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# EEOC v. Hi Care, Inc. d/b/a Home Instead Senior Care

Judge William M. Nickerson

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# EEOC v. Hi Care, Inc. d/b/a Home Instead Senior Care

**Keywords**

EEOC, Hi Care, Home Instead Senior Care, 10-WMN-02692, Consent Decree, Disparate Treatment, Assignment, Race, Hospitality, Employment Law, Title VII

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, )

Plaintiff,,

10-WMN-02692

v. )

HI CARE, INC. )  
d/b/a HOME INSTEAD SENIOR CARE,

Defendant..

CONSENT DECREE

This action was instituted by Plaintiff, Equal Employment Opportunity Commission (hereinafter the "EEOC" or the "Commission"), against Defendant HiCare, Inc. ("Defendant") alleging that Defendant engaged in unlawful employment practices at its Arnold and Ellicott City, Maryland offices, in violation of Section 703 of Title VII, 42 U.S.C. S 2000e-2(a)(2). Specifically, the Commission alleged that Defendant utilized a racial coding system to identify clients who prefer Caucasian caregivers, internally referring to clients who prefer Caucasian caregivers as "circle dots," and that Defendant relied upon such racial coding when assigning caregivers to work by catering to the racial preferences of its clients. The parties desire to resolve the Commission's action without any admission or acknowledgement of liability or wrongdoing on the part of Defendant and without the time and expense of continued litigation. The parties desire to formulate a plan to be embodied in this Consent Decree consistent with Title VII.

The Court has examined this Decree and finds that it is reasonable and just and in accordance with the Federal Rules of Civil Procedure and Title VII. Therefore, upon due consideration of the record herein and being fully advised in the premises, it is ORDERED, ADJUDGED, AND DECREED:

Scope of Decree

1. This Decree resolves all issues and claims in the Complaint filed by the Commission in this action, including but not limited to those claims which emanated from the Charge of Discrimination filed by Christina Omole. This Decree in no way affects the Commission's right to process any other pending or future charges that may be filed against Defendant and to commence civil actions on any such charges as the Commission sees fit.

2. This Decree shall be in effect for five years from the date of entry. During that time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate the purposes of the Decree.

3. This Decree, being entered with the consent of EEOC and Defendant, shall not constitute an adjudication or finding on the merits of the case.

Relief to Claimants

4. Defendant shall pay \$150,000 to be distributed to Claimants in amounts to be determined by the Commission at its sole discretion. Claimants are defined as all caregivers employed by Defendant from October 2007 through the entry of this Decree. All of the monetary relief paid to the Claimants pursuant to this Decree is acknowledged to be compensatory damages under Title VII.

5. Within ten (10) business days of entry of this Decree, Defendant shall provide the Commission with the names, dates of employment, and status (full-time/part-time) of each caregiver employed with Defendant from October 2007 through the entry of this Decree, which the Commission shall use to apportion damages based on Claimants' length of service and employment status with Defendant. Within five (5) business days of receiving the names, dates of employment, and status, the Commission shall provide Defendant with the apportionment owed to each Claimant. Within twenty (20) days of receiving the apportionment of damages, Defendant shall issue a check to each Claimant in the amount the Commission has determined. Defendant shall submit a copy of each check and related correspondence to the EEOC, Baltimore District Office, Attn: Lindsey White, 10 S. Howard Street, Third Floor, Baltimore, Maryland 21201. Further, Defendant shall issue an Internal Revenue Service ("IRS") Form 1099 to each claimant, if required under IRS rules and regulation, for the 2010 tax year in the amount each claimant received.

6. Defendant shall promptly notify the EEOC in writing if any checks issued to Claimants are returned as undeliverable or are not cashed after a period of thirty calendar days has elapsed after being mailed. With the assistance of the EEOC, Defendant shall make a good faith effort to locate any Claimant whose check is returned as undeliverable and will re-mail the check once to those for whom a potentially new address can be found. After allowing a reasonable time for negotiation of settlement checks and location of Claimants, not to exceed three months, any remaining undistributed settlement funds will be sent to Maryland Legal Aid.

### Injunctive Relief

7. Defendant, its officers, agents, servants, employees and all persons acting on its behalf hereby are enjoined from any and all patterns and practices of engagement in racial coding. In addition, Defendant will cease any practices, current or previous, which permit customers or clients to dictate Defendant's business operation with respect to race-based assignment of employees based on the customers' racial preference unless specifically requested by the caregiver. Racial discrimination violates Title VII, which, in part, is set forth below:

It shall be an unlawful employment practice for an employer --

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to [her] compensation, terms, condition, or privileges of employment, because of such individual's ... color ...

