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# EEOC v. Luby's Restaurants Limited Partnership d/b/a Luby's San Antonio #19

Judge Fred Biery

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# EEOC v. Luby's Restaurants Limited Partnership d/b/a Luby's San Antonio #19

## **Keywords**

EEOC, Luby's Restaurants Limited Partnership, Luby's San Antonio #19, SA08CA0794FB, Consent Decree, Hostile Work Environment, Constructive Discharge, Female, Sex, Hospitality, Employment Law, Title VII



adversely affected Maria Del Carmen Rodriguez, Nadine Ramirez, Lisa Bustos, and a class of similarly situated females in that they were subjected to repeated unwelcome sexual touching, sexual comments, gestures and innuendo, in addition to other harassing conduct leveled disproportionately or only against female employees, in violation of Section 703(a) of Title VII. The EEOC further alleged that Maria Del Carmen Rodriguez was constructively discharged, when she quit her employment, allegedly because her employment conditions became so intolerable. Maria Del Carmen Rodriguez intervened in the EEOC's lawsuit and the allegations Contained in the Intervener's Complaint-in-Intervention mirror those in the EEOC's Complaint.

The EEOC, Rodriguez and Luby's wish to settle this action, without the necessity of further litigation, pursuant to the terms delineated in this Decree. By entering into this Consent Decree, Defendant Luby's makes no admission of liability, and it specifically denies all the allegations asserted in the Complaint and the Complaint-in-Intervention.

**THEREFORE IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. This Court has jurisdiction of the subject matter of the claims and causes of action asserted by the EEOC and Rodriguez against Luby's, venue is proper, and all administrative prerequisites to the EEOC's filing its Complaint have been met.

2. This Consent Decree resolves all claims raised in the EEOC's Complaint and in Rodriguez's Complaint-in-Intervention. The EEOC and Rodriguez waive further litigation of all claims raised in the above-referenced Complaints. The EEOC expressly reserves its right, however, to process and litigate any other charges which may now be pending or may in the future be filed against Defendant Luby's.

3. Defendant Luby's, its officers, successors, assigns, agents, servants, employees, attorneys, and all persons in active concert or participation with them, who are working at its

Floyd Curl location, #19, San Antonio, Texas are hereby enjoined from engaging in sexual harassment, including sexual harassment and any other employment practice which discriminates on the basis of sex, female.

4. Within thirty (30) days of the Court's entry of this Consent Decree, Defendant Luby's shall, in settlement of this dispute, pay a total sum of One Hundred and Thirty-Five Thousand Dollars (\$135,000.00), which will be paid and apportioned as follows:

- a) Eighty Five Thousand Dollars (\$85,000.00) to Maria Del Carmen Rodriguez. Payment to Maria Del Carmen Rodriguez shall be mailed to Ms. Rodriguez's attorney, Tim Maloney, LAW OFFICES OF MALONEY & CAMPOLO, L.L.P., 900 S.E. Military Drive, San Antonio, Texas 78214.
- b) Fifty Thousand Dollars (\$50,000.00) apportioned evenly between Nadine Ramirez and Lisa Bustos. Payment of Twenty-Five Thousand Dollars (\$25,000.00) to Nadine Ramirez shall be mailed to 6131 Sunset Haven, San Antonio, Texas 78249. Payment of Twenty-Five Thousand Dollars (\$25,000.00) to Lisa Marie Bustos shall be mailed to 5903 Eckhert Road, Apt. #322, San Antonio, Texas 78240.
- c) Payments shall be made by certified check, and a copy of all the settlement checks and any accompanying transmittal documents shall be forwarded to Judith G. Taylor, Supervisory Trial Attorney, San Antonio Field Office, United States Equal Employment Opportunity Commission, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

5. Within sixty (60) days of the entry of this Consent Decree, Defendant Luby's will implement a sexual harassment policy that meets the following criteria:

- (a) States that Luby's: (i) prohibits discrimination against any employee on the basis of sex, female, in violation of Title VII; (ii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of sex, female, in violation of Title VII; and, (iii) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to any employee through acts such as physical/verbal abuse and derogatory comments based on sex, female, in violation of Title VII;
- (b) Defines and provides examples of sexual harassment;
- (c) Provides for prompt investigation of sexual harassment complaints and for prompt action, which is appropriate and effective, to remedy the discrimination;

- (d) Provides for substantial and progressive discipline for violating Luby's sexual harassment policy up to and including discharge;
- (e) Requires that all employees report incidents of sexual harassment to the person(s) identified by Luby's as the person(s) charged with the responsibility for investigating discrimination complaints; and
- (f) Shall include a toll free telephone number to report sexual harassment.

