



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

ADAAA Case Repository

Labor and Employment Law Program

9-14-2005

Equal Employment Opportunity Commission, Plaintiff, vs. Hardee's Food Systems, Inc., Defendant.

Judge Ortrie D. Smith

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/adaaa>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. [Please help support our student research fellowship program with a gift to the Legal Repositories!](#)

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in ADAAA Case Repository by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

Equal Employment Opportunity Commission, Plaintiff, vs. Hardee's Food Systems, Inc., Defendant.

Keywords

Equal Employment Opportunity Commission, Hardee's Food Systems Inc., 4:05-cv-00830-ODS, Consent decree / Settlement, Disparate Treatment, Hiring, Other physical impairment disability, Hospitality, Employment Law, ADA

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
Plaintiff,)
vs.) Case No. 04-05-0830-CV-ODS
HARDEE'S FOOD SYSTEMS, INC.,)
Defendant.)

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission ("EEOC") has instituted this action alleging that Defendant Hardee's Food Systems, Inc. ("HFS") discriminated against a female applicant for employment, the charging party in EEOC Charge Number 281-2004-00466 ("Charging Party") in violation of Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA") by failing to hire her at its restaurant located in Oak Grove, Missouri (the "Oak Grove Restaurant"). HFS denies the allegations asserted against it by the EEOC.

For purposes of settlement and compromise only, and with no admission of liability by HFS, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay and burden of further litigation;

The parties acknowledge that the settlement of this lawsuit and entry of this Consent Decree, with HFS' consent, is not and shall not be construed as an admission that HFS has violated the ADA, the Missouri Human Rights Act, R.S.Mo. 213.010 et seq., or any state or federal law, nor shall it be construed as or deemed an admission

by HFS that it has any liability whatsoever to the EEOC or Charging Party, such liability being hereby expressly denied.

THEREFORE, it is the finding of this Court, made on the pleadings and on the record as a whole and upon agreement of the parties, without an admission or finding of liability on the part of HFS, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action, (ii) the requirements of the ADA will be carried out by the implementation of this Decree, (iii) this Decree is intended to and does resolve all matters in controversy in this lawsuit among the parties, and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. GENERAL PROVISIONS

1. This Decree, being entered with the consent of the parties for purposes of settlement, shall not constitute an adjudication on the merits of this lawsuit and shall not be construed as an admission by HFS of any violation of the ADA or any executive order, law, rule or regulation dealing with or in connection with disability discrimination in employment.

2. HFS shall not discriminate against its employees or applicants with respect to hiring, promotion, firing, compensation or other terms, conditions or privileges of employment on the basis of disability. HFS asserts that it has been and will continue to be its policy that it does not discriminate against its employees or applicants with respect to hiring, promotion, firing compensation, or other terms, conditions or privileges of employment on the basis of disability.

II. NON-RETALIATION

3. HFS shall not discriminate or retaliate against any person because he or she:

(a) opposed any practice made unlawful under the ADA; (b) filed a charge of discrimination or other complaint with the EEOC or a state agency; or (c) participated in any investigation by the Commission connected with or leading up to this lawsuit; or (d) has benefited in any way as a result of this Consent Decree. HFS asserts that it has been and will continue to be its policy that it does not discriminate or retaliate against any person because he or she has engaged in protected activity under the ADA.

III. RELIEF FOR CHARGING PARTY

4. HFS has entered into a voluntary settlement with respect to certain sums to be paid to Charging Party. The financial terms of the voluntary settlement are set forth on Exhibit A. The parties acknowledge that this sum has been paid to Charging Party and that no further sums are due to Charging Party. The financial settlement to Charging Party is set forth on Exhibit A for informational purposes only and is not intended to be a part of this Consent Decree.

