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EEOC v. Vamco Sheet Metals

Judge J. Paul Oetken

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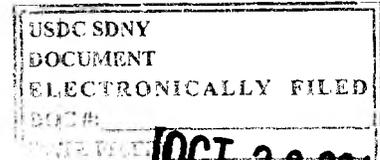
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EEOC v. Vamco Sheet Metals

Keywords

EEOC, Equal Employment Opportunity Commission, Keisha Watkins, Melanie Demicco, Anna Quitariano, Nilsa Lopez, Vamco Sheet Metals, 1:13-cv-06088-JPO-JCF, Manufacturing, Sex, Female, Disparate Treatment, Failure to Accomodate, Constructive Discharge, Terms and Conditions

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

CIVIL ACTION NO.
13-CV-6088 (JPO)

Plaintiff;

KEISHA WATKINS, MELANIE DEMICCO,
ANNA QUITORIANO, NILSA LOPEZ,

Plaintiff-Intervenors;

-against-

VAMCO SHEET METALS, INC.,

Defendant.

CONSENT DECREE

On August 29, 2013, the EEOC filed this action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 alleging unlawful employment practices on the basis of sex and to provide appropriate relief to Kesha Watkins, Melanie DeMicco, Anna Quitoriano, Nilsa Lopez (collectively, "Intervenors"), and other female employees who allege they were affected by such unlawful practices. The EEOC's Complaint states that Defendant violated Title VII of the Civil Rights Act of 1964 when it discriminated against Intervenors and a group of other female employees as to the terms, conditions, or privileges of their employment and discharged them because of their sex.

On December 19, 2013, Intervenors filed a motion to intervene in this action with claims under Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, the New York City Human Rights Law, the Fair Labor Standards Act, and the New York State Labor Law seeking injunctive relief and an award of damages to compensate Intervenors. Intervenors state in their proposed complaint that Defendant discriminated against Intervenors by

discharging them because of their sex, and refusing to provide Melanie DeMicco with reasonable break time or adequate facilities to express breast milk.

This Decree and compliance with it shall not be construed as an admission by Defendant of any liability whatsoever or as an admission by Defendant of the violation of the individuals' rights, a violation of any statute or any discrimination against the class members. This Consent Decree applies to Vamco Sheet Metal, Inc., currently located at 3090 Route 9, Cold Spring, New York 10516.

In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

PART I GENERAL PROVISIONS

A. Purpose of this Decree

1. The EEOC, Intervenors, and Defendant desire to settle this action, and therefore do hereby stipulate and consent to entry of this Decree as final and binding between the parties.

2. The Decree resolves all issues that were raised in the EEOC's Complaint, Intervenors' proposed complaint, and EEOC Charges of Discrimination filed by Intervenors (Nos. 520-2009-04502C, 520-2011-00749C, 520-2011-00878C, and 520-2011-00899C), which served as the jurisdictional prerequisite in this case. This Decree in no way affects the EEOC's right to process any pending or future charges that may have been or will be filed against Defendant, and to commence civil actions on any such charges.

3. The EEOC, Intervenors, and Defendant agree that this Court has jurisdiction over the subject matter of this litigation and the parties, that venue is proper, and that all administrative prerequisites have been met. No party will contest the validity of this Decree or the jurisdiction of the federal district court to enforce this Decree and its terms.

4. The terms of this Decree represent the full and complete agreement between Plaintiff EEOC and Defendant Vamco in this matter. The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

B. Computation of Time

When a period of time is stated in days, or a longer unit of time, exclude the day of the event that triggers the period, count every day including weekends and federal holidays, and include the last day of the period, but if the last day is a weekend day or federal holiday, the period continues to run until the end of the next day that is not a weekend day or federal holiday.

C. Applicability of Decree to Successors and Assigns or Upon Purchase, Merger or Consolidation

Before Defendant finalizes any sale, transfer, or merger of its business or a substantial portion of its assets, it shall provide a copy of this Decree to the prospective buyer, transferee, or merger partner.

D. Amendments to this Decree

By mutual consent of the parties, this Decree may be amended in the interests of justice and fairness and to facilitate execution of this Decree's provisions. No waiver, modification, or amendment of any provision of this Decree will be effective unless made in writing, approved by all parties to this Decree, and approved or ordered by the Court.

