 2. Changes in Policy and Procedure: Within thirty days before
2 implementing any changes to Defendant's policy and complaint procedure
3 regarding discrimination, harassment, and retaliation; to the centralized tracking
4 system of any complaints of sex / sexual discrimination, harassment, and/or
5 retaliation; and the monitoring of such complaints, Defendant shall provide to the
6 EEOC the revised Policy, procedure, or revision for review and comment, if any.

7 3. Initial Reporting: Within one hundred and twenty days of the
8 Effective Date, Defendant shall provide to the EEOC with a written report of
9 Defendant's compliance with the Decree since the Effective Date. The Initial
10 Report shall include the following:

11 a. confirmation that Defendant has distributed the Policy to
12 all of its employees;

13 b. confirmation that Defendant has provided the training to
14 all employees in compliance with the Decree;

15 c. confirmation that Defendant has complied with the
16 record keeping requirements of the Decree;

17 d. confirmation that Defendant has posted its policy against
18 and complaint procedure for discrimination in compliance with the Decree;

19 e. a summary of Defendant's efforts in holding managers
20 and supervisors accountable in regular performance evaluations for understanding
21 and complying with Defendant's policy and procedure against discrimination and
22 retaliation;

23 f. a copy of the Policy that Defendant had distributed to its
24 employees;

25 g. a copy of training materials and outline of the training
26 that was provided to Defendant's employees during the reporting period;

27 h. all complaints of sex / sexual discrimination, harassment,
28 and/or retaliation tracked by date, the name of the employee who filed the

1 complaint, the name of the person who handled the complaint, summary of any
2 investigation, and the resolution of the complaint/request; and

3 i. copies of all documents pertaining to the investigation of
4 all complaints set forth in 3(h), including the complaint itself, interview notes,
5 documents of investigation, findings of the investigation, responses to the
6 complaint, disciplinary actions, and follow-up steps.

7 4. Annual Reporting: On an annual basis or twelve months after
8 the deadline for Initial Reporting for the duration of the Decree, Defendant shall
9 provide to the EEOC with a written report of Defendant's compliance with the
10 Decree since the last report. The annual report shall include the same information
11 and documentation as set forth for the Initial Reporting. The employees to be
12 provided with the Policy are all employees hired or managers promoted since the
13 last report to the EEOC in compliance with the Decree.

14 5. Request by the EEOC: Within thirty days of a request by the
15 EEOC, Defendant shall provide to the EEOC all documents required to be kept in
16 connection with the Decree, including the documentation with respect to
17 complaints of sex / sexual discrimination, harassment, and/or retaliation and the
18 resolution of such complaints.

19 **X. COSTS OF ADMINISTRATION AND IMPLEMENTATION**

20 Defendant shall bear all costs associated with its administration and
21 implementation of its obligations under this Decree.

22 **XI. MISCELLANEOUS PROVISIONS**

23 A. During the term of this Consent Decree, Defendant shall provide any
24 potential successor-in-interest with a copy of this Decree within a reasonable time
25 prior to the execution of any agreement for acquisition or assumption of control of
26 any or all of Defendant's operations or facilities.

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B. During the term of this Decree, Defendant shall ensure that each of its officers, managers, supervisors and Human Resources staff is aware of any term in this Decree which may be related to his/her job duties.

C. All reporting under this Decree shall be directed to: Anna Y. Park, EEOC Regional Attorney, EEOC – Los Angeles District Office, 255 East Temple Street, 4th Floor, Los Angeles, CA, 90012.

D. The Parties agree to entry of this Decree and judgment subject to final approval by the Court.

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
/s/ Anna Y. Park

Date: July 1, 2013

By: _____

Anna Y. Park
Attorneys for Plaintiff EEOC

PACIFIC AIRPORT SERVICES, INC.

Date: July 1, 2013

By: /s/ Colin M. Thompson

Colin M. Thompson
Attorneys for Defendant
Pacific Airport Services, Inc.

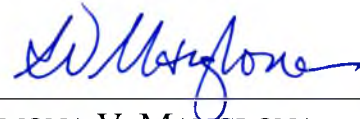


~~PROPOSED~~ ORDER

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2 **GOOD CAUSE** having been shown, the provisions of the foregoing
3 Consent Decree are hereby approved and compliance with all provisions thereof is
4 fair and adequate.

5 **IT IS SO ORDERED.**

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8 **July**
9 Date: ~~June~~ 3, 2013



RAMONA V. MANGLONA
Chief Judge

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