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EEOC v. Luihn Food Systems

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EEOC v. Luihn Food Systems

Keywords

EEOC, Equal Employment Opportunity Commission, Luihn Food Systems, 5:09-cv-00387, Agriculture, Sex, Female, Hostile Work Environment, Sexual Harassment, Retaliation

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:09-cv-00387

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
and)	
)	
TINA UNDERWOOD, SABIH SHERIDAN,)	CONSENT DECREE
and SHEILA MUNGIN,)	
)	
Plaintiff-Intervenors,)	
)	
v.)	
)	
LUIHN FOOD SYSTEMS, INC.,)	
)	
Defendant.)	

The Equal Employment Opportunity Commission (the “Commission”) instituted this action pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1) and (3) (“Title VII”), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Thereafter, Sheila Mungin, Sabih Sheridan, and Tina Underwood (collectively, the “Plaintiff-Intervenors”) intervened, through counsel, alleging violations of Title VII. Defendant Luhn Food Systems, Inc. (the “Defendant”) denies all the allegations of the Plaintiff-Intervenors and the Commission and does not admit to any liability whatsoever. Likewise, the Commission does not disavow the allegations contained in its Complaint. The Commission’s entry into this Consent Decree does not in any way imply or suggest that Defendant was or was not in compliance with the law with respect to its dealings with the Individual Claimants as alleged in this action.

The Commission, Plaintiff-Intervenors, and the Defendant hereby stipulate to the

jurisdiction of the Court over the parties and agree that the subject matter of this action is properly before the Court.

The parties have advised this Court that they desire to resolve the 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 the Consent Decree; and (3) this Decree resolves all matters in controversy between the parties as provided in paragraphs 1 through 16 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant shall not discriminate against any person on the basis of sex, including by subjecting them to a sexually hostile work environment, or any other protected category within the meaning of Title VII.

2. Defendant shall not discriminate or retaliate against any person because of his or her opposition to any practice made unlawful under Title VII of the Civil Rights Act of 1964 or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing under that statute.

3. Defendant shall pay the sum of Two Hundred Seventy Seven Thousand Dollars and no 100s (\$277,000.00) in settlement of the claims raised in this action, including all claims for attorney's fees and costs by Plaintiff-Intervenors. Payments for alleged personal physical injuries shall be made to the following individuals in amounts determined by the Commission: Pamela Johnson, Sheila Mungin, Barbara Nowlin, Sabih Sheridan, and Tina Underwood (the "Individual Claimants"). Defendant shall issue a Form 1099 to each Individual Claimant and

counsel for Plaintiff-Intervenors. Neither the Commission nor Defendant make any representation or assume any responsibility for any tax liability, assessments, interest, penalties, and/or costs that each Individual Claimant may incur on such payment under local, state, and/or federal law. Within five (5) days of the entry of this Decree, the Commission will provide Defendant with a schedule showing the amount to be paid to each Individual Claimant and counsel for Plaintiff-Intervenors as well as the address to which payment shall be mailed. Defendant shall make payment pursuant to the schedule provided by the Commission within twenty (20) days after the Commission provides Defendant with the payment schedules or within fifteen (15) days after the Court approves this Consent Decree, whichever is later. Within ten (10) days after payment has been mailed, Defendant shall mail to Lynette A. Barnes, Regional Attorney, at the Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C., 28202, a copy of each check and proof of each check's delivery to each Individual Claimant.

4. Within ten (10) days of the entry of this Decree by the Court, Defendant shall eliminate from the employment records of Pamela Johnson, Sheila Mungin, Barbara Nowlin, Sabih Sheridan, and Tina Underwood any and all documents, entries, or references of any kind relating to the facts and circumstances which led to the filing of EEOC Charge Numbers 433-2008-00225, 433-2008-00384, 433-2008-00420, and 433-2008-01605 and the related events that occurred thereafter. Within fifteen (15) days of the entry of this Decree by the Court, Defendant shall report compliance with this provision to the EEOC.

5. Letter of Reference. Defendant agrees to provide Pamela Johnson, Sheila Mungin, Barbara Nowlin, Sabih Sheridan, and Tina Underwood with a positive letter of reference using the form attached hereto as Exhibit A.

6. Sexual Harassment Policy. Within ninety (90) days of the entry of this Decree by the Court, Defendant shall revise its sexual harassment policy to include the following: (1) clearly described procedures for reporting sexual harassment, including a contact number for Defendant's Human Resources department; (2) assurance that Defendant will protect the confidentiality of harassment complaints to the extent possible; (3) a procedure for the prompt, thorough, and impartial investigation of employee complaints of harassment; and (4) assurance that Defendant will take immediate and appropriate corrective action when it determines that sexual harassment has occurred. Defendant shall distribute to each current employee a copy of the policy within the aforementioned 90 day time period. Within one hundred (100) days of the entry of this Decree, Defendant shall report compliance to the Commission. During the term of this Decree, Defendant shall distribute the policy to all new employees and review it with them at the time of hire.

7. During the term of this Decree, Defendant shall post a copy of the policy described in paragraph 6, *supra*, in all of their facilities in a place where it is visible to employees. If the policy becomes defaced or unreadable, Defendant will replace it by posting another copy of the policy. Within one hundred (100) days after the Consent Decree is entered, Defendant will post the policy and notify the EEOC that it has been posted.

8. During the term of this Decree, Defendant shall provide an annual training program to all of its managers, supervisors and employees. Each training program shall include an explanation of the requirements of Title VII of the Civil Rights Act of 1964, and its prohibition against sexual harassment and retaliation in the workplace. Each training program shall also include an explanation of Defendant's policy referenced in paragraph 6 above, and an explanation of the rights and responsibilities of employees and managers under the policy.