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. 92000e-2(a)(1)&(2).

8. This injunction shall survive the duration of this Decree.

### Title VII Training

9. Once during the calendar year 2011 and once during every calendar year thereafter for the duration of this Decree, Defendant will provide all HiCare recruits and human resources personnel with no fewer than two (2) hours of live training on the requirements and prohibitions of Title VII.

a. The training will be conducted by Rebecca Strandberg, of Rebecca Strandberg & Associates, PA.

b. All Title VII training materials will be provided by Defendant to the EEOC within sixty (60) days of the entry of this decree. The training will cover racial discrimination with a special emphasis on the discriminatory assignment of caregiving based on the racial preferences of clients unless specifically requested by the caregiver..

c. Within ten (10) business days after the training, Defendant shall forward to EEOC a copy of the attendance records from the training session.

10. During the calendar year 2011 and once during every calendar year thereafter for the duration of this Decree, Defendant shall provide newly hired HiCare recruits and human resources personnel with Title VII training within fifteen (15) days from the newly hired personnel's first day of work. The training will be conducted live or in DVD/Video format.

a. Within ten (10) business days after the training, Defendant shall forward to EEOC a copy of the attendance records from the training session.

#### Policies and Procedures

11. Within fifteen (15) days of the entry of this Decree, Defendant shall implement a policy that addresses the potential safety risks of caregiving assigned to customers with racial preferences without imposing a race-conscious work limitation on its workforce. This policy is attached as Exhibit A.

#### Notice and Postings

12. Within ten (10) business days of entry of this Decree, Defendant shall post and cause to remain posted the posters required to be displayed in the workplace by Commission Regulations, 29 C.F.R. ~ 1601.30, in all places where notices to employees customarily are posted at Defendant's facilities.

13. Within ten (10) business days of entry of this Decree, Defendant shall post Exhibit B ("Notice to Employees") in all places where notices to employees customarily are posted at Defendants's facilities. This Exhibit shall be posted and maintained for the duration of the Decree. Exhibit B shall also be signed by Owner Dave Dickens with the date of actual posting shown thereon. Should the Exhibit become defaced, marred, or otherwise made unreadable, upon written notice of same and a reasonable time to act, Defendant shall ensure that new readable copies of the Exhibit are posted in the same manner as heretofore specified. Within thirty (30) days of approval of this Decree, Defendant shall forward to the Commission's Baltimore Field Office a copy of the signed Notice and written certification that the Notice has been posted and a statement of the location(s) and date of posting.

Monitoring Provisions

14. Defendants's Human Resources Director or appropriate designee, will direct, monitor and maintain responsibility for implementation of this Decree.

15. EEOC may monitor compliance during the duration of this Decree by inspection of Defendants's premises upon ten (10) business days' written notice to Defendant by the EEOC. Upon such notice, Defendant will make available for inspection its facilities sought to be inspected by EEOC.

16. All materials required by this Decree to be sent to EEOC shall be addressed to:

Equal Employment Opportunity Commission  
Baltimore Field Office  
Attention: Lindsey A. White, Trial Attorney  
10 S. Howard Street, Third Floor  
Baltimore, Maryland 21201

17. The Commission and Defendant shall bear their own costs and attorney" fees.



18. The undersigned counsel of record in the above-captioned action hereby consent, on behalf of their respective clients, to the entry of the foregoing Consent Decree.

Respectfully submitted,

FOR PLAINTIFF:

FOR DEFENDANT::

/s/

Debra M. Lawrence  
Regional Attorney

*lsi*

Maria Salacuse (Bar No. 15562)  
Supervisory Trial Attorney

*lsi*

(signed by Lindsey A. White with permission of Rebecca N. Strandberg)  
Rebecca N. Strandberg (Bar No. 02196)  
Rebecca Strandberg & Associates, PA  
8607 Second Avenue, Suite 405A  
Silver Spring, MD 20910

***J?***

Lindsey A. White (Bar No. 29183)  
Trial Attorney  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Baltimore Field Office  
10 S. Howard Street, Third Floor  
Baltimore, MD 21201

SO ORDERED.

Signed and entered this ***10% of Jkc ^ O ^*** 2010.

William M. Nicl<sup>^</sup>on  
United States District Court Judge