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## Equal Employment Opportunity Commission, Plaintiff v. The Home Depot USA, Inc. Defendant

Judge Dora L. Irizarry

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**Equal Employment Opportunity Commission, Plaintiff v. The Home Depot USA, Inc. Defendant**

**Keywords**

Equal Employment Opportunity Commission, The Home Depot USA Inc., 03-4860, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Termination, Other mental impairment disability, Retail, Employment Law, ADA

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

<b>EQUAL EMPLOYMENT OPPORTUNITY</b>	)
<b>COMMISSION,</b>	)
	)
<b>Plaintiff</b>	)
	)
<b>v.</b>	)
	)
<b>THE HOME DEPOT USA, Inc.</b>	)
	)
<b>Defendant.</b>	)

**Civil Action No. 03-4860**

**CONSENT DECREE**

This cause of action was initiated on September 24, 2003, by the Equal Employment Opportunity Commission (hereinafter "EEOC"), an agency of the United States Government, alleging that Defendant The Home Depot ("Defendant") violated Title I of the Americans with Disabilities Act of 1990 ("ADA") and Title I of the Civil Rights Act of 1991 by engaging in discrimination against Carolyn Pisani, a developmentally disabled individual, by not involving her job coach as a reasonable accommodation, and by terminating her because of her disability.

The parties agree that it is in their mutual interest to fully resolve the matter without further litigation. They stipulate and consent to the entry of this Decree as final and binding between them, and their successors or assigns.

This Decree resolves all matters raised in the Complaint filed herein. It does not constitute an adjudication or finding on the merits of this action, or an admission by Defendant of any violation of law or commission of wrongful conduct, which Defendant expressly denies. Subject to paragraph 1, below, this Decree in no way affects EEOC's rights to process any future charges that may be filed against Defendant, and to commence civil actions on any such charges.

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 FOLLOWS:

1. This Decree resolves all of the issues raised by EEOC Charge Number 160-AO-2445 and the EEOC Complaint in this case.
2. The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.
3. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Nothing in this Decree shall be construed to preclude EEOC from bringing proceedings to enforce this Decree in the event that Defendant fails to perform any of the promises and representations contained herein.
4. Defendant shall comply with the ADA's prohibition against employment discrimination against any individual because of her or his disability.
5. Defendant shall not retaliate against any individual for having asserted her or his rights under the ADA. Defendant shall not retaliate against any individual who has participated in this matter.

6. Defendant will maintain Non-Discrimination Policies which shall prohibit disability discrimination. These Policies include guidance entitled, “Reasonable Accommodation” and “Working With A Job Coach” (Collectively the “Policies”). See attached documents as Exhibits A and B. Specifically, the “Working With A Job Coach” Policy will be posted on the company’s computer portal and be implemented on a national basis for all Defendant’s employees.

7. These Policies shall be provided by Defendant to all managers and employees of its South Setauket store, and other stores within District Office 1208 VDO # 35 within thirty (30) days of the entry of the Consent Decree. These stores include Store #1202 Commack, 5025 Jericho Turnpike, Commack, NY 11725; Store #1211 Bay Shore, 1881 Sunrise Highway, Bay Shore, NY 11706; Store #1218 Copiague, 1101 Sunrise Highway, Copiague, NY 11726; Store #1265 South Setauket, 255 Pond Path, South Setauket, NY 11720; Store #1267 Farmingdale, 202 Airport Plaza, Farmingdale, NY 11735; Store #1285 Deer Park, 455 Commack Road, Deer Park, NY 11729.

8. Defendant will include training on “Working With A Job Coach” in the on-going anti-discrimination training that it currently provides to employees at its South Setauket store, and other stores within District Office 1208 VDO # 35.

9. Within five (5) days of the entry of this Decree, Defendant will post the Notice of Non-Discrimination attached as Exhibit C in its South Setauket store.

10. Defendant will pay Carolyn Pisani \$ 75,000, subject to the terms of a separate agreement between Pisani and Defendant.

