



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Consent Decrees

Labor and Employment Law Program

4-14-2011

EEOC v. Wal-Mart Stores d/b/a Sam's Club

Judge Michael J. Seng

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/condec>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. [Please help support our student research fellowship program with a gift to the Legal Repositories!](#)

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in Consent Decrees by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

EEOC v. Wal-Mart Stores d/b/a Sam's Club

Keywords

EEOC v. Wal-Mart Stores, Sams Club, 1:09-cv-00804-OWW-MJS, Consent Decree, hostile work environment, national origin, Hispanic, Latino, Retail Industry, Employment Law, Title VII

1 Anna Y. Park (SBN 164242)
2 Michael J. Farrell (SBN 266533)
3 Gregory L. McClinton (SBN 153553)
4 Amrita Mallik (SBN 249152)
5 **U.S. EQUAL EMPLOYMENT**
6 **OPPORTUNITY COMMISSION**
7 255 East Temple Street, Fourth Floor
8 Los Angeles, CA 90012
9 Telephone: (213) 894-1083
10 Facsimile: (213) 894-1301
11 E-Mail: lado.legal@eoc.gov

12 Attorneys for Plaintiff
13 **U.S. EQUAL EMPLOYMENT**
14 **OPPORTUNITY COMMISSION**

15 Mark R. Curiel, Esq. (SBN 222749)
16 Donald R. Livingston (*pro hac vice*)
17 **AKIN GUMP STRAUSS HAUER & FELD LLP**
18 2029 Century Park East, Suite 2400
19 Los Angeles, California 90067-3012
20 Telephone: 310-229-1000
21 Facsimile: 310-229-1001
22 E-mail: mcuriel@akingump.com

23 Attorneys for Defendant SAM'S WEST, INC.
24 DBA SAM'S CLUB

25 **UNITED STATES DISTRICT COURT**
26 **EASTERN DISTRICT OF CALIFORNIA**

27 U.S. EQUAL EMPLOYMENT
28 OPPORTUNITY COMMISSION,
Plaintiff,

vs.

Wal-Mart Stores, Incorporated dba
Sam's Club, and DOES 1-10, Inclusive,
Defendant(s).

} Case No.: 1:09-CV-00804-OWW-GSA
[PROPOSED] CONSENT DECREE;
ORDER

1 **I.**

2 **INTRODUCTION**

3 Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or
4 "Commission") and Defendant Wal-Mart Stores, Inc. dba Sam's Club
5 ("Defendant") agree to the entry of this Consent Decree to resolve the EEOC's
6 Complaint, filed under Title VII of the Civil Rights Act of 1964, as amended, 42
7 U.S.C. section 2000e et seq. ("Title VII"). The EEOC's Complaint alleges that
8 Evangelina Valdez, Martina Perez and Sofia Alvarez ("Charging Parties") and
9 other similarly situated individuals ("Claimants") were subject to discrimination,
10 specifically a hostile work environment by a co-worker due to their national origin
11 (Hispanic/Latino).

12 **II.**

13 **PURPOSES OF THE CONSENT DECREE**

14 The Parties to this Consent Decree ("Decree") are the EEOC and Defendant.
15 This Decree shall be binding on and enforceable against Defendant and its officers,
16 directors, agents, successors, and assigns. Defendant does not admit any violation
17 of the law.

18 **III.**

19 **RELEASE OF CLAIMS**

20 A. This Decree fully and completely resolves between Defendant and the
21 EEOC all claims, including any and all claims of similarly-situated employees, and
22 allegations that are raised by the EEOC against Defendant in the Complaint filed in
23 the United States District Court, Eastern District of California on May 6, 2009,
24 captioned U.S. Equal Employment Opportunity Commission v. Wal-Mart Stores,
25 Incorporated dba Sam's Club, Case No. 1:09-CV-00804-OWW-GSA
26 ("Complaint"). This Decree further fully and completely resolves between
27 Defendant and the EEOC all claims, including any and all claims of similarly-
28 situated employees, and allegations that are raised by the Charging Parties and

1 Claimants against Defendant in the following Charges of Discrimination: No. 485-
2 2009-00161; No. 485-2009-00250; No. 485-2009-00166; No. 485-2009-00170;
3 No. 485-2009-00158; No. 485-2009-00162; and No. 485-2009-00403.

4 B. Nothing in this Decree shall be construed to preclude any party from
5 bringing suit to enforce this Decree in the event that any party fails to perform the
6 promises and representations contained in this Decree.

