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Equal Employment Opportunity Commission, Plaintiff v. Damping Technologies, Inc., Defendant

Judge Robert L. Miller Jr.

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Equal Employment Opportunity Commission, Plaintiff v. Damping Technologies, Inc., Defendant

Keywords

Equal Employment Opportunity Commission, Damping Technologies Inc., 3:04-CV-612 RM, Consent decree / Settlement, Disparate Treatment, Retaliation, Termination, Manufacturing, Employment Law, ADA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff)
) CAUSE NO. 3:04-CV-612 RM
v.)
)
DAMPING TECHNOLOGIES, INC.,)
)
Defendant)

CONSENT DECREE

The Equal Employment Opportunity Commission (“Commission” or “EEOC”) instituted Civil Action No. 3:04-CV-612 under the authority granted by Section 706 (f)(1) and (3) of Title VII the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5 (f) (1) and (3) (“Title VII”); Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705 (“ADEA”); Section 107(a) of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12117(a) (“ADA”); and Section 102 of Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The EEOC’s action was brought to correct unlawful employment practices on the basis of retaliation.

The Commission and Defendant Damping Technologies, Inc. (“Damping”) hereby stipulate to the jurisdiction of the Court over the parties and the subject matter.

The parties have advised the Court that they desire to resolve Civil Action No. 3:04-CV-612 without the burden, expense, and delay of further litigation.

It is, therefore, the finding of the Court, based on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2)

implementation of this Decree will advance the purposes and provisions of Title VII, the ADEA, and the ADA; and (3) this Consent Decree resolves all matters and claims in controversy in this lawsuit between the EEOC and Damping as provided in paragraphs 1 through 13 below.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. Damping will not discriminate against any employee on the basis of age, disability, race, color, religion, sex, or national origin and will comply with all provisions of Title VII, the ADEA, and the ADA.
2. Damping will not retaliate or discriminate against any of its employees, former employees, or applicants for employment because the individual (a) has made a charge or opposed an unlawful employment practice under Title VII, the ADEA, the ADA or any of the laws enforced by the EEOC or (b) has assisted or participated in any manner in an investigation, proceeding, or hearing under Title VII, the ADEA, the ADA or any of the laws enforced by the EEOC.
3. Damping agrees to post the Notice of Non-Discrimination Policy attached to this Decree as Appendix A in conspicuous locations visible to applicants and employees throughout its Mishawaka, Indiana, facility. Said notices shall remain posted throughout the term of this Decree.
4. Damping shall pay \$38,571.46 in back pay, \$2,500.00 in interest, and \$23,928.54 in front pay, for a total of \$65,000.00, to Mary Steely or her heirs or assigns in the event of her death. The payment shall be made in two installments, ½ on or before May 1, 2005 (or within seven days of notification as provided in ¶ 5, whichever is later), and the second ½ on or before August 1, 2005. Two checks in the amount of \$32,500, less applicable taxes and withholdings, shall be

made payable to Mary Steely and sent to her by certified mail at 214 North Middleboro Avenue, Mishawaka, Indiana, 46544. Damping will not deduct from any amount the employer's share of any costs, taxes, or social security required by law to be paid by Damping. Further, Damping will not withhold any amounts from payments of liquidated damages, interest, or punitive damages.

5. Before Damping is required to make a payment pursuant to ¶ 4, the Commission will notify counsel for Damping when it has received an executed release (Appendix B) and will forward a copy of the executed release to counsel.

6. Within seven days of receipt of notice from the EEOC that Ms. Steely has executed the release (or May 1, 2005, whichever is later), Damping shall mail the first check as provided in ¶ 4 above. Damping shall mail the second check on or before August 1, 2005. Damping shall mail copies of the checks and proof of their delivery (signed certified mail receipts) to the Commission. Then, the Commission promptly will deliver the original release to Damping's counsel.

