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EEOC v. Preferred Labor LLC, d/b/a Preferred People Staffing

Judge F. Dennis Saylor IV

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EEOC v. Preferred Labor LLC, d/b/a Preferred People Staffing

Keywords

EEOC, Preferred Labor LLC, Preferred People Staffing, 06-40190-FBS, Consent Decree, Disparate Treatment, Retaliation, Sex, Female, Employment Law, Title VII

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
EQUAL EMPLOYMENT OPPORTUNITY))	
COMMISSION,))	
)	
Plaintiff,))	
)	
v.))	
)	Civil Action No. 06-40190-FDS
PREFERRED LABOR LLC, d/b/a))	
PREFERRED PEOPLE STAFFING,))	
)	
Defendant.))	
_____)	

CONSENT DECREE

This cause of action was initiated on or about August 31, 2006 by Plaintiff Equal Employment Opportunity Commission (EEOC), an agency of the United States Government. EEOC filed this action against Defendant, Preferred Labor LLC, d/b/a Preferred People Staffing (Defendant), under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Charging Party Catherine Darensbourg (Darensbourg) and a class of other similarly situated female job applicants who applied for temporary day labor with Defendant. EEOC's Complaint alleged that Defendant subjected Darensbourg and female job applicants who applied for temporary day labor with Defendant to repeated sex-based discrimination by failing to refer individuals for temporary day labor based on their sex, and by complying with discriminatory requests for temporary employees based on sex made by one or more of its clients. The Complaint also alleged that Defendant retaliated against Darensbourg

after she complained about Defendant's discriminatory conduct by refusing to consider her for job opportunities.

The parties agree that it is in their mutual interest to fully resolve this matter without further litigation.

The parties stipulate and consent to the entry of this Consent Decree as final and binding between the parties.

The parties have agreed that this Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court.

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 FOLLOWED:

General Provisions

1. This Decree resolves all of the issues raised by EEOC Charge No. 161-2005-00460 and the complaint filed by EEOC in this action. This Decree in no way affects EEOC'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 EEOC sees fit.

2. On April 17, 2007, Defendant entered into an Asset Purchase Agreement with Preferable People LLC and on April 23, 2007, Defendant ceased operations of its temporary day labor business. Should Defendant resume conducting business as a temporary day labor agency, the term "Defendant" includes Defendant's managers, officers, agents, or parent organization for purposes of the injunctive relief required in this Decree.

3. The Court has jurisdiction of the subject matter of this action and over the parties, venue is proper, and all administrative prerequisites have been met.

4. No party shall contest the validity of this Decree.

5. No party shall contest the jurisdiction of the United States District Court to enforce this Decree and its terms, or the right of EEOC to bring an enforcement suit upon the breach of any of the terms of this Decree by Defendant.

6. Breach of any term of this Decree should be deemed a substantive breach. EEOC shall determine whether Defendant has complied with the terms of this decree and is authorized to seek compliance with the Decree in the United States District Court, which shall retain jurisdiction to enforce this Decree.

7. If Defendant resumes conducting business as a temporary day labor agency during the term of this decree, Defendant shall be enjoined from discriminating against any individual because of the individual's sex. This injunction includes, but is not limited to enjoining Defendant from complying with discriminatory requests for temporary employees made by their clients, enjoining Defendant from placing or referring applicants or employees to assignments based on their sex, enjoining Defendant from discouraging applicants or employees from applying for or accepting assignments based on their sex, enjoining Defendant from classifying jobs or assignments on the basis of sex, and enjoining Defendant from otherwise discriminating against applicants or employees on the basis of sex.

8. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall be enjoined from retaliating against any individual for asserting her or his rights under Title VII, including from retaliating against any individual who files or has filed a charge, gives or has given testimony or given assistance with the investigation or litigation of these charges or action, or asserts or has asserted her rights under Title VII. Defendant is enjoined from retaliating against any individual who engages in or

has engaged in protected activity under Title VII and from retaliating against Charging Party and Claimants.

9. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall provide EEOC with drafts for approval of the documents referenced below in paragraphs 28,29, 36, 37, 38 and 39, no later than 30 days prior to resuming business. EEOC will have 10 days to approve each of the referenced documents, or to notify Defendant of any necessary changes thereto. Defendant shall have five days to make such changes, or to notify EEOC that it is unwilling to do so. If the parties cannot agree on any aspect of the referenced documents, EEOC shall have the right to petition the court for relief.

Monetary Damages and Claims Process

10. Within 30 days of the entry of this Decree, Defendant shall pay a total of \$250,000.00 in damages into a Claims Fund to be distributed by the Claims Fund Administrator as follows:

- a. \$30,000.00 in compensatory damages to Charging Party Catherine Darensbourg;
- b. \$20,000.00 in compensatory damages to Claimant Krista Guglielmetti;
- c. \$200,000.00 in compensatory damages to be distributed to additional Claimants determined by EEOC to be qualified for monetary relief.

11. At EEOC's sole discretion, CAC Services Group, LLC shall act as the Administrator for the claims process in this case. The Administrator shall be responsible for establishing, managing and making distributions from the Claims Fund solely in accordance with the EEOC's instructions. EEOC may inspect the records of the Fund at such times as EEOC sees

fit. Defendant shall be solely responsible for all fees, expenses and any other costs incurred by the Administrator.

12. The Administrator shall establish an interest bearing account into which the Claims Fund payment from Defendant shall be deposited. Any interest on the account shall become part of the Fund. The Administrator shall establish, maintain and make distributions from the Fund in accordance with the EEOC's instructions. EEOC shall have sole authority regarding the maintenance of the Fund and shall hold sole discretion and authority to authorize any and all distributions from the Fund. All funds in the account shall be used to pay damages to class members and charging parties as defined and set forth below, except that any funds remaining in the account after all distributions to class members and charging parties have been made shall be distributed in accordance with paragraph 25 below.

13. Defendant shall pay all costs associated with distributing and administering the Fund, including all fees, expenses and any other costs billed by the Administrator, and the costs of compiling a list of the names and addresses for all Potential Claimants and making reasonable efforts to locate those Potential Claimants. Reasonable efforts shall consist of attempting to obtain current contact information for Potential Claimants for whom Defendant's contact information is out of date through a search based on the potential claimant's social security number. Defendant shall cooperate with such efforts by providing any related documentation it has regarding such potential claimants if so requested by the Administrator or EEOC. No costs shall be deducted from the Claims Fund.

14. For purposes of this Decree, Potential Claimants are defined as females who applied or attempted to apply for work with Defendant, and/or worked for Defendant, through its Worcester, Massachusetts facility from January 1, 2005, up to April 23, 2007.

15. Within 30 days of the entry of this Decree, the Administrator shall send all Potential Claimants a Notice of Settlement in the form attached as Exhibit A, together with a Claim Form attached as Exhibit B. Beginning the fourth Monday after the entry of this Decree, the Administrator shall also run English and Spanish-language public announcements regarding eligibility for relief under this decree (attached as Exhibit C) in media outlets, including newsprint and radio, in the metropolitan Worcester, Massachusetts region on Mondays, Wednesdays and Fridays for three consecutive weeks. The public announcement shall include a 1-800 number to be maintained by the Administrator which Potential Claimants may call to obtain a Claims Form. The Claim Form shall explicitly advise Potential Claimants of their responsibility to fully respond to each question in the Claim Form and to supply all of the requested information before the expiration of the deadlines set forth herein, and to keep EEOC advised of any change in name, address or telephone number, in order to preserve any rights they may have under the Decree. The deadline for returning the Claim Form shall be prominently displayed at the top of the Claim Form. All Claim Forms submitted to EEOC must be postmarked by the 90th day from the date of entry of this Decree.

