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Equal Employment Opportunity Commission, Plaintiff, v. Wal-Mart Stores, Inc., Defendant.

Judge Gary A. Fenner

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**Equal Employment Opportunity Commission, Plaintiff, v. Wal-Mart Stores, Inc.,
Defendant.**

Keywords

Equal Employment Opportunity Commission, Wal-Mart Stores Inc., 04-0076-CV-W-GAF, Consent decree / Settlement, Disparate Treatment, Hiring, Cerebral Palsy, Retail, Employment Law, ADA

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
)	
Plaintiff,)	
)	Case No. 04-0076-CV-W-GAF
v.)	
)	
WAL-MART STORES, INC.,)	
)	
Defendant.)	

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission has instituted this action alleging that Defendant Wal-Mart Stores, Inc. failed to hire Steve E. Bradley, Jr., because of his disability, cerebral palsy, in violation of Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. For purposes of settlement and compromise only, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay and burden of further litigation;

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, 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. NON-DISCRIMINATION

1. In all matters arising from or relating to employment, Wal-Mart and its officers, agents, employees, successors, and assigns, or any of them, shall not engage in any employment practice which unlawfully discriminates against an employee or applicant under the Americans with Disabilities Act. Prohibited discrimination includes, but is not limited to:

- a. refusing to hire or rehire a qualified individual with a disability because of his/her disability;
- b. refusing to provide a reasonable accommodation to a qualified individual with a disability;
- c. maintaining any practice or policy that violates the ADA by depriving or tending to deprive any individual of employment opportunities because of such individual's disability; and
- d. making disability related pre-employment inquiries.

II. NON-RETALIATION

2. Wal-Mart, its officers, agents, employees, successors, assigns, or any of them, shall not engage in reprisal or retaliation of any kind against any person because such person:

- a. opposed any practice made unlawful under the ADA;
- b. filed a charge of discrimination with the Commission or a state agency or testified or participated in any manner in any investigation, proceeding, or hearing under the ADA;
- c. requested and/or received relief in accordance with this Consent Decree;

- d. participated in any manner in this action or in the investigation giving rise to this action; or
- e. asserted any rights under this Consent Decree.

III. RELIEF FOR CHARGING PARTY

3. Within fifteen (15) days after this Decree is approved by the Court, Wal-Mart will forward to Steve E. Bradley, Jr., a check made payable to him in the gross amount of Three Hundred Thousand Dollars (\$300,000.00), including:

- a. Five Thousand Four Hundred Seventy Dollars and Nine Cents (\$5,470.09) for backpay, less only any applicable deductions for the employee's portion of FICA and applicable federal and state income tax withholdings;
- b. Two Hundred Ninety Four Thousand Five Hundred Twenty Nine Dollars and Ninety One Cents (\$294,529.91) for compensatory damages.

4. Wal-Mart will forward to Steve E. Bradley, Jr., with the check described above, an itemized statement of withholdings for each amount withheld, including the employee share of FICA and the applicable federal and state income withholdings from each amount allocated separately as backpay, compensatory damages.

IV. INJUNCTIVE RELIEF

5. Within 180 days after this Decree has been approved by the Court, Wal-Mart will provide live training to its Store Manager, Assistant Managers, and Personnel Manager responsible for the operations of Store #325 in Richmond, Missouri regarding the company's policies and practices that relate to the employment and reasonable accommodation of persons

with disabilities, including the resources and support available through the company's Director of ADA Services.

6. Within 30 days after this Decree has been approved by the Court, Wal-Mart will send notification that it encourages employment applications from persons with disabilities to the following organizations: The Rehabilitation Institute of Kansas City, Jewish Vocational Service of Kansas City, U.S. Veterans Employment Service (Kansas City), and The Full Employment Council (Kansas City and Jackson, Clay, Platte, Ray & Cass counties).

7. Within 180 days after this Decree has been approved by the Court, Wal-Mart will publish print advertising in the Kansas City Star that informs the public that the company is committed to employing persons with disabilities in many different kinds of jobs. The advertisements will run for a minimum of one week. Wal-Mart will notify the Commission's Regional Attorney in its St. Louis District Office of the publishing date of the advertisements and provide copies of the ads at least seven days prior to publication.

V. POSTING AND NOTICES

8. Wal-Mart will post and cause to remain posted the posters required to be displayed in the workplace by Commission Regulations, 29 C.F.R. § 1601.30.

9. Wal-Mart will post and cause to remain posted copies of the notice attached as Exhibit A ("Notice") in locations publicly visible to all employees during the term of this Decree.

10. Wal-Mart will post and cause to remain posted a copy of the Notice adjacent to the Hiring Center kiosk in Store #325.

VI. MONITORING AND REPORTING

11. Wal-Mart's Director of ADA Services will direct, monitor and maintain responsibility for implementation of this Decree.