7. Damping shall adopt and implement a training program for all of its supervisors and managers at its Mishawaka, Indiana, facility. This training shall cover what constitute unlawful employment practices under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990, with particular emphasis on the non-retaliation provisions of the statutes. The training must be conducted within 120 days from the date of entry of this Decree. Thirty days before the training, Damping shall provide notice to the Commission of the date, time, and place of the training, and shall send to the Commission a copy of the training program and all written materials, if any, to be used.

The Commission may provide reasonable input on the content of the training but shall do so no later than ten days prior to the training.

8. Damping will submit a report to the EEOC detailing compliance with this Decree within 180 days of the date of the Decree. Damping will certify to the EEOC's Regional Attorney that it has complied with ¶¶s 4 - 6 of this Decree. In addition, Damping shall provide the following information:

- i. the dates and topics of all training programs presented pursuant to ¶ 7;
- ii. a copy of all written materials relied on or disseminated at the training programs;
- iii. the name and position of each employee who attended the training programs; and
- iv. for the preceding twelve months, a description of all verbal or written complaints of discrimination by Damping or any of its managers or supervisors from any employee, the name and position of the complainant, Damping's findings regarding the complaint, and Damping's response to the complaint including any discipline administered as a result of the complaint.

All reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4203.

9. The EEOC may review compliance with this Decree. As part of such review, the EEOC may inspect the premises, interview employees, and examine and copy documents.

10. In the event that the EEOC alleges that a violation of this Decree has occurred, the EEOC shall give notice in writing specifically identifying the alleged violation to Damping. Damping

will have ten days in which to investigate and respond to the allegation. If the parties are unable to resolve the allegation(s), the EEOC may petition the Court for relief.

11. The term of this Decree shall be for three years following the date of entry of the Decree.

12. Each party will each bear its own costs.

13. The Court will retain jurisdiction of this cause for 3 years for purposes of monitoring compliance with the Decree and entry of such further orders or modifications as may be necessary or appropriate.

SO ORDERED.

Date: May 9, 2005

/s/ Robert L. Miller, Jr.
Chief Judge
United States District Court

cc: K. Bird
D. Mirkin

EMPLOYEE NOTICE

Posted Pursuant to an Agreement Resolving a Charge of Employment Discrimination filed with the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Indianapolis District Office

This Notice is being distributed and posted by agreement between Damping Technologies, Inc., and the United States Equal Employment Opportunity Commission, resolving Civil Action No. 3:04-CV-612 in the United States District Court for the Northern District of Indiana.

Federal law prohibits discrimination against any employee, former employee, or job applicant because of the individual's sex, race, color, religion, national origin, disability, or age (over 40).

Federal law also prohibits retaliation of any kind against any person who has opposed any practice made unlawful under federal law or because an individual has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

Damping supports and will comply with federal law in all respects and will not take any actions against employees because they have exercised their rights under the law. Damping agrees not to discriminate in employment; will conduct a training program on the requirements of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act; and will not retaliate against an individual who files a charge of discrimination.

If you have any complaints of discrimination, you may contact the EEOC at the address or telephone number given below. An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204-4203
Telephone (317) 226-7212
TTY (317) 226-5162

APPENDIX A

RELEASE

In consideration of the payment to me by Damping Technologies, Inc., of \$65,000.00, less appropriate taxes and withholdings, and in consideration of the Consent Decree (of which this release is a part) agreed to by the Equal Employment Opportunity Commission and Damping Technologies, Inc. in Civil Action 3:04-CV-612, entered of record in the Northern District of Indiana, I, Mary Steely, hereby fully and forever release and discharge Damping Technologies, Inc., and its successors and assigns, including its present and former directors, officers, and agents, from any claim that was raised in Civil Action 3:04-CV-612.

I have read this Release and I execute it voluntarily, without coercion or threat of reprisal.

Dated: _____

Mary Steely

Subscribed and sworn to before me the undersigned, a Notary Public for _____
County, State of Indiana, this _____ day of _____, 2005.

Signature of Notary Public

Printed name of Notary Public

County of Residence:

My Commission Expires:

APPENDIX B