16. The Notice of Settlement and Claim Form shall be sent by the Administrator to all Potential Claimants at their last known address both by regular First Class U.S. mail and by certified mail, return receipt requested, together with a postage-paid return envelope addressed to EEOC. As described in paragraph 13, the Administrator shall attempt to obtain current contact information for Potential Claimants for whom Defendant's contact information is out of date through a search based on the Potential Claimant's social security number. The Administrator shall provide EEOC with mail tracking information.

17. Each Potential Claimant shall be offered an opportunity to submit a claim to EEOC. Any Potential Claimant wishing to file a claim must submit to EEOC a completed Claim Form to the Boston Area Office of EEOC within 90 days of the date of entry of this Decree, together with all relevant information the Potential Claimant wishes to submit with her claim. EEOC, in its discretion, may request additional information. If a Potential Claimant fails to provide EEOC with a completed Claim Form and all relevant information the Potential Claimant wishes to submit with her claim by the deadline stated in this Decree, the Claim shall be denied as untimely, unless EEOC, in its sole discretion, determines that good shown has been shown to permit consideration of the claim. If a Potential Claimant fails to timely provide other information which may be requested by EEOC, EEOC in its sole discretion may deny the claim for failure to cooperate.

18. EEOC shall review the Claims Forms and other relevant information timely received by EEOC in order to make a determination of the distribution of the Claims Fund. EEOC shall make all determinations as to eligibility for monetary relief which may include compensatory damages, back pay and/or front pay. EEOC shall have sole discretion to deny any claims submitted to it. For purposes of this Consent Decree, an eligible Claimant is a person who EEOC has determined is eligible for relief from the Claims Fund in this matter. EEOC shall divide the Claims Fund among eligible Claimants in amounts to be determined by EEOC. EEOC retains sole discretion to determine the amounts to be awarded from the Claims Fund. No person or party has a right to object to EEOC's determinations.

19. All Potential Claimants determined to be eligible by EEOC shall be deemed "Claimants" and receive a Notice of Eligibility (Exhibit D) and a Claimant Acceptance Form (Exhibit E) by regular mail, which shall notify Claimants of the approximate monetary award to

be paid to them from the claims fund, subject to modification by EEOC or the Court after consideration of any objections that may be filed. Claimants shall have 30 days from the date of the mailing of their Notice of Eligibility to sign and return the Claimant Acceptance Form. The submission of a signed Claimant Acceptance Form by a Claimant shall indicate their acceptance of any monetary award to be paid from the Claim Fund. Any Claimant who fails to return the Claimant Acceptance Form by the deadline will be deemed to have declined to participate in this settlement and shall not receive a share from the Claims Fund, although EEOC in its discretion may consider late Claimant Acceptance Forms under compelling circumstances.

20. All Potential Claimants determined to be ineligible by EEOC shall receive a Notice of Ineligibility (Exhibit F).

21. A Claimant or Potential Claimant may raise an objection to EEOC's determination of eligibility by delivering to the Court and EEOC a written explanation of the basis for the objection. Objections must be filed within 30 days of EEOC's mailing of the Notices of Eligibility and Ineligibility, although EEOC and the Court may consider late objections under compelling circumstances. EEOC may attempt to informally resolve any objections raised by Potential Claimants.

22. After the deadline for submitting objections, the Court will conduct a fairness hearing to decide any unresolved objections. At least 7 days prior to the fairness hearing, EEOC will provide a proposed Claimant Distribution List to the Court and Defendant including any changes resulting from the informal resolution of any objections. The Court may approve the proposed Claimant Distribution List, or order modifications based on any objections.

