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Equal Employment Opportunity Commission, Plaintiff, v. Kraft Foods Global, In. d/b/a Nabisco, Inc., Defendant.

Judge Edward J. Lodge

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**Equal Employment Opportunity Commission, Plaintiff, v. Kraft Foods Global, In. d/
b/a Nabisco, Inc., Defendant.**

Keywords

Equal Employment Opportunity Commission, Kraft Foods Global In d/b/a Nabisco Inc., CV 06-0074-S-EJL, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Termination, Multiple Sclerosis, Retail, Employment Law, ADA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
))	CIVIL NO. CV 06-0074-S-EJL
Plaintiff,)	
))	[PROPOSED] CONSENT DECREE
v.)	AND ORDER OF DISMISSAL
))	
KRAFT FOODS GLOBAL, INC. d/b/a)	
NABISCO, INC.,)	
))	
Defendant.)	
_____)	

I. INTRODUCTION

1. This action originated with a discrimination charge filed by Cathy Rutledge (“Ms. Rutledge”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and the Idaho Human Rights Commission (“IHRC”) on March 31, 2004. Ms. Rutledge alleged that Kraft Foods Global, Inc. d/b/a Nabisco, Inc. (“Kraft”) discriminated against her, a qualified individual with a disability, when it failed to accommodate her because of her disability and then constructively discharged her in violation of the Americans with Disabilities Act of 1990, and Title I f the Civil Rights Act of 1991 (“ADA”).

2. The EEOC investigated this charge and issued a Letter of Determination on August 10, 2004 finding reasonable cause that Kraft had discriminated against Ms. Rutledge in violation of the ADA with respect to her discrimination charge.

3. The EEOC filed this lawsuit on February 21, 2006 in the United States District Court for the District of Idaho on behalf of Ms. Rutledge, alleging that from at least July 2, 2003, Kraft had discriminated against Ms. Rutledge when it failed to accommodate her disability, and then constructively discharged her.

4. The parties want to conclude fully and finally all claims arising out of the EEOC's complaint, and the charge of discrimination filed with EEOC by Ms. Rutledge. They enter into this Consent Decree to further the objectives of equal employment as set forth in the ADA.

II. NONADMISSION OF LIABILITY AND NONDETERMINATION BY THE COURT

5. This Consent Decree is not an adjudication or finding on the merits of this case and shall not be construed as an admission by Kraft of a violation of the ADA.

III. JURISDICTION AND VENUE

6. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The employment practices

alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Idaho at Boise.

IV. SETTLEMENT SCOPE

7. This Consent Decree is the final and complete resolution of all ADA allegations of unlawful employment practices contained in the complaint filed on behalf of Ms. Rutledge, including all claims by the parties for attorney fees and costs. The scope of this Consent Decree will be limited to Kraft's Direct Store Delivery ("DSD") sales personnel in Idaho. The Consent Decree resolves all issues and claims arising out of this complaint, and is binding and final as to all such issues and claims.

V. MONETARY RELIEF

8. In settlement of this lawsuit, Kraft agrees to provide a gross amount of \$ 2,626.40 to Ms. Rutledge as back pay and benefits, less applicable withholding and deductions, and \$ 47,373.60 to compensate her for her emotional harm, payment of which is to be provided directly to her by certified mail to an address to be provided, within ten (10) business days after the parties have signed this Consent Decree, with copies to the EEOC.

VI. AFFIRMATIVE AND OTHER RELIEF

A. General Provisions

9. Kraft, its officers, agents, managers, assistant managers and other supervisors of its DSD sales personnel in Idaho and all human resource professionals who support Kraft's DSD sales personnel in Idaho will refrain from engaging in practices which constitute discrimination against any current or former employee because of his or her disability with respect to any

employment decision. In recognition of its obligations under the ADA, Kraft will institute the policies and practices set forth below.