7 C. Nothing in this Decree shall be construed to limit or reduce
8 Defendant's obligation to comply fully with Title VII or any other federal
9 employment statute.

10 D. This Decree in no way affects the EEOC's right to bring, investigate
11 or litigate other charges that may be in existence, except as provided in Section
12 III.A, or may later arise against Defendant in accordance with standard EEOC
13 procedures.

14 IV.

15 EFFECTIVE DATE, DURATION, AND SCOPE OF DECREE

16 A. The provisions and agreements contained in this Decree are effective
17 immediately upon the date this Decree is entered by the Court ("Effective Date").

18 B. Except where a shorter period is provided in this Decree, the Decree
19 shall remain in effect for three (3) year after the Effective Date.

20 C. Except where this Decree is limited - with respect to training and
21 reporting - to Sam's Club Number 4704, in Fresno, California, all other terms of
22 this Consent Decree are limited to Sam's Club No.4704, in Fresno *and* Sam's Club
23 No. 4819, in Bakersfield, California.

24 V.

25 MODIFICATION AND SEVERABILITY

26 A. This Decree constitutes the complete understanding of the Parties with
27 respect to the matters contained in this Decree. No waiver, modification, or
28

1 amendment of any provision of this Decree will be effective unless made in writing
2 and signed by an authorized representative of each of the parties.

3 B. If one or more provisions of the Decree are rendered unlawful or
4 unenforceable, the Parties shall make good faith efforts to agree upon appropriate
5 amendments to this Decree to effectuate the purposes of the Decree. In any event,
6 the remaining provisions will remain in full force and effect.

7 C. By written agreement of the Parties, this Decree may be amended or
8 modified to effectuate the purposes of this Decree.

9 **VI.**

10 **JURISDICTION**

11 A. The Court has jurisdiction over the Parties and the subject matter of
12 this lawsuit. The terms and provisions of this Decree are fair, reasonable, and just.
13 This Decree conforms to the Federal Rules of Civil Procedure and Title VII. It is
14 not in derogation of the rights or privileges of any person.

15 B. The Court shall retain jurisdiction of this action during the duration of
16 the Decree for the purposes of monitoring and entering all orders, judgments, and
17 decrees that may be necessary to implement the relief provided in this Decree.

18 **VII.**

19 **COMPLIANCE AND DISPUTE RESOLUTION**

20 A. The Parties agree that if the EEOC has reason to believe that
21 Defendant has failed to comply with any provision of this Consent Decree, the
22 EEOC may, while this Decree is in effect, petition or bring an action before this
23 Court to enforce the Decree. Prior to initiating such petition or action, the EEOC
24 will notify Defendant's legal counsel of record, in writing, of the nature of the
25 dispute. This notice shall specify the particular provision(s) that the EEOC
26 believes has or have been breached. Defendant shall have thirty (30) days from
27 receipt of EEOC's notice of the alleged breach to attempt to resolve or cure the
28 breach.

1 D. Within ten (10) business days after all settlement checks have been
2 sent to all Claimants, Defendant shall submit a copy of the checks or confirmation
3 of payment and related correspondence to Anna Park, EEOC Regional Attorney at
4 the office address on the caption page of this Decree.

5 **IX.**

6 **GENERAL AFFIRMATIVE RELIEF**

7 A. Anti-Discrimination Provision

8 Defendant, its respective officers, agents, management (including all
9 supervisory employees), successors, assigns, and all those in active concert or
10 participation with them, or any of them, shall not:

11 1. Engage in discrimination or harassment of any person on the
12 basis of his or her national origin;

13 2. Engage in or be a party to any action, policy, or practice that is
14 intended or is known to them to have the effect of harassing or intimidating any
15 employee on the basis of national origin; or

16 3. Create, facilitate or permit the existence of a work environment
17 that is hostile to employees on the basis of national origin.

18 B. Anti-Retaliation Provision

19 Defendant, its respective officers, agents, management (including all
20 managerial employees), successors, assigns, and all those in active concert or
21 participation with them, or any of them, shall not engage in, implement or permit
22 any action, policy, or practice with the purpose of retaliating against any current or
23 former employee or applicant because he or she has in the course of this action:

24 1. Opposed any practice made unlawful under Title VII;

25 2. Filed a charge of discrimination alleging such practice;

26 3. Testified or participated in any manner in any investigation
27 (including without limitation, any internal investigation undertaken by Defendant)
28

1 or proceeding in connection with this case and/or relating to any claim against
2 Defendant of national origin harassment or any subsequent retaliation;

3 4. Was identified as a possible witness or claimant in this action,
4 or;

5 5. Sought and/or received relief in accordance with this Decree.