23. Upon the Court's approval of the Claimant Distribution List regarding the distribution of the Claims Fund, EEOC shall notify Defendant and the Administrator in writing

via U.S. Mail of the eligible Claimants and the amounts to be paid to each eligible Claimant. Within 10 days of the date EEOC mails the notice to Defendant and the Administrator regarding distribution of the Claims Fund, the Administrator shall issue and send checks to the eligible Claimants in the amounts directed by EEOC, together with a notice to the eligible Claimant that the check must be cashed within 90 days of the date of the check, or the check shall be void and the claim shall be denied. The checks shall be sent by overnight delivery service.

24. If a Claimant has not cashed a check within 90 days after the date of the check, the check shall be voided and the claim shall be deemed denied.

25. On the 180th day after the Administrator has sent checks to the eligible Claimants, the Administrator shall advise EEOC in writing of the amount of any funds remaining in the Claims Fund account, including any funds which remain because checks were not cashed, funds which could not be distributed after diligent efforts by the Administrator to locate a Claimant, and interest which has accrued. EEOC shall then instruct the Administrator in writing to issue a check for the remaining balance in the Claims Fund account to a 501(c) organization in Massachusetts selected by EEOC which promotes equal employment opportunities for women. The Administrator shall issue a check to such organization within 10 days after EEOC sends its instruction regarding final distribution of the funds to such organization. The Claims Fund account may then be closed.

26. The Administrator shall provide EEOC with copies of transmittal letters and checks sent to Charging Party and all Claimants within 10 days of issuance.

27. All payments to Claimants shall be considered as non-pecuniary, compensatory damages for employment discrimination and not as wages. The Administrator shall issue an IRS form 1099 to all class members with each check.

Written Policies and Procedures

28. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall implement and maintain written policies and procedures prohibiting employment discrimination, including sex discrimination and retaliation. Such policies must set forth, at a minimum, Defendant's commitment to equal opportunity in all aspects of employment and set forth a detailed explanation of prohibited conduct and the assurance Defendant shall not retaliate against employees who make complaints of discrimination, who oppose practices they consider to be unlawfully discriminatory, and/or who participate in protected activity or who provide information related to complaints of discrimination. The policy shall also explain that it applies to all applicants and employees, full-time, part-time or temporary, and whether applying for or working in a position at Defendant's facilities, a client site, or a remote location.

29. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall immediately implement a complaint procedure for applicants and employees who believe that they have been discriminated against or retaliated against. As part of these complaint procedures, applicants and employees of Defendant shall be able to report incidents of discrimination or retaliation to any member of the management team at any Defendant location, to any person in Defendant's Human Resources Office, or to a toll-free number for reporting incidents of discrimination or retaliation. In addition, as part of these complaint procedures, it shall be the duty of any member of the management team at any Defendant location to immediately report any allegations of or suspected incidents of discrimination or retaliation to the Defendant's Human Resources Office.

30. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall, within 30 days of resuming business, establish and maintain a functioning toll-free telephone number for reporting incidents of discrimination or retaliation. The telephone shall be answered by human resources personnel who are trained to investigate claims of discrimination and retaliation. The telephone shall be answered personally by trained human resources personnel from 9:00 a.m. to 5:00 p.m., Monday through Friday. During other hours, this telephone line shall have an outgoing recorded message containing information about the complaint reporting procedure and a listing of staffed hours, and shall accept recorded messages and complaints.

31. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall immediately implement and maintain procedures for the investigation and handling of reported allegations of or suspected incidents of discrimination or retaliation, together with a disciplinary policy for employees who engage in discriminatory or retaliatory behavior.

32. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall distribute a copy of the written policies and procedures described in paragraphs 28 through 31 above to all of its applicants and employees within 30 days of resuming business and shall thereafter distribute a copy of the written policies and procedures to all new applicants and employees at the time such applicants or employees apply for employment with and/or job placement by Defendant.

Notice and Posting

33. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall, within 10 days of resuming business, display and

maintain the EEOC poster in each of its facilities in a place visually accessible to applicants and employees of Defendant.

