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EEOC v. Pallet Companies d/b/a IFCO Systems NA, Inc.

Judge Catherine C. Blake

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EEOC v. Pallet Companies d/b/a IFCO Systems NA, Inc.

Keywords

EEOC, Pallet Companies d/b/a IFCO Systems NA, Inc., 1:16-cv-00595-CCB, Consent Decree, Sexual Harassment, Hostile Work Environment, Retaliation, Sex, Female, Employment Law, Title VII

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

RECEIVED IN THE OFFICE OF
CATHERINE C. FLAKE

2016 JUN 28 PM 12:05

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U.S. EQUAL EMPLOYMENT OPPORTUNITY)
 COMMISSION,)
 DEPUTY)
)
 Plaintiff,)
)
 v.)
)
 PALLET COMPANIES d/b/a IFCO)
 SYSTEMS NA, INC.,)
)
)
 Defendant.)

UNITED STATES DISTRICT JUDGE

Civil Action No. 1:16-cv-00595-CCB

CONSENT DECREE

This action was instituted by Plaintiff Equal Employment Opportunity Commission (the "EEOC" or the "Commission") against Defendant Pallet Companies d/b/a IFCO Systems NA, Inc. ("IFCO" or "Defendant"), under Title VII of the Civil Rights Act of 1964 ("Title VII") and Title I of the Civil Rights Act of 1991, alleging that Defendant unlawfully discriminated against Yolanda Boone ("Ms. Boone") on the basis of her sex (female) by subjecting her to harassment, which culminated in her discharge, and that Defendant discharged Ms. Boone in retaliation for complaining about the harassment. Defendant asserts that discrimination or harassment based on sexual orientation is against both its values and its written employment policies, which policies have been in place since 2007, and Defendant denies that it discriminated in any way against Ms. Boone. The parties desire to resolve amicably the Commission's action without the time and expense of continued litigation, and, as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of a Consent Decree. With these understandings, the Parties have jointly formulated a plan to be

embodied in a Decree which will promote and effectuate the purposes of 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 EEOC in this Title VII action (“the Complaint”), which emanated from the Charge of Discrimination filed by Ms. Boone. This Decree in no way affects the 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 the Commission sees fit.

2. This Decree shall be in effect for a period of two years from the date it is entered by the Court. 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. If the Court determines that Defendant has failed to meet the established terms at the end of two years, the duration of the Decree may be extended.

3. Unless otherwise specified in this Decree, the terms of this Decree apply to Defendant’s seven plants in the North Region of IFCO’s Third-Party Operations Division (the “Region”) located in the following cities: Baltimore, MD, Barrington, NJ, Scarborough, ME, Martinsburg, VA, Wilmington, MA, and Suffolk, VA.

4. This Decree, being entered with the consent of the parties, shall not constitute an admission, adjudication, or finding on the merits of the case.

Monetary Relief

5. Within ten (10) business days of entry of this Decree, Defendant shall pay Yolanda Boone monetary relief in the total amount of \$182,200, representing \$7,200 in back pay with interest and \$175,000 in nonpecuniary compensatory damages. Defendant will issue to Ms. Boone an IRS Form 1099 for the 2016 tax year for the non-pecuniary damages amount and an IRS W2 form for the 2016 tax year for the back pay amount. Defendant shall make all legally required withholdings from the back pay amount. The checks and IRS forms will be sent directly to Ms. Boone, and a photocopy of the checks and related correspondence will be mailed to the EEOC, Baltimore Field Office, 10 S. Howard Street, 3rd Floor, Baltimore, Maryland 21201 (Attention: Trial Attorney Amber Trzinski Fox).

6. Defendant shall provide Ms. Boone, within ten (10) days of the entry of this Decree, with a positive letter of reference, on IFCO letterhead, setting forth, at a minimum, the following: Ms. Boone's dates of employment, position, and work location. In response to any inquiry received by Defendant's automated employment and income verification provider, The Work Number, concerning Ms. Boone from a potential employer, headhunter, or other person inquiring about Ms. Boone's employment history, Defendant shall ensure that The Work Number provides a positive reference concerning Ms. Boone, indicating the following: Ms. Boone's dates of employment, position, and work location. Ms. Boone should direct all potential employers, headhunters or other persons inquiring about her employment history at Defendant to contact The Work Number by visiting its website at www.theworknumber.com or by dialing 1-800-367-5690 (1-800-424-0253 TTY). Defendant's Work Number employer name is IFCO Systems and its employer code is 16415.