B. Anti-Discrimination Policies and Procedures

10. Kraft shall carry out anti-discrimination policies, procedures, and training for all employees, managers, assistant managers and other supervisors of its DSD sales personnel in Idaho and all human resource professionals who support Kraft's DSD personnel in Idaho. Kraft will provide training to such managers and supervisors to understand its Equal Employment Opportunity ("EEO") policies and how those policies define discrimination based on a current or former employee's disability, and the procedures to follow in the event a request for an accommodation is received. Kraft will require such managers and supervisors to comply with EEO policies through certain competencies set out in its MAP performance management program. Specifically, compliance by director level employees will be reviewed through the competency of "managing diversity" and by supervisors and managers below the director level through the competency of "ethics and values."

11. Within one-hundred-and-fifty (150) days of the date of the effective date of this Consent Decree, Kraft will: (a) review its EEO policy and the method and/or administrative process in which requests for assistance or accommodation from any employee regarding a physical or mental impairment are evaluated, approved or disapproved, and revise it as necessary to ensure that it adequately addresses Kraft's obligations under the ADA; and (b) distribute its EEO policy to all present and future DSD sales personnel in Idaho, both management and non-management.

C. Training

12. Within one-hundred-and-fifty (150) days of the execution of this Consent Decree, Kraft will develop and present to all managers, assistant managers, and supervisors of its DSD sales personnel in Idaho, all managers with oversight responsibilities for DSD sales personnel in Idaho, and all human resource professionals who support Kraft's DSD sales personnel in Idaho, no less than one (1) hour of face-to-face training by a qualified trainer on the ADA. This training will include discussion about how requests for assistance and accommodation of disabilities are to be evaluated, approved or disapproved. Within one-hundred-and-fifty (150) days of the execution of this Consent Decree, Kraft will develop and present to all non-supervisory DSD sales employees in Idaho no less than one (1) hour of face-to-face training by a qualified trainer on employment discrimination, including the requirements of the ADA. The EEOC will have an opportunity to review the training materials prior to the training date.

Annually thereafter for the life of this Consent Decree, Kraft will require: (1) all managers, assistant managers and supervisors of its DSD sales personnel in Idaho, all managers with oversight responsibilities for its DSD sales personnel in Idaho, and all human resource professionals who support Kraft's DSD sales personnel in Idaho to complete one (1) hour of face-to-face training by a qualified trainer on the ADA; and (2) all non-supervisory DSD sales employees in Idaho to complete at least one (1) hour of training on employment discrimination, including the requirements of the ADA.

D. Expungement of Records

13. Kraft will not disclose any information or make reference to any charge of discrimination that is the subject of the lawsuit or this lawsuit in responding to employment reference requests for information about Ms. Rutledge.

14. Kraft will expunge from the personnel file of Ms. Rutledge, any reference to her discrimination charge against Kraft and this lawsuit, and will ensure that her Kraft personnel records do not reflect that she is “eligible” or “not eligible” for re-hire. If Ms. Rutledge wishes to do so, Kraft will permit her to review her personnel file to ensure that all such references have been expunged. Kraft will not add any information or references to the personnel file of Ms. Rutledge regarding this charge of discrimination and this lawsuit after such references have been expunged.

E. Policies Designed to Promote Supervisor Accountability

15. Kraft will continue to advise all managers and supervisors of their duty to ensure compliance with its EEO policies, and to report any incident or complaint of disability discrimination of which they become aware. If a manager or supervisor violates Kraft’s EEO policies, he/she may be subject to discipline up to and including termination. Kraft also will remind all managers and supervisors that there will be no retaliation against any associate for reporting or relaying any incident of discrimination or retaliation under Kraft’s EEO policy, or for participating in or conducting an investigation of such an incident.

16. Kraft agrees that “commitment to equal employment opportunity” will be considered a desirable qualification for evaluation of supervisory positions, as reflected in Kraft’s MAP competencies referenced in Paragraph 10.