34. Within 10 days of resuming business, Defendant shall display and maintain in each of its facilities, in a place visually accessible to applicants and employees of Defendant, a copy of the non-discrimination policy described in paragraph 28, the complaint procedure described in paragraph 29, the disciplinary policy for employees who engage in discriminatory, harassing or retaliatory behavior described in paragraph 31.

35. Within 10 days of resuming business, Defendant shall display and maintain in each of its facilities, in a place visually accessible to applicants and employees of Defendant, a poster containing the toll-free number for reporting incidents of discrimination, or retaliation and describing how applicants and employees may use the number.

36. Within 10 days of resuming business, Defendant shall display and maintain in each of its facilities, in a place visually accessible to applicants and employees of Defendant, a remedial Notice pursuant to this Decree, a copy of which is attached as Exhibit G, printed on EEOC letterhead, and shall thereafter distribute a copy of the remedial notice to all new applicants and employees at the time such applicants or employees apply for employment with and/or job placement by Defendant.

37. Within 10 days of resuming business, Defendant's President and Chief Executive Officer shall send a memorandum to all applicants and employees emphasizing Defendant's commitment to abide by all federal laws prohibiting employment discrimination, including laws prohibiting sex discrimination and harassment, pregnancy discrimination and harassment, and retaliation, and shall thereafter distribute a copy of the memorandum to all new applicants and

employees at the time such applicants or employees apply for employment with and/or job placement by Defendant.

38. Within 10 days of resuming business Defendant shall place bi-monthly notices in media outlets in the metropolitan Worcester, Massachusetts region to be identified by EEOC designed to inform applicants and potential applicants that Defendant shall not discriminate on the basis of sex and shall not retaliate against any individual who opposes discrimination by Defendant. These notices shall be placed on a bi-monthly basis for the duration of this Decree. Every 4 months for the duration of this Decree, Defendant shall provide EEOC with written certification that it has fulfilled this obligation, together with a true copy of each notice as it appeared in the media outlet.

39. Within 30 days of resuming business, Defendant shall provide a memo to all of its current clients setting forth the obligations of Defendant and its clients under federal anti-discrimination laws, giving notice of the existence of this Decree and emphasizing Defendant's commitment to abide by such laws and this Decree. Defendant shall provide EEOC with written certification that it has fulfilled this obligation within 10 days of the date it has provided the memo. For the duration of this Decree, Defendant shall provide this memo to all new clients obtained by Defendant at the time that the entity becomes a client, and shall provide EEOC with written certification that it has fulfilled this obligation within 10 days of the date it has provided the memo.

Recruitment and Management Accountability Policies

40. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall implement recruitment policies which target female job applicants and emphasize that Defendant shall comply with federal anti-

discrimination laws, shall not comply with discriminatory requests for temporary employees made by Defendant's clients, shall not place or refer applicants or employees to assignments based on their sex or classify jobs or assignments based on sex, and shall encourage female applicants to seek all positions for which they are qualified. These recruitment policies shall continue in effect for at least the duration of this Decree.

41. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall implement performance rating procedures which include a requirement that managers and supervisors comply with and contribute to compliance with federal anti-discrimination laws, Defendant's anti-discrimination policies and procedures, with this Decree, and to provide that managers and supervisors are evaluated by Defendant for their compliance with this requirement.

Anti-Discrimination Training

42. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall provide all of its employees with no fewer than four hours of training in federal laws prohibiting discrimination in employment within 30 days of resuming business. Thereafter, Defendant shall provide all of its new employees with this training within 10 days of the commencement of employment by a new employee. Defendant shall maintain attendance records identifying the name and job title of the attendees at each session. Within 10 days of each training session, Defendant shall provide to EEOC a copy of the attendance records from the training session.