6 C. Posting of Notice of Consent Decree

7 Within ten (10) days after the Effective Date and for two years from the
8 Effective Date of this Decree, Defendant shall post in English and Spanish a full-
9 sized copy of the Notice of Consent Decree, attached to the Decree as Attachment
10 A, in a clearly visible location frequented by employees (i.e. break rooms or
11 bulletin boards with other employee notices) in Fresno Sam's Club Number 4704
12 and Bakersfield Sam's Club Number 4819.

13 D. Policy and Complaint Procedure for National Origin Discrimination,
14 Harassment and Any Subsequent Retaliation

15 1. Within sixty (60) days of the Effective Date, Defendant shall
16 review its policy against and complaint procedure for national origin
17 discrimination, harassment, and any subsequent retaliation. If the following
18 elements are not in the current policy, the policy shall be revised to include them:

19 a. a clear explanation of prohibited conduct: national origin
20 discrimination, harassment, and any subsequent retaliation;

21 b. an assurance that employees who make complaints of
22 national origin discrimination, harassment or provide information related to such
23 complaints will be protected from retaliation;

24 c. a clearly described complaint process for national origin
25 discrimination, harassment, and any subsequent retaliation that provides accessible
26 avenues of complaint against co-workers, including the complainant's supervisors;

27
28

1 d. an assurance that Defendant will protect the
2 confidentiality of discrimination complaints to the extent possible from being
3 disclosed to those who do not need to know;

4 e. a complaint process that provides a prompt, thorough,
5 and impartial investigation;

6 f. a procedure for communicating effectively with the
7 complainant regarding the status of the complaint / investigation; and

8 g. assurance that Defendant will take prompt and
9 appropriate corrective action when it determines that national origin
10 discrimination, harassment or any subsequent retaliation has occurred.

11 2. At the training under IX.G.3, Defendant shall distribute its
12 policy against and complaint procedure for national origin discrimination,
13 harassment, and any subsequent retaliation to all of its employees. The policy shall
14 be available in English and Spanish.

15 3. For the term of this Decree, all new employees hired at Fresno
16 Sam's Club Number 4704 and Bakersfield Sam's Club Number 4819 shall receive
17 within thirty (30) days of hire Defendant's policy against and complaint procedure
18 for national origin discrimination, harassment and any subsequent retaliation, and
19 shall be provided with an overview of the policy and procedures.

20 4. For the remainder of the term of this Decree, all employees
21 promoted from non-managerial to managerial positions at Fresno Sam's Club
22 Number 4704 or Bakersfield Sam's Club Number 4819 shall receive within thirty
23 days of promotion any policies and procedures of Defendant's against and about
24 national origin discrimination, harassment and any subsequent retaliation
25 applicable to managerial employees; and shall be provided with an overview of the
26 policy and procedures.

27
28

1 E. Procedure for Handling Complaints

2 Defendant shall have procedures for handling complaints of national origin
3 discrimination, harassment and any subsequent retaliation made by Defendant's
4 employees.

5 F. Manager/Supervisor Accountabilitv

6 Defendant shall hold its managers, supervisors, and human resources
7 personnel at Fresno Sam's Club Number 4704 and Bakersfield Sam's Club
8 Number 4819 accountable for engaging in discrimination, or for failing to comply
9 with Defendant's anti-discrimination and anti-retaliation policies and procedures.

10 G. Training

11 1. Within sixty (60) days of the Effective Date, the Defendant
12 shall review and, if necessary to comport with Section G.2 below, revise its
13 training of its policy against and complaint procedure for national origin
14 discrimination, harassment and any subsequent retaliation.

15 2. Within 90 days after the Effective Date, the Defendant shall
16 provide training of at least 2 hours in duration for its managerial and human
17 resources employees at Fresno Sam's Club Number 4704 and Bakersfield Sam's
18 Club Number 4819, and the Market Manager and Human Resources Manager over
19 those Clubs. This training shall be in Spanish for an employee who is monolingual
20 and whose language is Spanish. The training shall cover EEO laws, including but
21 not limited to national origin discrimination and harassment. The training shall
22 also encompass retaliation. The training shall also cover Defendants' policy
23 against discrimination, the complaint procedures and policies. The training of
24 managerial employees shall additionally include training on how to receive,
25 investigate, or report to designated officials complaints of national origin
26 discrimination, harassment and any subsequent retaliation; and how to take
27 preventive and corrective measures against national origin discrimination,
28 harassment and any subsequent retaliation.