7. Defendant will contribute, each year of this Decree, \$10,000 to the Human Rights

Campaign Foundation to support, specifically, the Human Rights Campaign Workplace Equality Program.

Injunctive Relief

8. Defendant, its managers, officers, agents, successors, purchasers, assigns, U.S. subsidiaries, and any corporation or entity into which Defendant may merge or with which Defendant may consolidate are enjoined from engaging in sex discrimination by creating or maintaining a hostile work environment on the basis of sex. The prohibited hostile work environment includes the use of offensive or derogatory comments, or other verbal or physical conduct based on an individual's sex, which creates a severe and/or pervasive hostile working environment, or interferes with the individual's work performance that violates Title VII, which, in part, is set forth below:

It shall be an unlawful employment practice for an employer – (1) . . . to discriminate against any individual with respect to [her] . . . terms, conditions, or privileges of employment, because of such individual's . . . sex

42 U.S.C. § 2000e-2(a)(1).

9. Defendant, its managers, officers, agents, successors, purchasers, assigns, U.S. subsidiaries, and any corporation or entity into which Defendant may merge or with which Defendant may consolidate, are further enjoined from retaliating against any individual for asserting her or his rights under Title VII or otherwise engaging in protected activity, such as by complaining of discrimination, opposing discrimination, filing a charge, or giving testimony or assistance with an investigation or litigation, including, but not limited to, participating in this matter in any way including by giving testimony, as set forth in the following provision of Title VII:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because [she] has opposed any practice made an unlawful

employment practice by this subchapter, or because [she] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a).

Sexual Orientation and No Retaliation Policy

10. Within thirty (30) days of the entry of this Decree, Defendant shall distribute to all employees in the Region copies of its existing EEO and Speaking Up policies (“Policies”) and wallet cards containing the Speaking Up hotline’s toll-free number and web address (“Wallet Card”). In addition, Defendant will distribute the Policies and the Wallet Card in hard copy form to any new employees of the Region within seven (7) days of hire. Defendant must also immediately post the Policies in a manner easily visible to all employees in the Region and immediately forward a copy of any amended policy to the EEOC.

Training

11. Defendant shall retain, at its expense, a subject matter expert (“SME”) on sexual orientation, gender identity, and transgender training to assist Defendant in development of a training program on LGBT workplace issues. The SME shall be identified to the EEOC within 30 days of the entry of this Decree and Defendant must obtain the EEOC’s approval of the SME. The EEOC’s approval of the SME will not be unreasonably withheld. Within 90 days of the entry of this Decree, Defendant and its SME will develop a specific training module on sexual orientation and sexual identity issues in the workplace (“LGBT Module”) and provide the LGBT Module to the EEOC for its approval. The LGBT Module, which will take no less than thirty minutes and no more than forty-five minutes to complete, will address FAQs, acceptance of diversity of all individuals in the workplace, and how the Policies provide protection for all LGBT employees, together with other topics or issues determined appropriate by the SME,

subject to the EEOC's approval. The EEOC may edit and comment on the draft module. Defendant will finalize the LGBT Module after receiving input from the EEOC, and will provide a final copy of the LGBT Module to the EEOC for the EEOC's final approval. The EEOC's approval of the LGBT Module will not be unreasonably withheld. The EEOC may provide the LGBT Module (after deleting all references to Defendant) to other companies and agencies as it deems necessary. Defendant and the SME will not claim any copyright or other ownership interest in the LGBT Module.

12. Defendant will present two types of training programs incorporating the LGBT Module:

A. Nationwide Plant Management and Human Resources Training. The LGBT Module will be presented, either live or via webinar, as part of an hour-long EEO and Harassment training program, to Defendant's General Manager, Vice President of Operations, Regional Operations Directors, Plant Managers, Assistant Plant Managers, Human Resource Directors and Human Resources Regional Field Operations Managers in the United States. This training session will include Defendant's Policies, including its anti-retaliation policy, as well as the requirements of Title VII's prohibitions against sexual harassment and retaliation and the requirements and prohibitions of this Decree. A copy of the entire program will be provided to the EEOC. The training shall be conducted by the SME (or his/her designee) and Kevin W. Shaughnessy or another lawyer selected by Defendant and approved by the EEOC.