E. Severability

If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the following will apply to insure that this Decree continues to effectuate the intent of the parties. The provisions of this Decree which are not rendered unlawful, unenforceable, or incapable of performance as a

result of such legislative act or court decision will remain in full force and effect and the parties' responsibilities will not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of this Decree would be undermined.

F. Breach of Decree / Cure Provision

Nothing in this Decree will be construed to preclude the EEOC from bringing proceedings to enforce this Decree, subject to the terms of this Section below, if Defendant fails to perform any of the terms contained herein. This Decree will be construed by this Court under federal law.

The Parties agree to engage in a good-faith effort to resolve any disputes that occur under this Decree. In the event that the EEOC believes that Defendant has failed to comply with any provision(s) of this Decree, it shall notify Defendant of the non-compliance. If requested, the EEOC will provide Defendant with a written summary of the non-compliance. The EEOC will afford Defendant a reasonable time of not less than ten days to remedy the non-compliance. If, after the reasonable time has lapsed the EEOC still believes, in good faith, that Defendant has not remedied the non-compliance, the EEOC may then seek the Court's intervention.

The EEOC is free to approach the Court at any time if it believes that immediate action is necessary in order to protect the public interest.

G. Notices

Except as otherwise provided for in this Decree, all notifications, reports, and communications to the parties required under this Decree will be made in writing and will be sufficient if they are both Emailed and sent by regular mail to the following persons (or their designated successors):

For EEOC: Consent Decree Monitor
Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, NY 10004
decreemonitor.nydo@eoc.gov

For Intervenors: Jelena Kolic
Legal Momentum
5 Hanover Square, Ste. 1501
New York, NY 10004
jkolic@legalmomentum.org

For Defendant: Barbara Gross
Littler Mendelson, P.C.
900 Third Avenue
New York, New York 10022
bgross@littler.com

Any party may change such addresses by written notice to the other parties setting forth a new address for this purpose.

PART II INJUNCTIVE RELIEF

A. Specific Injunctions

5. Defendant, its managers, officers, agents, or any other person or entity acting on behalf of Defendant, are hereby enjoined from discriminating against female employees as to the terms, conditions, or privileges of their employment or discharging them because of their sex.

6. Defendant, its managers, officers, agents, or any other person or entity acting on behalf of Defendant, are hereby enjoined from retaliating against any employee who opposes unlawful discrimination or who participates in any way in the filing, investigation, litigation, or resolution of any complaint of discrimination.

B. Posting and Distribution of Notices

1. Posting of Notice of Resolution

Within 30 days of entry of this Decree, Defendant will conspicuously post and maintain Exhibit A, the Notice of Resolution, where employee notices are posted by Defendant. On an annual basis beginning six months after entry of this Decree, Defendant will certify in writing to the EEOC that it has posted Exhibit A.

2. Provision of Memo to Employees

Within 30 days of entry of this Decree, and annually thereafter, Defendant will distribute to each employee, including managers, Exhibit B, the Non-Discrimination Memorandum. On an annual basis beginning six months after entry of this Decree, Defendant will certify in writing to the EEOC that it has distributed Exhibit B, as required.

C. Non-Discrimination Policy and Complaint Procedures

1. Content of Non-Discrimination Policies and Procedures

Within 30 days of entry of this Decree, Defendant will ensure its policies and procedures contain the following, as set forth in Exhibit C:

- a. an explanation of the prohibition of discrimination on the basis of sex (including pregnancy and related conditions) in all discharge decisions, job assignments, warnings, or discipline, and all terms, conditions, or privileges of employment, including examples of “terms, conditions, or privileges;”
- b. an assurance that Defendant will not retaliate against employees who make complaints of discrimination, who oppose practices they consider to be discriminatory, or who participate in protected

- activity or provide information related to complaints of discrimination;
- c. a clearly described complaint process that provides accessible avenues of complaint with a number of choices of individuals to whom complaints can be made, including persons outside the employee's chain of command and persons not employed on the employee's jobsite;
 - d. an assurance that Defendant will accept any and all complaints from employees who wish to file complaints internally, including the identity of specific individuals to whom employees can issue complaints;
 - e. an assurance that Defendant will keep confidential to the extent possible and not publicize unnecessarily the subject matter of the complaints or the identity of the complainants;
 - f. an assurance that the filing of anonymous complaints is permitted;
 - g. assurances that Defendant provides a prompt, thorough, and effective investigation of all complaints;
 - h. a requirement that the investigation be documented in written form;
 - i. assurances that the investigation will be completed and a determination made and communicated to the complainant and respondent as soon as practical;