1 3. A separate training of at least 60 minutes in duration shall be
2 provided for non-managerial employees in the Fresno Club covering EEO laws,
3 including by not limited to national origin discrimination and harassment. The
4 training shall also encompass retaliation. The training shall also cover Defendants'
5 policy against discrimination, complaint procedures and policies. This training
6 shall be in Spanish for an employee who is monolingual and whose language is
7 Spanish.

8 4. The former manager of Sam's Club 4704 during the relevant
9 period in the aforementioned charges in Paragraph III.A shall be given the training
10 designated for managers described above in G(2).

11 5. After the initial trainings described in paragraphs 2 and 3 of this
12 section, Defendant shall conduct annual training (every twelve (12) months
13 thereafter for the term of this Decree) on EEO laws, obligations of managers and
14 supervisors on EEO compliance, its policy against and complaint procedure for
15 national origin discrimination, harassment and any subsequent retaliation for the
16 same audiences in Paragraphs 2 and 3 of this Section.

17 6. For any employees who miss the scheduled training described
18 in this section, the Defendant shall provide training to these employees within
19 thirty (30) days of the scheduled training. This rescheduled training may be live or
20 by use of a videotape recording of the missed training session.

21 H. Employment Reference

22 Defendant shall give a neutral reference, through its third party vendor, for
23 Charging Parties and Claimants upon inquiry by any prospective employers, which
24 may include the following information: date of hire, last position held, date of
25 departure and last pay rate. Defendant will not provide further information
26 regarding the circumstances of the Charging Party or Claimant's employment.
27
28

1 X.

2 **RECORD KEEPING AND REPORTING**

3 A. Record Keeping

4 The Defendant shall establish a record-keeping procedure for Fresno Club
5 Number 4704 that provides for the centralized tracking of complaints about
6 national origin discrimination, harassment and any subsequent retaliation. The
7 records to be maintained shall include:

8 1. All documents generated in connection with any internal
9 complaint, investigation into, or resolution of regarding national origin
10 discrimination, harassment and any subsequent retaliation for the duration of the
11 Decree and the identities of the parties involved; and,

12 2. A form or electronic record acknowledging each employee's
13 receipt of Defendant's policy against and complaint procedure against
14 discrimination.

15 3. The Defendant shall provide to the Commission upon request
16 all non-privileged documents generated in connection with any such
17 discrimination, harassment, and retaliation complaints, investigations, and
18 resolutions. The Commission shall give Defendant 30 days notice of any request
19 for documents pursuant to this paragraph.

20 B. Reporting

21 The Defendant shall provide the following reports to the Commission
22 in writing, by mail, or by facsimile:

23 1. Within 120 days after the Effective Date and annually
24 thereafter (with the last reporting one month before the end of the Consent Decree)
25 for the term of the Decree, the Defendant shall submit to the Commission the
26 following:

27 a. verification that the Notice of Consent Decree
28 (Attachment A) has been posted in compliance with the Consent Decree;

1 b. its policy against and complaint procedure for
2 national origin discrimination, harassment and any subsequent retaliation;

3 c. verification of the distribution to Defendant's
4 employees of its policy against and complaint procedure for national origin
5 discrimination, harassment and retaliation in compliance with the Consent Decree;

6 d. for all training conducted under Section IX.G, a
7 copy of Defendant's training materials, schedule of training, dates of training and a
8 roster of attendees by name and position;

9 e. verification that all applicable managerial and non-
10 managerial employees have been trained in compliance with the Consent Decree;

11 g. verification that a record keeping system exists for
12 (1) the tracking of national origin discrimination, harassment complaints at Club
13 4704, (2) the employees' acknowledgment of the receipt of Defendant's policy and
14 complaint procedure for national origin discrimination, harassment and retaliation
15 in compliance with the Consent Decree, and (3) the attendance/completion of all of
16 its employees in training concerning its policy and complaint on national origin
17 discrimination, harassment and retaliation in compliance with the Consent Decree;