12. Within thirty (30) days after this Decree is approved by the Court, Wal-Mart will forward to the Commission's Regional Attorney in its St. Louis District Office a copy of the check and statement of withholdings forwarded to Steve E. Bradley, Jr. as described in paragraphs 3 and 4 above.

13. Within two hundred ten (210) days after this Decree is approved by the Court, Wal-Mart will forward to the Commission's Regional Attorney in its St. Louis District Office a letter signed by its Director of ADA Services stating that it has complied with the requirements of paragraph 5 and 7, describing the manner and dates on which such compliance was effected.

14. Within sixty (60) days after this Decree is approved by the Court, Wal-Mart will forward to the Commission's Regional Attorney in its St. Louis District Office a copy of the notification letter required by paragraph 6, and a letter signed by its Director of ADA Services that the company has complied with paragraph 6.

15. Within forty-five (45) days after this Decree is approved by the Court, Wal-Mart will prepare and submit to the Commission's Regional Attorney in its St. Louis District Office a letter stating that the notices have been posted as required by paragraphs 8, 9, and 10 above.

16. On a quarterly basis, Wal-Mart will prepare and submit to the Commission's Regional Attorney in its St. Louis District Office a list of all job applicants who are not hired whom the reviewing, interviewing or hiring Wal-Mart Associate knows to have a disability.

This

list will include each individual's name; home address; date of application; job titles sought; the reason the applicant was not hired; and name of each Manager or Associate involved in the hiring decision. If no known disabled individuals have applied and not been hired during the quarter, Wal-Mart will so inform the Commission's Regional Attorney in its St. Louis District Office.

17. On a quarterly basis, Wal-Mart will prepare and submit to the Commission's Regional Attorney in its St. Louis District Office a list of all job applicants to Store #325 in Richmond, Missouri who have complained of, reported, or filed a charge of discrimination in hiring on the basis of disability during that quarter. This list will include each individual's name; home address; nature of the individual's complaint; name of the individual who received the complaint or report; date complaint or report was received; description of Wal-Mart's actions taken in response to the complaint or report, including the name of any manager or supervisor involved in those actions. If no such complaint, report or charge was received, Wal-Mart will so inform the Commission's Regional Attorney in its St. Louis District Office.

18. At any time during the effect of this Decree, the Commission's Regional Attorney in its St. Louis District Office may request from Wal-Mart's Director of ADA Services certification, including supporting documentation, of Wal-Mart's continued compliance with any term of this Decree. Wal-Mart will provide such certification, as requested, within a reasonable amount of time, not to exceed thirty (30) days after the request is made.

VI. GEOGRAPHICAL SCOPE OF DECREE

19. Except as otherwise specified in this Decree, the terms of this Decree apply to Wal-Mart store #325 in Richmond, Missouri.

VI. TERM AND EFFECT OF DECREE

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

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

22. This Decree is being entered with the consent of the parties for purposes of settlement and shall not constitute an adjudication on the merits of this lawsuit or be construed as an admission by Defendant of any violation of the Americans with Disabilities Act or any other law.

23. This Decree will be for a period of two (2) years and can be extended by timely petition to the Court by the Commission and upon a showing by the Commission that the applicable standard for modifying and extending a consent decree is satisfied. During the Decree's term the Court will retain jurisdiction of this cause for purposes of compliance.

24. Each party will bear its own costs and attorney's fees.

SO ORDERED:

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: April 18, 2008

EXHIBIT A

NOTICE TO EMPLOYEES AND JOB APPLICANTS

(on company letterhead)

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. Wal-Mart Stores, Inc.*, Case No. 04-0076-GAF, on file in the United States District Court for the Western District of Missouri in Kansas City, Missouri. The agreed remedy as set forth in the Consent Decree includes monetary relief; training for managers at Store #325 in Richmond, Missouri; notice of rights to employees and job applicants; and reporting requirements.

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 also 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 it prohibits retaliation against persons who file charges with the EEOC, or who participate in or cooperate with an EEOC investigation.

Wal-Mart has agreed that it will not discriminate on the basis of disability in hiring, firing, work assignments, pay, promotion or other terms or conditions of employment. Wal-Mart Stores, 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, Wal-Mart will not tolerate discrimination in employment, nor will it tolerate retaliation against any employee for exercising rights under law.

Employees or job applicants should feel free to report instances of discriminatory treatment to their supervisor, a manager, or Wal-Mart's employee hotline [INSERT #], at any time. Wal-Mart 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 about employment discrimination to the Office of the Regional Attorney, United States Equal Employment Opportunity Commission, Kansas City Area Office, 400 State Avenue, Suite 905, Kansas City, KS 66101 or by telephone to (913) 551-5848.