Contemporaneous with the execution of this Consent Decree, HFS shall require Charging Party to execute a Release of claims against HFS, including all claims asserted in this lawsuit, and all claims which could have been asserted in this lawsuit, and HFS agrees to reimburse Charging Party for up to \$250.00 in attorneys' fees so that she may consult a private attorney prior to signing said Release.

5. The EEOC hereby dismisses, with prejudice, any and all claims for attorneys' fees, responses, costs, back pay, front pay, compensatory damages, punitive

damages, and any other financial relief, sought by EEOC on behalf of Charging Party. The EEOC also acknowledges and agrees that this Consent Decree, and the provisions contained herein, fully resolve any fines, sanctions, or penalties, that have been or may be assessed by the Court on the EEOC's claim that HFS has not complied with the record keeping requirements of the EEOC regulations, including but not limited to 29 C.F.R. §1602.14. EEOC further agrees that it will not file any other action based on HFS' inability to produce personnel or employment records for the Oak Grove Restaurant for the time period up to and including the date the Consent Decree is approved by the Court.

6. Within thirty (30) days of the entry of this Decree, Defendant will mail a letter in the form shown in Exhibit B to Charging Party on appropriate HFS letterhead, signed by HFS Vice President of Human Resources.

IV. INJUNCTIVE RELIEF

7. During the term of this Decree, prior to denying a disabled applicant employment or reasonable accommodation, HFS will contact the Job Accommodation Network (JAN). HFS will request that JAN give it information about the candidate's disability and whether accommodations are available that will help the candidate perform the essential functions of the job.

8. Within ninety (90) days of the entry of this Decree, HFS will provide three (3) hours of training to each current Oak Grove Restaurant General Manager, Restaurant Manager or Assistant Manager, and to Jill Stan and Gail Thompson (if they are still employed by HFS), and the HFS Human Resource Manager responsible for the Oak Grove Restaurant on the requirements of the ADA and workplace disabilities

awareness. This training shall include distribution of information regarding JAN, the application of the ADA to employment of qualified individuals with craniofacial conditions, and may include training provided by the EEOC.

9. On a quarterly basis, HFS will prepare and submit to the EEOC's Regional Attorney in its St. Louis District Office, a list of all individuals who claim they were denied employment at the Oak Grove Restaurant during the term of the Decree as a result of a disability. This list will include the individual's name, home address, home telephone number, date of application, job title sought, and reason why they were denied employment.

V. POSTING AND NOTICES

10. Within fifteen (15) days of the entry of this Decree, HFS will post and cause to remain posted the posters required to be displayed in the workplace by EEOC Regulations, 29 C.F.R. § 1601.30.

11. Within fifteen (15) days of the entry of this Decree, HFS will post and cause to remain posted copies of the notice attached as Exhibit C in locations publicly visible to the employees of the Oak Grove Restaurant during the term of this Decree.

VI. REPORTING

12. Within thirty (30) days of the entry of this Decree, HFS will forward to the EEOC's Regional Attorney in its St. Louis District Office a letter provided to Charging Party as described in paragraph 6.

13. Within ninety (90) days of the entry of this Decree, HFS will forward to the EEOC's Regional Attorney in its St. Louis District Office a letter signed by or on behalf of HFS' Vice President of Human Resources stating that it has complied with the

requirements of paragraph 7, describing the manner and dates on which such compliance was effected.

14. Within thirty (30) days of the entry of this Decree, HFS will submit to the EEOC's Regional Attorney in its St. Louis District Office a letter confirming the posting of notices required by paragraphs 9 and 10.

VII. TERM AND EFFECT OF DECREE

15. By entering into this Decree the parties do not intend to resolve any charges of discrimination currently pending before the EEOC other than the charge that created the procedural foundation for the complaint in this case.

16. This Decree will be binding upon the parties hereto, their successors and assigns.

17. This Decree will be for a period of one (1) year. During the Consent Decree's term the Court will retain jurisdiction of this cause for purposes of enforcement of the Consent Decree. The term of the Consent Decree can be extended only upon a showing that HFS has substantially failed to comply with a material term of the Consent Decree.

