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## Equal Employment Opportunity Commission, Plaintiff, v. Five Cap, Inc., Defendants.

Judge Robert Holmes Bell

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**Equal Employment Opportunity Commission, Plaintiff, v. Five Cap, Inc.,  
Defendants.**

**Keywords**

Equal Employment Opportunity Commission, Five Cap Inc., 1:05-cv-00153-RHB, Consent decree / Settlement, Disparate Treatment, Subjective Decision Making, Termination, Other physical impairment disability, Service, Employment Law, ADA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	Case No. 1:05-CV-0153
	)	
v.	)	HONORABLE
	)	ROBERT HOLMES BELL
FIVE CAP, INC.	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**CONSENT DECREE**

1. Plaintiff, the United States Equal Employment Opportunity Commission (the "Commission") commenced this action on February 28, 2005 in the United States District Court for the Western District of Michigan, Southern Division, alleging that the Defendant, Five Cap, Inc. ("*Defendant*"), failed to allow Charging Party, Cheryl McInnis-Smith to return to work following a medical leave of absence, in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*

2. As a result of settlement discussions, the Commission and Defendant have resolved their differences and have agreed that this action should be settled. It is the intent of the parties that this be a final and binding settlement in full disposition of any and all claims alleged or which could have been alleged in the Complaint against Defendant or in the Charge of Discrimination filed by Cheryl McInnis-Smith, Charge No. 230-2004-02670.

3. The Commission is the agency of the United States government authorized by the

ADA to investigate allegations of unlawful employment discrimination based upon disability, to bring civil actions to prohibit unlawful employment practices, and to seek relief for individuals affected by such practices.

4. Defendant is an employer engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U. S.C. § 12111(2), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e (g) and (h). Defendant had at least 25 employees for 20 or more calendar weeks during the relevant period of time.

5. Pursuant to the ADA, the parties acknowledge the jurisdiction of the United States District Court for the Western District of Michigan over the subject matter and parties to this case for the purpose of entering this Decree, and if necessary, enforcing the provisions of this agreement.

6. Venue is appropriate in the Western District of Michigan. For purposes of this Decree and proceedings related to this Decree only, Defendant agrees that all statutory conditions precedent to the institution of this lawsuit against Defendant has been fulfilled.

7. Having examined the terms and provisions of the Consent Decree and based on the pleadings, records, and stipulations of the parties, the parties agree to the following:

- a. The Court has jurisdiction over the subject matter of this action against Defendant;
- b. The terms and provisions of this Consent Decree are fair, reasonable and just. The rights of Defendant, the Commission, and those for whom the Commission seeks relief are adequately protected by this Decree;
- c. The Consent Decree conforms with the Federal Rules of Civil Procedure and the

ADA, and is not in derogation of the rights and privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties and those for whom the Commission seeks relief.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

8. This agreement, being entered with the consent of the Commission and Defendant, shall not constitute an adjudication or finding on the merits of this case and shall not be construed as an admission by Defendant of any violation of the ADA or, any other law, rule or regulation dealing with or in connection with equal employment opportunity.

9. Defendant, its officers, agents, employees, successors, assigns and all persons in active concert or participation with them or any of them shall comply with the provisions of the ADA, 42 U.S. C. § 12101 et seq., with regard to disability discrimination.

10. Defendant shall not take any action against any person which constitutes intimidation, retaliation, harassment, or interference with the exercise of such person's rights under the ADA because of the filing of the Charge of Discrimination by Cheryl McInnis-Smith, which forms the basis for the present case, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case under the ADA.

11. Defendant shall, within ten (10) days of entry of this Consent Decree, pay Cheryl McInnis-Smith \$60,000. This monetary compensation shall be paid in one check made payable to Cheryl McInnis-Smith, 423 Emory Street, Howard City, Michigan 49329. Defendant shall mail this payment to Cheryl Smith by overnight mail within ten (10) days after this Consent Decree has been entered by the Court. The Commission shall have the right to monitor

compliance with this paragraph through inspection of all documents relating to said disbursement, including but not limited to, a copy of the check, check stub, return receipt, letters, and any other documents evincing payment hereunder.

