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EEOC v. Heartland Employment Services

Judge William T. Lawrence

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EEOC v. Heartland Employment Services

Keywords

EEOC, Equal Employment Opportunity Commission, Heartland Employment Services, ManorCare, Health Care, Race, African American, Black, Disparate Treatment, Subjective Decision Making, Terms and Conditions

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	1:08-cv-1292-WTL-TAB
HEARTLAND EMPLOYMENT)	
SERVICES, LLC, d/b/a MANORCARE)	
OF INDY SOUTH)	
)	
)	
Defendant.)	
_____)	

CONSENT DECREE

This action was instituted by the Equal Employment Opportunity Commission (“Commission”) under the authority granted to it under Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). The Commission’s action was brought to correct alleged unlawful employment practices on the basis of race. Specifically, the Commission alleged in its Complaint that the Defendant Heartland Employment Services, LLC, d/b/a ManorCare of Indy South (“ManorCare of Indy South”) discriminated against Thelma M. Wrencher and a class of similarly situated individuals with respect to the terms, conditions, and privileges of their employment and discharged Thelma M. Wrencher because of her race, black. ManorCare of Indy South denied the EEOC’s allegations.

The Commission and ManorCare of Indy South hereby stipulate to the jurisdiction of the Court over the parties and the subject matter of this action.

The parties have advised the Court that they desire to resolve the remaining allegations in

the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made 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) the purpose and provisions of Title VII will be promoted and effectuated by the entry of this Consent Decree; and (3) this Consent Decree resolves all the matters in controversy between the parties as provided in paragraphs 1 through 15 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. ManorCare of Indy South agrees that:
 - a. it will not discriminate against employees because of race;
 - b. it will not engage in any act, policy or practice that has the purpose or effect of discriminating against employees or applicants for employment on the basis of race; and
 - c. it will not discriminate or retaliate in any way against any person because of opposition to a practice made unlawful under Title VII or because of the filing of a charge, the giving of testimony, assistance or participation in any manner in an investigation, proceeding or hearing under Title VII.
2. To resolve this matter without the burden and expense of further litigation, ManorCare of Indy South agrees to pay \$10,000.00 to Thelma Wrencher in settlement of her discharge claim as raised in this cause of action. The payment will be made via check payable to Thelma Wrencher for Ten Thousand and no/100 Dollars (\$10,000.00), less FICA, federal and state income taxes, and any other legally required deductions. The parties agree that this amount represents lost wages. Ms. Wrencher will receive a W-2 reflecting this amount. ManorCare of Indy South agrees not to deduct from the settlement amount of \$10,000.00 the amount of the employer's share of any costs, taxes or social security required by law to be paid by ManorCare of Indy South. Within thirty days from the entry of this Consent Decree by the Court, the

Commission will forward a release to Thelma Wrencher for her execution. A copy of the release is attached hereto as Appendix A. The Commission will notify counsel for ManorCare of Indy South on receipt of the release executed by Thelma Wrencher. Then, within forty-five days from the entry of this Consent Decree by the Court, or within five days of the Commission's notification that it has received the release signed by Ms. Wrencher, whichever is later, ManorCare of Indy South shall mail the settlement check(s) to Ms. Wrencher by certified mail to 3725 Keefe Court, Indianapolis, Indiana 46235. ManorCare of Indy South shall mail a copy of Ms. Wrencher's check and proof of its delivery to her (a signed certified mail receipt) to the Commission in the care of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204. The Commission shall then forward Ms. Wrencher's executed release to ManorCare of Indy South's counsel upon receipt of proof of delivery of the settlement check to Ms. Wrencher.

3. ManorCare of Indy South agrees to pay each class member, including Thelma Wrencher, (or their heirs or assigns in the event of death) the sum of \$1,000 each. The members of the class include forty-six black employees who worked as Certified Nurse Assistants ("CNAs"), Licensed Practical Nurses ("LPNs") or Registered Nurses ("RNs") at the Indy South facility between March 1, 2007, and the date this agreement is entered by the Court. ManorCare of Indy South agrees to issue each class member a form 1099 and also agrees not to deduct from the class members' settlement amount the employer's share of any costs, taxes or social security required by law to be paid by ManorCare of Indy South. These damages shall be distributed to the members of the class in full satisfaction of their claims in this action.

The Commission shall have thirty (30) days from the date of entry of the Consent Decree to report to the Court on the proposed distribution of damages and procedures for class member notification and a fairness hearing. Within ninety (90) days of the issuance of a court order

approving or modifying the Commission's proposal, the Commission will notify each class member of the proposed damage distribution, the requirement of signing a release to receive a damage award, and procedures for objecting to the proposed distribution. If no objections are filed, the Court will issue an order approving the distribution of damages to class members ("final order on distribution"). If objections are filed, a fairness hearing will be held before the Court issues the final order on distribution. After the Court issues the final order on distribution, ManorCare of Indy South shall make payment as provided in paragraph 4 herein.