18. Each party will bear its own costs and attorneys' fees.

BY CONSENT:

/s/Robert G. Johnson
ROBERT G. JOHNSON
Regional Attorney

/s/Susan Nell Rowe
SUSAN NELL ROWE MO #33360
STOLAR PARTNERSHIP LLP
911 Washington Avenue
St. Louis, Missouri 63101-1290
TEL (314) 231-2800
FAX (314) 436-8400
SNR@Stolarlaw.com

/s/Donna Harper
DONNA HARPER MO #26406
Senior Trial Attorney

COUNSEL FOR DEFENDANT
HARDEE'S FOOD SYSTEMS, INC.

/s/Andrea G. Baran
ANDREA G. BARAN MO #46520
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Kansas City Area Office
400 State Avenue, Suite 905
Kansas City, Kansas 66101
TEL (913) 551-5844
FAX (913) 551-6957
robert.johnson@eeoc.gov
donna.harper@eeoc.gov

COUNSEL FOR PLAINTIFF
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

IT IS SO ORDERED.

Date: September 14, 2005

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT A

HFS has agreed to settle this matter for a total of \$34,000 payable to Charging Party. The payment of the foregoing to Charging Party is not, and shall not be construed as an admission that HFS has any liability to Charging Party or the EEOC, which liability HFS expressly denies.

EXHIBIT B

Charging Party
Street Address

Dear Ms. Charging Party:

We are writing to you personally in connection with the settlement of the lawsuit brought by the EEOC on your behalf.

We wish to personally express our deep regret for any conduct by our staff that caused you any distress. The conduct you and the EEOC allege does not reflect the principles on which we hope to operate our business.

We want to stress to you that any conduct that caused you distress is not reflective of the values of Hardee's Food Systems, Inc. or its management. We have full confidence that our managers understand the respect and dignity to which all our applicants for employment are entitled.

We wish you all the best, and sincerely hope that in settling this matter, we have helped to erase some of the pain you felt because of your experience at our Oak Grove, Missouri restaurant.

Sincerely,

Hardee's Food Systems, Inc.
Vice President of Human Resources

EXHIBIT C

NOTICE TO EMPLOYEES AND JOB APPLICANTS

This Notice is posted as part of a remedy agreed to pursuant to a Consent Decree entered in the case of *Equal Employment Opportunity Commission (EEOC) v. Hardee's Food System, Inc.*, Case No.

_____, U.S. District Court, Western District of Missouri, Kansas City, which was filed by the EEOC on behalf of both the federal government and an individual with a disability who sought a position with HFS.

Federal law prohibits discrimination against any employee because of race, national origin, color, religion, sex, disability or age (forty and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment. Federal law prohibits retaliation against persons who complain of or oppose practices they believe are discriminatory on the basis of race, national origin, color, religion, sex, disability, or age (forty and over), and persons who file charges with the EEOC or a state fair employment practices agency, or cooperate with or participate in an investigation conducted by the EEOC or a state fair employment practices agency. Hardee's Food Systems, Inc. supports and will comply with such federal law in all respects and will not take any action against employees because they have exercised their rights under the law. Specifically, Hardee's Food Systems, Inc. will not tolerate discrimination in employment, or retaliation against any employee for exercising rights protected by federal law.

Employees and applicants should report possible discrimination or harassment to Susan Stull, Human Resources Area Manager, (913) 219-9885, sstull@ckr.com, or the HFS Employee Helpline _____, as soon as possible. HFS will follow its policies and procedures to promptly investigate all such reports and to protect the person making the report from retaliation, including retaliation by anyone alleged to have committed the discrimination or harassment. Employees and applicants also may file complaints of discrimination or harassment with the EEOC, Kansas City Area Office, 400 State Avenue, Suite 905, Kansas City, KS 66101, by mail, in person, or by telephone, (913) 551-5655.