F. Reporting

17. Kraft shall report in writing and in affidavit form to the EEOC beginning six (6) months from the date of the entry of this decree, and thereafter every six months for the duration of the decree the following information:

- a. Certification of the completion of training set forth in Paragraph 12 above with a list of all attendees including their job titles.
- b. Certification that its EEO policy has been sent to all current and newly hired employees as described in Paragraph 11 above.
- c. A list of any changes, modifications, revocations or revisions to its EEO policies and procedures which concern or affect the subject of disability discrimination and/or evaluating a request for assistance and accommodation from an employee regarding a physical or mental impairment as it relates to the performance of the employee's job duties.
- d. A summary of all disability discrimination complaints which are reported to human resources, if any, filed by Kraft's DSD sales personnel in Idaho and the resolution of each complaint; and
- e. A statement that Kraft has complied with the terms of the Decree. If Kraft has not complied with any term of the Decree, the statement will specify the areas of non-compliance, the reason for the noncompliance, and the steps taken to bring the Defendant into compliance.

G. Posting

18. Kraft will post a Notice, attached as Exhibit 1 to this Consent Decree. The Notice shall be posted on a centrally located bulletin board at Kraft's DSD sales facility in Idaho for the duration of the Consent Decree.

VI. ENFORCEMENT

19. If the EEOC determines that Kraft has not complied with the terms of this Decree, the EEOC will provide written notification of the alleged breach to Kraft. The EEOC will not petition the Court for enforcement of the decree for at least ten (10) business days after providing

written notification of the alleged breach to James Fuller, Esq., Senior Counsel, Kraft Foods Legal Department, Three Lakes Drive, Northfield, Illinois 60093-2753. The 10-day period following the written notice shall be used by the parties for good faith efforts to resolve the dispute, or for Kraft to cure the breach.

VIII. RETENTION OF JURISDICTION

20. The United States District Court for the District of Idaho shall retain jurisdiction over this matter for the duration of the decree.

IX. DURATION AND TERMINATION

21. This Decree shall be effect for two (2) years from the date the Court enters this Decree. If the EEOC petitions the Court for breach of the Decree, and the Court finds Kraft to be in violation of the terms of the Decree, the Court may extend the duration of the Decree.

X. CONCLUSION

22. The parties are not bound by any provision of this decree until it is signed by authorized representatives of each party and is entered by the Court, which will become the “effective date” of this decree.

Dated this 10th day of October, 2006.

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ORDER APPROVING CONSENT DECREE

The Court having considered the foregoing stipulated agreement of the parties, IT IS HEREBY ORDERED THAT the foregoing Consent Decree be, and the same hereby is, approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party. The Court retains jurisdiction of this matter for purposes of enforcing the Consent Decree approved herein.

DATED this _____ day of _____, 2006.

Judge, EDWARD J. LODGE
United States District Court

KRAFT FOODS GLOBAL, INC.

NOTICE TO ALL KRAFT FOODS GLOBAL, INC. EMPLOYEES

Federal law prohibits an employer from discriminating against any individual based on the individual's physical or mental disability with respect to hiring, promotion, demotion, terms and conditions of employment, and/or termination. It is also unlawful for an employer to retaliate against any individual because he or she complains of discrimination or harassment, cooperates with the investigation of a discrimination or harassment charge by Kraft Foods Global, Inc. or a government agency, participates as a witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under the law.

Should you have any complaint of discrimination based on a physical or mental disability, you should contact your supervisor or Human Resources.

Any employee who is found to have retaliated against any other employee because such employee made a complaint of discrimination or participated in an investigation of a discrimination charge or lawsuit will be subject to discipline, up to and including termination.

Employees have the right to bring complaints of disability discrimination and/or retaliation to the U.S. Equal Employment Opportunity Commission, Seattle Field Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, 206/220-6883, 1-

800-699-4000, and/or the Idaho Human Rights Commission at, P.O. Box 83720, Owyhee Plaza, Fourth Fl., 1109 Main St., Ste. 400, Boise, ID 83720-0040, 208/334-2873. Any Kraft Foods Global, Inc. employee or applicant may also contact Human Resources at (925) 454-4773.

This notice is posted pursuant to a mutual resolution of *EEOC v. Kraft Foods Global, Inc. d/b/a Nabisco, Inc.*, CV 06-0074-S-EJL (D. Id.).