The first training program shall be completed within one hundred (100) days after entry of the Decree by the Court. Each subsequent training program shall be conducted at approximately one-year intervals. At least fifteen (15) days prior to each program, Defendant shall provide the Commission with an agenda for the training program. Within ten (10) days after completion of each training program, Defendant shall certify to the Commission the specific training which was undertaken and shall provide the Commission with a roster of all employees in attendance.

9. Beginning within thirty (30) days after the entry of this Decree by the Court, and continuing throughout the term of this Decree, Defendant shall conspicuously post the attached Employee Notice, marked Exhibit B, hereby made a part of this Decree, in a place where it is visible to employees at its facility located at 5900 Duraleigh Road in Raleigh, North Carolina. If the Notice becomes defaced or unreadable, Defendant shall replace it by posting another copy of the Notice.

10. During the term of this Consent Decree, Defendant shall provide the Commission with reports at six (6) month intervals, with the first being due four (4) months after approval by the Court of this Decree. The reports will include the following information:

- A. the identities of all individuals who, during the previous six (6) months, (i) have made any complaints about sexual comments, sexual conduct, or any conduct that the complainant deems sexual in nature; (ii) have made any complaints about conduct that could be construed as sexual harassment under Defendant's sexual harassment policy; and (iii) have complained about sexual harassment, including by way of identification each person's name, address, telephone number, position, and social security number; and
- B. a brief description of the individual's complaint; and
- C. a description of all actions taken by Defendant in response to the individual's complaint.

11. The Commission may review compliance with this Decree. As part of such

review, the Commission may inspect Defendant's facilities, interview employees and examine and copy documents.

12. If anytime during the term of this Decree, the Commission believes that Defendant is in violation of the Decree, the Commission shall give notice of the alleged violation to Defendant. Defendant shall have ten (10) days in which to investigate and respond to the allegations. Thereafter, the parties shall then have a period of ten (10) days or such additional period as may be agreed upon by them, in which to engage in negotiation and conciliation regarding such allegations before the Commission exercises any remedy provided by law.


13. The term of this Decree shall be for two (2) years from its entry by the Court.

14. All reports or other documents sent to the Commission by Defendant pursuant to this Decree shall be sent to: (1) if by mail – Lynette A. Barnes, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C., 28202; or (2) if by email – EEOC-CTDO-decree-monitoring@eoc.gov.

15. Each party shall bear its own costs and attorney's fees.

16. This Court shall retain jurisdiction of this cause for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

11/30/11
Date



Judge, U.S. District Court
Eastern District of North Carolina

The parties jointly request that the Court approve and enter the Consent Decree:

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Plaintiff**

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Attorney for Defendant

SHEILA MUNGIN, Plaintiff-Intervenor

SABIH SHERIDAN, Plaintiff-Intervenor

TINA UNDERWOOD, Plaintiff-Intervenor

/s/ Faith Herndon
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Durham, NC 27701
fh@faithlaw.net
*Attorney for Sheila Mungin, Sabih Sheridan,
and Tina Underwood*

EXHIBIT A

[Defendant's letterhead]

[Date]

TO WHOM IT MAY CONCERN:

We are pleased to provide the following reference on behalf of our former employee,
_____.

_____ was employed by Luihn Food Systems, Inc., from [start date] to [last date of employment]. During her tenure with us, _____ held the position of [position]. Her ending salary was \$ _____ per hour.

According to our records, _____ was a reliable employee who possessed positive customer service skills.

We hope that this information about _____ is helpful to you in considering her for employment.

Sincerely,

[Typed name of company representative]
[Position], Luihn Food Systems, Inc.

EXHIBIT B
 IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
 COMMISSION,)
 Plaintiff,)
 and)
 TINA UNDERWOOD, SABIH SHERIDAN,)
 and SHEILA MUNGIN,)
 Plaintiff-Intervenors,)
 v.)
 LUIHN FOOD SYSTEMS, INC.,)
 Defendant.)

Civil Action No. 5:09-cv-00387

NOTICE

1. This Notice is posted pursuant to a settlement between the U.S. Equal Employment Opportunity Commission and Luhn Food Systems, Inc., in a case of discrimination based on sex. Specifically, the EEOC alleged that Luhn Food Systems, Inc. subjected a class of female employees to sexual harassment in violation of Title VII of the Civil Rights Act of 1964. As part of the settlement, Luhn Food Systems, Inc. agreed to take action set out in the Consent Decree resolving this matter. By entering into this settlement, Luhn Food Systems, Inc. does not admit to any liability.
2. Federal law requires that employers not discriminate against any employee or applicant for employment because of the individual's race, color, religion, sex, national origin, age (40 or older) or disability. Title VII specifically prohibits discrimination based on sex, including sexual harassment.
3. Luhn Food Systems, Inc. will comply with such federal law in all respects. Furthermore, Luhn Food Systems, Inc. will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U. S. Equal Employment Opportunity Commission.

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 their local U. S. Equal Employment Opportunity Commission field office for the purpose of filing a charge of employment discrimination. To locate the nearest field office, contact:

Equal Employment Opportunity Commission
 1801 L Street, N.W.
 Washington, DC 20507
 TEL: 1-800-669-4000
 TTY: 1-800-669-6820

This Notice will remain posted for at least two (2) years by agreement with the U.S. Equal Employment Opportunity Commission. DO NOT REMOVE THIS NOTICE UNTIL: _____, 2013.