11. Each party shall bear its own attorney fees and costs incurred in this action.
12. This Decree constitutes the complete understanding among the parties. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.
13. This Decree will remain in effect for two (2) years from the date of entry.

s/Elizabeth Grossman  
Elizabeth Grossman, Acting Regional Attorney

s/ Sunu P. Chandy  
Sunu P. Chandy, Senior Trial Attorney  
For Plaintiff US EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York 10004  
Phone 212-336-3706  
Fax 212-336-3623

Dated: October 11, 2005  
New York, New York

s/Esther G. Tamburo  
Esther G. Tamburo, Esq.  
Donald R. Livingston, Esq.  
Paul Mirengoff, Esq.  
For Defendant HOME DEPOT USA, INC.  
Akin Gump Strauss Hauer & Feld, LLP  
1333 New Hampshire Ave., N.W.  
Washington, DC 20036  
Phone 202-887-4588  
Fax 202-887-4288

Dated: October 6, 2005  
Washington, D.C.

SO ORDERED, ADJUDGED, AND DECREED

Signed this \_\_\_\_ day of \_\_\_\_\_, 2005

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Judge Dora L. Irizarry

**EXHIBIT A**

## **Reasonable Accommodation (ASV.001.rev1.02.04)**

### **Introduction**

Home Depot complies with all laws including the Americans with Disabilities Act. This SOP describes the process to follow to comply with that statute.

### **Definitions**

**Qualified:** an individual can perform the essential functions of the job either with or without reasonable accommodation.

**Disability:** an impairment – mental or physical – which substantially limits one's ability to perform one or more major life activities. (Examples of major life activities are eating, sleeping, walking and working). Or having a record of such impairment, or being regarded as having such impairment.

**Reasonable Accommodation:** a modification or adjustment to a job, employment process or practice, or work environment that permits a qualified applicant or associate with a disability to participate in the application process, to perform the essential functions of the job, or to enjoy the benefits and privileges of employment.

### **Policy and Procedure**

A qualified individual with a disability may request a reasonable accommodation at any time during the application process or during employment. An associate with a disability is not prohibited from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer. An individual with a disability can request reasonable accommodation when s/he knows that there is a workplace barrier that is preventing him/her, due to the disability, from: performing the job effectively, competing for a position, or gaining equal access to a benefit of employment. It is in an associate's interest to request a reasonable accommodation before performance suffers or conduct problems occur.

When an applicant or associate requests an accommodation, the Human Resource Manager must do the following things:

- Determine if the applicant/associate is a "qualified individual" and whether he/she has a "disability"; the HRM must partner with Associate Services in Atlanta to make these determinations. See ADA Checklists A and B, available on desktop HR.
- **\*\*\*Before a request for reasonable accommodation is denied, the HRM must partner with the Director of Associate Services in Atlanta, ext. 13158.**
- Identify the essential functions of the job using the job description

**EXHIBIT A**

- Discuss with the applicant/associate the specific job-related limitation imposed by the disability and the manner in which it may be overcome
- Work with the applicant/associate to identify and discuss possible accommodations; evaluate the potential effectiveness of the possible accommodations in enabling the person to perform the essential functions of the job
- Consider the applicant/associate's preference in selecting and implementing the accommodation that is most appropriate for him/her and for the business
- Contact the Associate Services Department in Atlanta for assistance in determining a reasonable accommodation or if the accommodation requires the purchasing of equipment

**When Managers/Supervisors Fail to Comply with These Requirements**

These requirements must be followed. Managers/supervisors who deviate from the requirements are subject to discipline up to and including termination. Exceptions to this SOP must be approved by the Human Resources Vice President (or equivalent) of the business unit.