- j. an assurance that Defendant will take prompt and appropriate corrective action when it determines that discrimination has occurred; and
- k. an explanation of Defendant's responsibility to use reasonable efforts to allow an employee to express breast milk for her nursing child, including a reasonable amount of break time and an appropriate space in close proximity to the work area to express milk in privacy.

Defendant annually will provide a copy of the relevant policies and procedures to the EEOC, to the extent they are revised. Attachment of the policies and procedures to this Decree is not a representation by the EEOC that Defendant has been or currently is in compliance with federal anti-discrimination laws.

2. Issuance of Policies and Procedures

- a. Within 30 days of entry of this Decree, Defendant will distribute to each employee a copy of Exhibit C.
- b. Defendant will provide copies of Exhibits B and C to all future employees within 14 days of the start of their employment.
- c. Defendant will provide a copy of Exhibit C to any business agent at the start of each new project to the extent the business agent has not already received it in the last year.
- d. On an annual basis beginning six months after entry of this Decree, Defendant will certify in writing to the EEOC that it has complied with Sections II.C of this Consent Decree.

D. Training

1. Annual Training

Within 90 days of the entry of this Decree, and annually throughout the term of the Decree, Defendant will provide an annual training program for all employees not covered by a collective bargaining agreement. The training will be at least two hours in duration.

Each training program will be conducted by an attorney from Littler Mendelson who specializes in Labor and Employment law. The training will review the rights and responsibilities of employees under federal anti-discrimination laws and how such laws define unlawful discrimination, with a focus on discrimination because of sex in discharge and the terms, conditions, or privileges of employment. The training will include examples of unlawful conduct in the context of the construction industry. The training will also cover Defendant's Policies and Procedures, with particular emphasis on the internal complaint, investigation, and remediation processes and an employee's right to file with the EEOC and state or local agencies. The training will also review the requirements of this Decree and the Policies and Procedures as they relate to the participants' work responsibilities, as well as the proper procedures for responding to complaints of discrimination or retaliation. Each of the annual trainings must be interactive, live, and in person.

At least seven days prior to any annual training, Defendant will provide the EEOC with a copy of the training materials. Reference to the training in this Decree is not a representation by the EEOC that Defendant has been or currently is in compliance with federal anti-discrimination laws.

2. New Employee Training

Defendant will provide a video of the annual training referenced in Section II.D.1 above to all new employees not covered by a collective bargaining agreement, within 30 days of the

commencement of their employment. If any significant changes to the law, policies, or training occur after the creation of the video, Defendant will provide any employee receiving the video training with material explaining those changes.

3. Pre-Training Notification Requirement

At least seven days prior to the annual trainings referenced in Section II.D.1 above, Defendant will provide the EEOC notice of the date, time, and location of the scheduled training. The EEOC, at its discretion and after providing reasonable notice to Defendant of not less than three (3) days, may attend and observe any training session.

4. Reporting Requirements for Training

All employees attending any training session described in the above paragraphs will print and sign their full names on an attendance sheet that lists the date and title of the training. Defendant will keep a copy of the attendance sheets for the duration of the Consent Decree. On a semiannual basis beginning six months after entry of this Decree, Defendant will confirm to the EEOC that the training requirements of the Consent Decree have been met.

E. Monitoring and Reporting

1. Monitoring by the EEOC

Defendant agrees to cooperate in good faith with any EEOC investigation of Defendant's compliance with this Decree, including, to the degree requested by the EEOC and related to this Decree, providing access to Defendant's premises and records and making personnel available for interview upon reasonable notice to Defendant by the EEOC of not less than five (5) days.

2. Record Keeping

Defendant will maintain all records created or obtained in the regular course of business regarding the referral, hire, rejection, termination, or layoff of any employee.

3. Reporting of Accommodations Regarding Expressing Breast Milk

On a semiannual basis, Defendant will provide a written report to the EEOC with a summary of any request to express breast milk by a Vamco employee, including the requesting employee's name, address, and phone number, to the extent available from Vamco's records.