B. Region Training. The LGBT Module will be presented to all employees in the Region as part of a live, hour-long EEO and Harassment training program. This training session will include Defendant's Policies, including its anti-retaliation policy, as well as

the requirements of Title VII's prohibitions against sexual harassment and retaliation and the requirements and prohibitions of this Decree. A copy of the entire program will be provided to the EEOC. The training shall be conducted by the SME (or his/her designee) and Kevin W. Shaughnessy or another lawyer selected by Defendant and approved by the EEOC.

13. The training for both groups of employees set forth in Section 12A and Section 12B must be completed within one hundred eighty (180) days of the entry of this Decree, or 30 days after the EEOC's approval of the final LGBT Module is received by Defendant, whichever is later. During the effective dates of this Decree, Defendant will also provide the training program in Section 12A to all new Plant Managers, Assistant Plant Managers, Human Resource Directors and Human Resources Regional Field Operations Managers within thirty (30) days of their hire or promotion and the training program in Section 12B to all new Region employees within thirty (30) days of their hire. Training for new employees covered by this Section 13 may be pre-recorded.

14. In year two of the Decree, Defendant shall provide one hour of EEO and LGBT training, via an on-line module, to all of its Plant Managers, Assistant Plant Managers, Human Resource Directors and Human Resources Regional Field Operations Managers in the United States, including a quiz or a test to be passed by all participants. To pass the quiz or test, the participants must achieve a score of 80 percent or greater.

15. Within ten (10) business days of completing the training described in Paragraphs 12A and 12B above, Defendant will provide the EEOC with written documentation that the training occurred, including a list of participants and their job titles, the date the training was completed, and where the training was delivered through a live session, a signed (either manual

or electronic) attendance sheet. Defendant will provide written documentation of the training of all new employees in the Region, and those trained as described in Paragraph 14, has occurred with its next due semi-annual report.

Notice and Postings

16. Within ten (10) business days of entry of this Decree, Defendant will post, at all of Defendant's locations, the posters required to be displayed in the workplace by Commission Regulations, 29 C.F.R. § 1601.30.

17. Within fifteen (15) business days of entry of this Decree, Defendant will also post in all places where notices are customarily posted for employees at its Baltimore Plant at 3030 Waterview Avenue, Suite #200, Baltimore, MD 21230, the Notice attached as Attachment A. The Notice shall be posted and maintained for the duration of the Decree and shall be signed by Defendant's owner or corporate representative with the date of actual posting shown. Should the Notice become defaced, marred, or otherwise made unreadable, Defendant will ensure that new readable copies of the Notice are posted in the same manner as specified above. Within its first semi-annual report, Defendant shall provide to the EEOC a copy of the signed Notice, written confirmation that the Notice has been posted, and a description of the location and date of the posting.

Monitoring Provisions

18. The EEOC has the right to monitor and review compliance with this Decree.

19. On a semi-annual basis, for the duration of this Decree, and one month before the expiration of this Decree, Defendant must submit written proof via affidavit to the EEOC that it has complied with each of the requirements set forth above. Such proof must include, but need not be limited to, an affidavit by a person with knowledge establishing: (a) the completion of

training; (b) that the sexual orientation and retaliation policy has been distributed and remains posted in accordance with this Consent Decree; (c) that it has complied with the injunctive relief requested in this Decree; and (d) notifying the Commission of all reported complaints alleging sexual orientation discrimination in the Region. The notification required by section 19(d) will include, if the information is available to Defendant, each name of the individual lodging the complaint; home address; home telephone number; nature of the individual's complaint; the name of individual who received the complaint or report; the date the complaint or report was received; description of Defendant's actions taken in response to the complaint or report, including the name of each manager or supervisor involved in those actions. If no complaints of alleged sexual orientation discrimination or harassment were reported, Defendant will confirm in writing to the EEOC that no such complaints were made.

20. The EEOC may monitor compliance during the duration of this Decree by inspection of Defendant's Regional premises, records, and interviews with employees at reasonable times. Upon thirty (30) days' notice by the EEOC, Defendant will make available for inspection and copying any records requested by the EEOC from the Region.