6. Within ninety (90) days from the entry of this Consent Decree, Defendant Luby's shall provide at least two (2) hours of sexual harassment training to all its employees, officials, managers and supervisors assigned to its Floyd Curl Location, #19 in San Antonio, Texas. The training shall explain that discrimination on the basis of sex, and in particular that sexual harassment violates Title VII; it shall instruct what conduct may constitute a violation of Title VII; and explain the damaging effects discrimination causes to victims, their families and co-workers, and the workplace environment. The individual(s) selected to conduct this training shall be an attorney or an independent training person or group (with at least five years' experience in labor and employment law), who will send a copy of the training presentation outline to the EEOC at least ten (10) days before any training session occurs. The EEOC shall have the right to approve the training and the instructor(s). Within twenty (20) days after the training has been completed, Defendant Luby's shall provide to the EEOC certification that the training has been completed, identifying each individual who attended the training and the date.

7. Defendant Luby's agrees to post a notice at its Floyd Curl Location, #19, in San Antonio, Texas, for eighteen (18) months, of its intent to comply with Title VII. This notice is set forth in Exhibit "A," which is attached to this Consent Decree. Defendant Luby's agrees to post a copy of Exhibit "A" in a conspicuous place at its Floyd Curl Location, #19, in San Antonio, Texas, within ten (10) of the entry of this Consent Decree. Defendant Luby's shall

ensure that the posting is not altered, defaced or covered by any other material.

8. Within forty-five (45) days of the Court's entry of this Consent Decree and during the term of this Consent Decree, Defendant Luby's shall provide each employee who is eighteen (18) years of age or younger at the time of hire and who work at its Floyd Curl location, #19, San Antonio, Texas, a Notice of Rights; a copy of this Notice of Rights is attached as Exhibit "B."

9. During the term of this Consent Decree, and upon five (5) days notice to Defendant Luby's Risk Manager, Derrick Ross at (713) 329-6960, the EEOC shall have the right to ensure compliance with the terms of this Consent Decree and may:

- (a) Conduct inspections at Defendant Luby's facility;
- (b) Examine and copy relevant documents.

10. Defendant Luby's shall bear the costs associated with administering and implementing the provisions of this Consent Decree.

11. Defendant Luby's has represented that Kenneth Everett Booth has been terminated and will not be rehired, and this provision shall survive the term of this Consent Decree.


12. The terms of this Consent Decree shall be binding upon the EEOC, Rodriguez and Luby's, its agents, officers, employees, servants, successors, and assigns, as to the issues resolved herein.

13. The duration of this Consent Decree shall be eighteen (18) months from the date of its filing with the Court. The Court shall retain jurisdiction of this case during the term of this Consent Decree to enforce compliance and to take any action necessary and/or appropriate for its interpretation, execution, modification and/or adjudication of disputes.

14. The parties to this Consent Decree shall bear their own costs and attorney's fees incurred in this action as of the date of entry of this Consent Decree by the Court.

15. When this Consent Decree requires the submission by Luby's of documents or other materials to EEOC, such documents or other materials shall be mailed to Judith G. Taylor, Supervisory Trial Attorney, United States Equal Employment Opportunity Commission, San Antonio Field Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

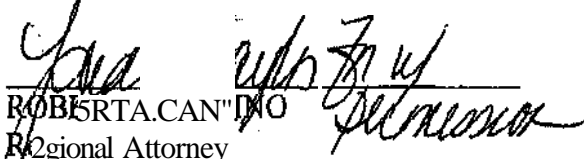
**SO ORDERED AND ENTERED** this ^ day of July, 2009.

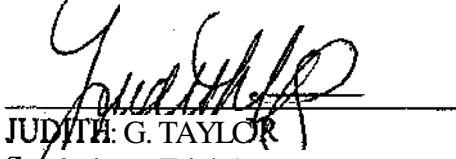
  
HONORABLE FRED BIERS  
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

JAMES L. LEE  
Deputy General Counsel

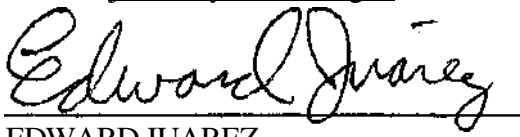
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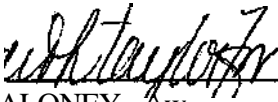


FULBRIGHT & JAWORSKI, L.L.P.  
300 Convent Street, Suite 2200  
San Antonio, Texas 78205  
Telephone: (210) 270-7120  
Facsimile: (210) 270-7205

**ATTORNEYS FOR DEFENDANT**

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
San Antonio Field Office  
5410 Fredericksburg Road, Suite 200  
San Antonio, Texas 78229-3555  
Telephone: (210) 281-7613  
Facsimile: (210) 281-7669

**ATTORNEYS FOR PLAINTIFF**

  
nm MALONEY <sup>^</sup>w  
Attorney at Law //•  
State Bar No. 03730150

LAW OFFICES OF MALONEY & CAMPOLO, LLP  
900 S.E. Military Drive  
San Antonio, Texas 78214  
Telephone: (210) 922-2200  
Facsimile: (210) 923-1313

**ATTORNEYS FOR PLAINTIFF-  
INTERVENOR**

**EXHIBIT A**

**NOTICE TO ALL EMPLOYEES**

LUBY'S RESTAURANTS LIMITED PARTNERSHIP D7B/A LUBY'S SAN ANTONIO #19 ("LUBY'S") SUPPORTS FEDERAL LAW REQUIRING THERE BE NO DISCRIMINATION AGAINST ANY APPLICANT OR EMPLOYEE BECAUSE OF HIS OR HER RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE OR DISABILITY AND AFFIRMS ITS COMMITMENT NOT TO DISCRIMINATE AGAINST ANY APPLICANT OR EMPLOYEE ON ANY TERM OR CONDITION OF EMPLOYMENT, NOR TO ALLOW HARASSMENT OF ANY EMPLOYEE BECAUSE OF HIS OR HER SEX.

LUBY'S WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE FOR OPPOSING EMPLOYMENT DISCRIMINATION OR FOR FILING OR PARTICIPATING IN A CHARGE OF EMPLOYMENT DISCRIMINATION.

IF YOU BELIEVE YOU ARE BEING DISCRIMINATED AGAINST IN ANY TERM OR CONDITION OF YOUR EMPLOYMENT BECAUSE OF YOUR RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY, OR THAT YOU ARE BEING SUBJECTED TO HARASSMENT BECAUSE OF YOUR SEX OR HAVING ENGAGED IN TITLE VII-PROTECTED ACTIVITY, YOU ARE ENCOURAGED TO SEEK ASSISTANCE FROM RESTAURANT GENERAL MANAGER, HUMAN RESOURCES, OR FROM THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 5410 FREDERICKSBURG ROAD, SUITE 200, SAN ANTONIO, TEXAS 78229-3550, (210) 281-7600 OR 1-800-669-4000.

NO RETALIATORY ACTION MAY BE TAKEN AGAINST YOU FOR SEEKING ASSISTANCE, FILING A CHARGE, OR COMMUNICATING WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

EEOC ENFORCES TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, WHICH PROHIBITS EMPLOYMENT DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN; THE AGE DISCRIMINATION IN EMPLOYMENT ACT; THE EQUAL PAY ACT; PROHIBITIONS AGAINST DISCRIMINATION AFFECTING INDIVIDUALS WITH DISABILITIES; SECTIONS OF THE CIVIL RIGHTS ACT OF 1991, AND TITLE I OF THE AMERICANS WITH DISABILITIES ACT, WHICH PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN THE PRIVATE SECTOR AND STATE AND LOCAL GOVERNMENTS.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE. THIS NOTICE WILL BE POSTED FOR A PERIOD OF EIGHTEEN MONTHS, COMMENCING ON \_\_\_\_\_, 200\_.

**NOTICE OF RIGHTS**  
**Luby's Youth at Work Initiative**  
**For Employees 18 and Under**

This Notice of Rights is part of Luby's Restaurants Limited Partnership's Youth at Work Initiative. As an employee who is eighteen (18) years of age or younger, you have a right to work in an environment free from any form of harassment or discrimination regarding sex, race, religion, age (40 or older), color, national origin, citizenship status, or disability. As a young worker who may be in the workplace for the first time, we want to make sure you fully understand your rights and responsibilities, and we want to make sure you are aware of the numerous avenues we provide to report concerns you may have about your work environment.

I. Your Rights as an Employee:

1. You have a right to work in an environment free from harassment or discrimination based on sex, race, religion, age (40 or older), color, national origin, citizenship status, or disability. A more detailed definition of prohibited harassment and discrimination is set forth in your "Equal Opportunity Nondiscrimination and Anti-Harassment Policy."
2. You have a right to complain about treatment that you believe is inconsistent with the rights outlined above. You will not be punished for complaining, and you will not be harassed or treated differently if you report inappropriate conduct or help another employee report inappropriate conduct, even if it turns out that the conduct was not illegal. This is known as your right to be protected against retaliation.

II. Your Responsibilities as an Employee:

1. You have a responsibility to behave professionally at work and to avoid engaging in conduct that interferes with other employees' right to work in an environment free from harassment and discrimination.
2. If you feel you or anyone else has been harassed or discriminated against, you have a responsibility to immediately contact your General Manager, Associate Manager, or the Employee Relations Manager. Employee Relations may be contacted at Luby's Inc., 13111 N.W. Freeway, Suite 600, Houston, Texas, 77040 or by telephone at (866) 521-0007. Never delay reporting any concerns you have - we cannot help you until you help us learn your concerns,

Please sign below to acknowledge you understand the rights and responsibilities described above.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

General Manager's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT B**