18 h. a summary report of its investigation into any
19 complaint about national origin discrimination, national origin harassment and/or
20 retaliation for complaining about national origin discrimination, and/or harassment
21 in the Fresno Club. The summary report shall include the following for each
22 complaint during the reporting period:

- 23 (1). the name and national origin, if known, of
24 the complaining party(ies);
25 (2). the date of the complaint;
26 (3). the name and national origin/race, if known,
27 of the alleged harasser(s);
28 (4). the name, national origin/ race and title of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- the person(s) who conducted the investigation into the complaint;
- (5). the nature of the complaint (i.e. comments, acts, pictures, etc.)
- (6). the date of the commencement and completion of the investigation;
- (7). a brief description of the investigation (i.e. number of persons interviewed, materials reviewed);
- (8). the outcome of the investigation and any action taken; and.
- (9). whether previous national origin and/or discrimination, harassment complaints had been made regarding the alleged harasser(s). If so, the report should also include the outcome of the prior investigations.

2. All reports under this Paragraph shall be directed to:
U.S. Equal Employment Opportunity Commission, Attn. Regional Attorney, 255
E. Temple Street, 4th Floor, Los Angeles, CA 90012.

XI.
COSTS OF ADMINISTRATION AND IMPLEMENTATION
OF THE CONSENT DECREE

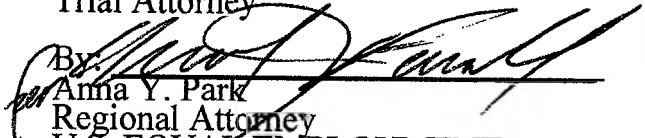
Defendant shall bear all costs associated with its administration and implementation of its obligations under this Decree.

XII.
COSTS AND ATTORNEYS' FEES
Each party shall bear its own costs of suit and attorneys' fees.

1 Dated: April 12th 2011

2 **U.S. EQUAL EMPLOYMENT**
3 **OPPORTUNITY COMMISSION**

4 ANNA Y. PARK
5 Regional Attorney
6 MICHAEL J. FARRELL
7 Supervisory Trial Attorney
8 GREGORY L. McCLINTON
9 Senior Trial Attorney
10 AMRITA MALLIK
11 Trial Attorney

12 By: 
13 Anna Y. Park
14 Regional Attorney

15 U.S. EQUAL EMPLOYMENT
16 OPPORTUNITY COMMISSION

17 Dated: 4/12/2011

18 DEFENDANTS WAL-MART STORES,
19 INCORPORATED

20 By:  Bill Clark

21 Title: VP. Human Resources

22 For Defendant Wal-Mart Stores,
23 Incorporated

24 ///
25 ///
26 ///
27 ///
28 ///

[PROPOSED] ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GOOD CAUSE APPEARING,

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is HEREBY ORDERED.

IT IS SO ORDERED.

Date: _____, 2011

By: _____
United States District Court Judge

Exhibit A

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "A"
NOTICE TO ALL EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in U.S. Equal Employment Opportunity Commission v. Wal-Mart Stores, Incorporated dba Sam's Club ("Wal-Mart"), Case No. 1:09cv-00804-OOW-GSA, Eastern District of California, settling a lawsuit filed by the U.S. Equal Employment Opportunity Commission ("EEOC").

In its suit, the EEOC alleged that Wal-Mart discriminated against a class of individuals who worked as Demonstrators because of their national origin (Mexican) in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Wal-Mart denies the allegations.

To resolve this lawsuit the parties have entered into a Consent Decree which requires Wal-Mart to:

- 1) provide monetary relief to the individuals who claimed they were discriminated against;
- 2) not permit national origin discrimination in the future;
- 3) provide periodic reports to the EEOC of any complaints of national origin discrimination at Club 4704; and
- 4) provide training to its management/supervisory employees at its Sam's Clubs located in Fresno and Bakersfield, California regarding discrimination.

The EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, pregnancy, and age. If you believe you have been discriminated against, you may contact the EEOC at 2300 Tulare Street, Suite 215, Fresno, California (559) 487-5793 or 255 East Temple Street, 4th Floor, Los Angeles, Ca (213)894-1000.

No action may be taken against you by any management official of Wal-Mart: (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation brought under Title VII. Should any such retaliatory actions be taken against you, you should contact the EEOC at the address listed above.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for two (2) years from the date below and must not be altered, defaced or covered by any other material.

Date: _____

U.S. District Judge