43. Within 60 days of resuming business, and every six months thereafter for the duration of this Decree, Defendant shall provide no fewer than eight additional hours of training in federal laws prohibiting discrimination for all management and supervisory employees of

Defendant. Thereafter, Defendant shall provide all of its new managers and supervisory personnel with this training within 10 days of the date such personnel are placed in a managerial or supervisory position. Defendant shall maintain attendance records identifying the name and job title of the attendees at each session. Within 10 days of each training session, Defendant shall provide to EEOC a copy of the attendance records from the training session.

Additional Monitoring Provisions

44. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall maintain records of all written or oral complaints or allegations of discrimination or retaliation made by any of its applicants or employees. Within 4 months of resuming business, and every 4 months thereafter, Defendant shall provide EEOC with a written report containing, at a minimum, a summary of each complaint, and for each such complaint: the name of the complaining party or party who was allegedly subjected to discrimination or retaliation, the name of the person(s) who allegedly engaged in such discriminatory or retaliatory conduct, the results of any investigation of the complaint or allegation, and any remedial action taken by Defendant. A final report shall be sent to EEOC 30 days before the date of the expiration of this Decree.

45. Within 4 months of resuming business, and every 4 months thereafter, Defendant shall provide a written report to EEOC containing a breakdown by sex of all applicants and a breakdown by sex of all individuals referred to work assignments, for the preceding 4 months. The written report shall contain, at a minimum, for each applicant, the name address, telephone numbers and other contact information, social security number, sex, dates of applications, job assignments offered and dates of offers, job assignments accepted, and compensation for such

job assignments. The report shall also include a listing of all job assignments available through Defendant during the preceding 4 months.

46. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall maintain such records as are necessary to demonstrate whether or not it is in compliance with this Decree and such records as required by 29 C.F.R. § 1602 *et. seq.* and to verify that the reports submitted pursuant to this Decree are accurate. If Defendant resumes conducting business as a temporary day labor agency during the term of this Decree, Defendant shall also specifically maintain the following documents for the duration of this Decree and for three years following the termination of the Decree: all job postings; all applications for temporary day labor and all other documents submitted or completed as part of the application process, including but not limited to applications received in-person, by mail, by fax, and by electronic means; all records regarding the selection and placement of temporary employees; all personnel files including all performance evaluations, discipline and termination records; all advertisements for any open positions; all complaints of discrimination or retaliation and all records relating to the investigation and remediation of such complaints; all notices of rejection to job applicants, requested change of assignment, or promotion; all computerized payroll and personnel data; all customer and job profile forms; and all electronically stored versions of the records described herein.

47. In addition to the monitoring provisions set forth elsewhere in this Decree, if Defendant resumes conducting business as a temporary day labor agency during the term of this Decree EEOC may monitor compliance during the duration of this Decree, by inspection of Defendant's premises, records, and interviews with employees at reasonable times. Upon three days notice by the EEOC, Defendant shall make available for inspection and copying any

records requested by EEOC, facilities sought to be inspected by EEOC, and employees sought to be interviewed by EEOC.

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

Equal Employment Opportunity Commission
Boston Area Office
Legal Unit
Attention: Arnold J. Lizana III, Trial Attorney
John F. Kennedy Federal Building, Room 475
Boston, MA 02203-0506

Duration of Decree

49. This Decree shall remain in effect for five years from the date of entry. If Defendant resumes business during the term of the Decree, the Decree shall remain in effect for five years from the date Defendant resumes business. The Decree shall not expire while any enforcement action concerning the Decree is pending. The Court shall retain jurisdiction over this action during the duration of the Decree. The matter may be administratively closed but shall not be dismissed during the duration of the Decree. Within 30 days after the date set for the expiration of the Decree, the parties shall submit a stipulation of dismissal to the Court or a notice that the Decree has not expired due to the pendency of an enforcement action.

SO ORDERED, ADJUDGED AND DECREED this 6th day of July, 2009.



Hon. F. Dennis Saylor IV
United States District Judge

Dated: New York, New York
June 26, 2009



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Dated: Massachusetts
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6/24, 2009



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