**What to Do/Who to Contact**

Director of Associate Services – Atlanta SSC Ext. 13158  
Associate Services Specialist – Atlanta SSC Ext. 13159 or 13026

**Reference Material**

ADA Checklists A and B – desktop HR

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## **EXHIBIT B**

### **Home Depot Job Coach Policy - Working With A Job Coach**

Many of our Facility Support Associates have the assistance of a Job Coach as they go about their daily routines in our store. Job Coaches, also referred to as Employment Specialists, help individuals with disabilities integrate into the workplace and be successful on the job. Some employees with disabilities are assigned Job Coaches from non-profit organizations or agencies. The job coach works at the store/site with the associate. Home Depot only pays the associate, not the job coach.

#### **Role of the Job Coach**

- The Job Coach works individually with the associate and the management team to help the associate develop proper work behaviors, social skills, and to adjust to the work environment. The assistance is available for short or long term depending on the needs of the associate.
- The Job Coach may initially spend significant time at the store/site. However, the intent is that the job coach will spend just enough time (and no more) to support the associate.
- The Job Coach should help supervisors and managers learn how to work most effectively with the new associate and educate them about the role of the job coach.
- The Job Coach should discuss with Home Depot any requests for reasonable accommodation and work with Home Depot to arrive at the best solution for the associate.

#### **Follow-Up Support**

- As the associate becomes more independent on the job, the presence of the job coach gradually decreases. To assure continued success, periodic follow-up support usually continues.
- The job coach should be available for consultation on an on-going basis as requested by Home Depot or the associate. This consultation may include assistance with additional training or retraining, or assistance in addressing work performance or behavior issues.

#### **Role of Home Depot Management**

- Although the associate is assigned a job coach, the goal is for the management team to do as much of the training and support as possible. However, if an individual has significant challenges and needs an extended training period, which is beyond the resources of the store/site, the job coach may do more of the one-on-one training.
- Management is responsible for monitoring associate performance and using the Performance Management Process for reviewing associate performance or addressing any performance issues. Management is also responsible for addressing associate conduct and behavior that violates The Home Depot's Code of Conduct. Conversations should take place directly with the associate. However, it may be necessary to have the job coach present when addressing performance concerns during discipline or performance evaluations.

For further information about accommodations or how to work with a Job Coach, contact The Associate Services Department at the Atlanta SSC extensions 13158, 13159, or 13026, or, to reach the Associate Services Department from outside the store, call (770) 433-8211 ext. 13158, 13159, or 13026.

**EXHIBIT C**

**NOTICE TO EMPLOYEES OF THE HOME DEPOT**

This Notice is being posted as part of an agreement between The Home Depot and the Equal Employment Opportunity Commission.

Federal Law prohibits employers from discriminating against applicants and employees based on an employee's disability, race, color, religion, sex, national origin or age. Home Depot will comply with all federal employment laws and will not discriminate on the basis of disability or any other protected basis. Home Depot will not retaliate against employees who raise discrimination complaints.

Under the federal Americans with Disabilities Act ("ADA"), an employer is required to provide reasonable accommodations for qualified individuals with disabilities. Under appropriate circumstances, reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities, job restructuring, modifying work schedules, reassignment to a vacant position, acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, providing qualified readers or interpreters, or allowing an employee with a disability to receive assistance from a job coach.

Home Depot will continue its policy of providing training to its management and other employees regarding their rights and responsibilities with respect to issues of workplace discrimination. Home Depot also agrees to maintain its anti-discrimination policy.

If you have a complaint of discrimination, you may report it to the Store Human Resources Manager, the Store Manager, the Regional Human Resources Manager, the District Manager, the Employment Practices Manager or the Human Resources Vice President.

If you have complaints of discrimination or retaliation you may also call or write to the:

Equal Employment Opportunity Commission ("EEOC")  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York 10004  
National Call Center: 800-669-4000  
Website: [www.eeoc.gov](http://www.eeoc.gov)

**THIS IS AN OFFICIAL NOTICE AND SHALL NOT BE DEFACED BY ANYONE**

This notice must remain posted for two years from the date of posting, until \_\_\_\_\_

Signed: \_\_\_\_\_  
Tracey Davis, District Human Resources Manager

Dated: \_\_\_\_\_