4. In order to receive his/her damage award, each class member shall execute a release in the form attached and made a part hereof as Appendix B. The Commission shall have forty-five days (45) days from the final order on distribution to obtain executed releases from the class members. Any class member who fails to timely return an executed release in the form set forth in Appendix B shall waive any claim to relief under this Decree and shall be barred from pursuing any claim raised or which could have been raised in the Commission's Complaint. If the Commission is unable to obtain an executed release from a class member (or his/her representative in the event of death or incapacity) within the time period specified, the class member's share of damages shall revert to Thelma Wrencher and the remaining class members as follows: the first \$5,000.00 in reversion funds shall be paid to Thelma Wrencher; any reversion funds exceeding \$5,000.00 shall be divided equally among the other class members (excluding Thelma Wrencher) who have returned executed releases. The Commission shall calculate any such division without further action by the Court.

Within sixty (60) days of the final order on distribution, the Commission shall forward the executed releases to ManorCare of Indy South and notify ManorCare of Indy South of the names and addresses of the payees who are to receive damage awards and the amount each is to receive. ManorCare of Indy South shall make payment within thirty (30) days of receipt of the executed

releases by issuing checks in the specified amounts made payable to each payee and sent by certified mail to the payee's address provided to ManorCare of Indy South by the Commission. ManorCare of Indy South shall mail a copy of each check and proof of its delivery (a signed certified mail receipt) to the Commission. The entire settlement amount shall be distributed to class members and no portion shall revert to ManorCare of Indy South.

5. ManorCare of Indy South agrees that it shall adopt a policy wherein its officers, agents, management (including supervisory employees), successors, assigns, and all persons acting in concert with them shall not discriminate against employees on the basis of race by making race-based job assignments.

6. ManorCare of Indy South agrees to post the Notice of Non-Discrimination Policy attached as Appendix C to this Decree in a conspicuous place on its premises. Said notice shall remain posted throughout the term of this Decree. ManorCare of Indy South also agrees to distribute the Notice of Non-Discrimination to each of its employees within ten days of the entry of this Decree by the Court.

7. ManorCare of Indy South agrees to eliminate from the record of Thelma Wrencher all reference to her charge of discrimination and participation in this suit and shall make no reference to such charge or participation in the event that it is contacted for references. This provision survives the expiration of the Consent Decree.

8. ManorCare of Indy South agrees to notify all of its employees that it will not make job assignments based on race and that race is not a factor to be considered in any employment decision.

9. ManorCare of Indy South agrees that its managers and supervisors, and all of its human resources personnel, shall attend annual training regarding race discrimination. Said individuals must attend at least one training session within twelve (12) months from the date of

entry of this Decree. Training regarding race discrimination must be provided on an annual basis to all managers, supervisors and human resources personnel. Thirty (30) days prior to the date of the training, ManorCare of Indy South shall provide notice to the Commission regarding the date, time and place of the training, and shall send to the Commission a copy of the training program. The Commission may provide reasonable input on the content of the program.

10. ManorCare of Indy South agrees to submit reports to the Commission detailing its compliance with this decree.

a. Within sixty (60) days of the date of this Decree, ManorCare of Indy South will certify to the EEOC Regional Attorney Laurie A. Young, that it has informed its employees that race is not a factor to be considered when making any employment decision, including job assignments and that it has distributed the Notice of Non-Discrimination attached as Appendix C to all of its employees;

b. In addition, three (3) annual reports shall be submitted during the term of this decree. The first report shall be due on June 30, 2009 and the subsequent reports shall be mailed to the Commission no later than June 30th of each year covered by the decree. The report shall include the following information for the twelve (12) month period preceding the report: the name, race, job position, home address, and home telephone number for all employees who are involuntarily discharged. The annual reports shall also include the date, location and title of the race discrimination training referred to in paragraph 9 above and the names and positions of the employees who attended the training.

Reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204.

11. ManorCare of Indy South agrees that the Commission may review compliance with this Decree. As part of such review, the Commission may inspect the premises, interview employees, and examine and copy documents, provided that said documents are not private health care records for which residents refuse to provide a release.

12. In the event that the Commission alleges that a violation of this Decree has occurred, prior to exercising any remedy provided by law, the Commission shall give notice of the alleged violation to ManorCare of Indy South. ManorCare of Indy South shall have thirty (30) days in which to investigate and respond to the allegation. Thereafter, the parties will have a period of thirty (30) days, or such additional period as may be agreed upon by them, in which to negotiate and confer regarding such allegation, before the Commission exercises any remedy provided by law.

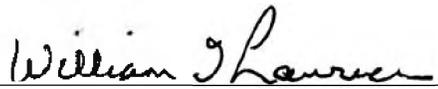
13. The Commission and ManorCare of Indy South shall each bear its own costs and attorney fees.

14. The term of this Decree shall be for three (3) years following the date of the entry of this Decree.

15. The Court will retain jurisdiction of this cause throughout the duration of this Decree for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

04/28/2009

Date



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Copies to:

Jo Ann Farnsworth, Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY

COMMISSION
101 W. Ohio Street, Suite 1900
Indianapolis, IN 46204

Jane Ann Himsel
Alan L. McLaughlin
LITTLER MENDELSON, P.C.
111 Monument Circle
Suite 702
Indianapolis, Indiana 46204