4. Reporting of Discrimination Complaints

Beginning four (4) months after entry of this Decree, Defendant will provide a written report every four (4) months to the EEOC with a summary regarding any verbal or written complaints of sex discrimination, including any complaints regarding pregnancy or breastfeeding accommodations, made by employees or applicants that were received, pending, or closed during the preceding four months and that came to the attention of Vamco's corporate management, including the complainant's name, address, and phone number, to the extent available from Vamco's records.

F. Compliance with Record-keeping Requirements

Defendant agrees to maintain such records as are necessary to demonstrate its compliance with this Decree and 29 C.F.R. §1602 *et seq.* and to verify that the reports submitted pursuant to this Decree are accurate.

PART III MONETARY RELIEF

Within 90 days of entry of this Decree, Defendant will pay the total gross sum of \$215,000, inclusive of the attorneys' fees of the Intervenor Plaintiffs.

Within 45 days of the entry of this Decree, Defendant will send checks for the back pay portion of each Intervenor Plaintiff's award, via overnight mail to Legal Momentum, 5 Hanover Square, Suite 1502, New York, NY 10004, Att: Jelena Kolic, Esq., for the amounts previously agreed to for each of the Intervenor Plaintiffs. Within 90 days of the entry of this Decree, Defendant will send checks for the compensatory damages portion of each Intervenor Plaintiff's award, via overnight mail to Legal Momentum, 5 Hanover Square, Suite 1502, New York, NY

10004, Att: Jelena Kolic, Esq., for the amounts previously agreed to for each of the Intervenor Plaintiffs. Within 90 days of entry of this Decree, Defendant will send checks for the attorneys' fees portion of each Intervenor Plaintiff's award, via overnight mail to Legal Momentum, 5 Hanover Square, Suite 1502, New York, NY 10004, for the amounts previously agreed to for each of the Intervenor Plaintiffs. Appropriate tax forms will be issued by Defendant to each of the Intervenor Plaintiffs and Legal Momentum, including IRS Form W-2s for the back pay portion of each Intervenor Plaintiff's award and IRS Form 1099s for the compensatory damages and attorneys' fees portions of each Intervenor Plaintiff's award. All of the tax forms will be sent via overnight mail to Legal Momentum, 5 Hanover Square, Suite 1502, New York, NY 10004, Att: Jelena Kolic, Esq., for distribution to each of the Intervenor Plaintiffs.

PART IV SIGNATURES

Each signatory to this Decree represents that (s)he is fully authorized to execute this Decree and to bind the parties on whose behalf (s)he signs.

PART V DURATION OF DECREE

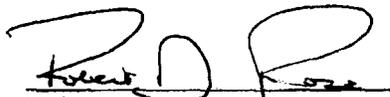
A. This Decree will remain in effect for three (3) years from the effective date of this Decree. The effective date of this Decree will be the date it is docketed by the clerk of the court after it is signed by and/or receives approval from the Court. If no enforcement action is pending and Defendant is in compliance at the expiration of the three-year term of this Decree, the Decree will expire by its own terms without further action required by the Parties or the Court. The Decree will not expire against any signatory until the resolution of any pending enforcement action against that signatory or until the resolution of any good-faith efforts to resolve any compliance dispute that the parties are engaged in, as required in Part I Section F of this Decree.

B. The Court will retain jurisdiction over this action for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the

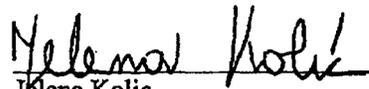
relief provided herein. Upon signature and approval by the Court, the matter may be administratively closed but will not be dismissed.

APPROVED IN FORM AND CONTENT:

For Plaintiff EEOC:


Robert D. Rose
Regional Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York, 10004

For Intervenors:


Jelena Kolic
Legal Momentum
5 Hanover Square, Ste. 1502
New York, NY 10004
jkolic@legalmomentum.org

For Defendant Vamco:

Dated: 10/10/14


Barbara Gross
Littler Mendelson, P.C.
900 Third Avenue
New York, New York 10022
bgross@littler.com

SO ORDERED this 27 day of October, 2014


The Honorable J. Paul Oetken

U. S. D. J.