13. Defendant agrees that within 90 days it will provide a mandatory training program to all employees and managers which will focus on the requirements of the federal equal employment opportunity laws, including the Americans with Disabilities Act of 1990, as amended. The training will include treatment of persons returning from medical leave, and shall also discuss the duty of reasonable accommodation for employees with disabilities and the interactive process. Within 30 days after all manager employees have been trained Defendant will provide the E.E.O.C. with a list of all attendees and certify that all manager employees have been trained.

#### **POSTING OF NOTICE**

14. Defendant agrees that it shall post a copy of the Notice attached as Exhibit A in a conspicuous location at all of its Michigan facilities where employee notices are posted. The notice shall be posted for three (3) years from the date the Consent Decree is entered by the Court. Should the posted notice become defaced, marred or otherwise made unreadable, Defendant agrees to post a readable copy of the notice as soon as practical thereafter.

#### **DURATION**

15. This Consent Decree shall remain in effect for three (3) years from the date it is entered, and the Court shall retain jurisdiction of this action during the duration of this Decree to enforce compliance with the Decree.

16. The Court will have all available equitable powers, including injunctive relief, to

enforce this Decree. Upon motion of any party, the Court may schedule a hearing for the purpose of reviewing any party's compliance with this Decree and/or ordering appropriate relief to determine whether the parties have complied with the terms of this Decree. Prior to seeking review by the Court, the parties shall engage in a good faith effort to resolve any dispute concerning compliance with the Decree. Any party seeking court review of a matter shall be required to give ten (10) days notice to the other parties before moving for such review.

17. Each party shall bear its own court costs and attorney fees.

18. If any provision(s) of this Agreement is found to be unlawful, only the specific provision(s) in question shall be affected and the other provisions will remain in full force and effect.

19. The terms of this Decree shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of Defendant.

20. This Agreement constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by Defendant and the Commission.

21. When this Decree requires or permits the submission any documents by Defendant to the Commission, if not otherwise indicated in the Decree, they shall be mailed to Laurie A. Young, Regional Attorney, EEOC, Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, IN 46204.

EQUAL EMPLOYMENT OPPORTUNITY

FIVE CAP, INC.

/s/ Trina Mengesha

/s/ Richard McNulty, with  
permission

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Trina R. Mengesha  
Senior Trial Attorney

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Detroit, MI 48226

IT IS SO ORDERED:

/s/ Robert Holmes Bell  
HONORABLE ROBERT HOLMES BELL

November 13, 2006  
DATE

**EXHIBIT A**



**NOTICE TO ALL EMPLOYEES**

This Notice is being posted as a result of a Consent Decree entered between the United States Equal Employment Opportunity Commission and Five Cap, Inc. to inform you of your rights guaranteed by federal law under the Americans With Disabilities Act, 42 U.S. C. § 12101 *et. seq.* ("ADA"). The ADA prohibits discrimination against any employee on the basis of disability with regard to any term or condition of employment including hiring, layoff, recall, promotion, discharge, pay and fringe benefits or in retaliation for the opposition to unlawful employment practices.

The United States Equal Employment Opportunity Commission is the federal agency which investigates charges of unlawful employment discrimination and, if necessary, files lawsuits in federal court to enforce the anti-discrimination provisions of the ADA. Any employee who believes that he/she is the victim of discrimination or retaliation has the legal right to file a charge of discrimination with the U.S. Equal Employment Opportunity Commission.

Five Cap supports and will comply with this federal law in all respects. Five Cap will not take any action against any employees because they have exercised their rights under the ADA.

\_\_\_\_\_  
FIVE CAP, INC.

\_\_\_\_\_  
DATE