21. For the duration of this Consent Decree, Defendant must create and maintain such records as are necessary to demonstrate its compliance with this Consent Decree and 29 C.F.R. §1602 *et seq.* and maintain an updated EEO poster in compliance with 42 U.S.C. § 2000e-10.

Miscellaneous Provisions

22. All materials required by this Decree to be provided to the EEOC shall be sent by e-mail to Amber Trzinski Fox, EEOC Trial Attorney, at amber.fox@eoc.gov, and by certified mail to Amber Trzinski Fox, EEOC Trial Attorney Baltimore Field Office, 10 South Howard Street, 3rd Floor, Baltimore, MD 21201. Any notice to Defendant shall be sent by email to

Kevin W. Shaughnessy at kshaughnessy@bakerlaw.com, and by certified mail to Kevin W. Shaughnessy, Baker & Hostetler LLP, 200 South Orange Avenue, Suite 2300, Orlando, FL 32801,

23. This Consent Decree will operate as a full and final resolution of this action. The EEOC and Defendant shall bear their own costs and attorneys' fees.

24. The EEOC and Defendant shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of this Decree, the complaining party shall notify the alleged non-compliant party in writing of such non-compliance and afford the alleged non-compliant party thirty (30) business days to remedy the non-compliance or satisfy the complaining party that it has complied. If the dispute is not resolved within thirty (30) business days, the complaining party may apply to the Court for appropriate relief.

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

FOR PLAINTIFF:

/s/ Debra M. Lawrence

Debra M. Lawrence
Regional Attorney

/s/ Maria Salacuse

Maria Salacuse
Supervisory Trial Attorney

/s/ Amber Trzinski Fox

Amber Trzinski Fox
Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Baltimore Field Office

FOR DEFENDANT:

/s/ Kevin W. Shaughnessy

Kevin W. Shaughnessy
(with permission)
Baker & Hostetler LLP
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Orlando, FL 32801
Phone: (407) 649-4014
Email: Kshaughnessy@bakerlaw.com

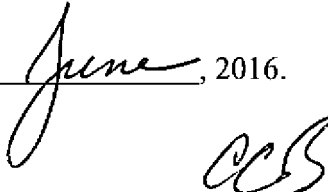
*Counsel for Defendant Pallet Companies
d/b/a/ IFCO Systems NA, Inc.*

10 S. Howard Street, 3rd Floor
Baltimore, MD 21201
Phone: (410) 209-2763
Email: amber.fox@eeoc.gov

*Counsel for Plaintiff Equal Employment
Opportunity Commission*

SO ORDERED.

Signed and entered this 28th day of June, 2016.



The Honorable Catherine C. Blake
United States District Court Judge

ATTACHMENT

A



NOTICE TO EMPLOYEES POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE EEOC AND PALLET COMPANIES d/b/a IFCO SYSTEMS NA, INC.

This Notice is being posted as part of the resolution of a lawsuit filed by the Equal Employment Opportunity Commission (EEOC) against Pallet Companies d/b/a IFCO Systems NA, Inc. ("IFCO") in the United States District Court for the District of Maryland, Baltimore Division (*EEOC v. Pallet Companies d/b/a IFCO Systems NA, Inc. ("IFCO")*), Civil Action No. 1:16-cv-00595-CCB). The EEOC brought this action to enforce provisions of Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of sex and retaliation.

IFCO will conduct its hiring and employment practices without regard to the sex or sexual orientation of an applicant or employee and ensure that no employees are retaliated against for complaining of any such discrimination.

IFCO will take all complaints of discrimination in the workplace seriously and address them appropriately.

IFCO will not engage in any acts or practices made unlawful under Title VII, including retaliation against one who exercises his or her rights under Title VII.

Employees or job applicants should feel free to report instances of discriminatory treatment to a supervisor or a manager, at any time. IFCO has established policies and procedures to promptly investigate any such reports and to protect the person making the reports from retaliation, including retaliation by the person allegedly guilty of the discrimination.

Individuals are also free to make complaints of employment discrimination directly to the Baltimore Field Office, 10 South Howard Street, 3rd Floor, Baltimore, Maryland 21201 or by calling 866-408-8075 / TTY 800-669-6820. General information may also be obtained on the Internet at www.eeoc.gov.

Owner

Date Posted:

