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## EEOC v. Fred Meyer Stores, Inc.

Judge Ancer L. Haggerty

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## EEOC v. Fred Meyer Stores, Inc.

### Keywords

EEOC, Fred Meyer, Case 3:11-cv-00832-HA, Consent Decree, Retail Industry, sexual harassment, sex, female, Employment law, Title VII

**William R. Tamayo, Regional Attorney**  
**John Stanley, Supervisory Trial Attorney**  
**May Che, Senior Trial Attorney**  
**Teri Healy, Senior Trial Attorney**  
U.S. Equal Employment Opportunity Commission  
Seattle Field Office  
909 First Avenue, Suite 400  
Seattle, WA 98104  
Tel: 206-220-6919  
may.che@eoc.gov  
teri.healy@eoc.gov

Attorneys for Plaintiff EEOC

**Maryann Yelnosky, OSB No. 863200**  
[myelnosky@bullardlaw.com](mailto:myelnosky@bullardlaw.com)  
**Francis T. Barnwell, OSB No. 841623**  
[fbarnwell@bullardlaw.com](mailto:fbarnwell@bullardlaw.com)  
Bullard Law  
200 SW Market Street, Suite 1900  
Portland, OR 97201  
503-248-1134/Telephone  
503-224-8851/Facsimile

Attorneys for Defendant Fred Meyer Stores, Inc.

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**FRED MEYER STORES, INC.,**

Defendant.

Case No. 3:11-CV-832-HA

**[PROPOSED] CONSENT  
DECREE**

## I. INTRODUCTION

1. This action originated when Laura Morrow filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC"). Ms. Morrow alleged that Defendant Fred Meyer Stores, Inc. ("Defendant" or "Fred Meyer") discriminated against her based on her sex by subjecting her to sexual harassment by a customer and by failing to take effective action to stop the sexual harassment in violation of § 703 of Title VII, 42 U.S.C. § 2000e-2(a) ("Title VII").

2. The EEOC sent Fred Meyer a Letter of Determination with a finding of reasonable cause to believe that Fred Meyer violated Title VII based on Ms. Morrow's discrimination charge. The EEOC's Letter of Determination included a finding that similarly situated female employees were also subjected to harassment because of their sex (female). Thereafter, EEOC attempted to conciliate the charge as to Ms. Morrow and two other claimants. However, conciliation was unsuccessful.

3. The EEOC filed this lawsuit on July 12, 2011, in the United States District Court for the District of Oregon on behalf of Ms. Morrow and similarly situated female employees. The EEOC filed its Amended Complaint on May 16, 2012, which alleges that Fred Meyer violated Title VII by subjecting Ms. Morrow and a class of similarly situated female employees, which included Kelli O'Neal, Victoria Settle, Janet Dudley, Deborah Atlee, Addie Humiston, and Courtney McMurray to a hostile work environment based on sex due to sexual harassment by a customer.

4. The parties want to conclude fully and finally all claims arising out of the EEOC's Complaint and Ms. Morrow's charge of discrimination filed with EEOC. The EEOC and Fred Meyer enter into this Consent Decree to further the objectives of

equal employment opportunity as set forth in Title VII.

## **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 Fred Meyer of a violation of Title VII. Fred Meyer expressly denies wrongdoing or liability.

## **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 pursuant to Sections 706(f) (1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f) (1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The parties agree that the alleged acts took place within the jurisdiction of the United States District Court for the District of Oregon.

## **IV. SETTLEMENT SCOPE**

7. This Consent Decree is the final and complete resolution of all Title VII allegations of unlawful employment practices contained in Ms. Morrow's discrimination charge, in the EEOC's administrative determination, and in the Complaint filed herein, on behalf of Ms. Morrow and class members Kelly O'Neal, Victoria Settle, Janet Dudley, Deborah Atlee, Addie Humiston, and Courtney McMurray including all claims by the EEOC and Fred Meyer for attorney fees and costs.

## **V. MONETARY RELIEF**

8. In settlement of this lawsuit, Fred Meyer agrees to pay the total sum of \$487,500 to Charging Party Laura Morrow and the EEOC's Class Members within

fifteen (15) days of the entry of this Consent Decree. The parties agree that the EEOC will notify Defendant in writing by May 2, 2014 the amount Laura Morrow and each EEOC Class Member will each receive from this lump sum. The parties also agree that the entire amount Laura Morrow and each Class Member receives from the lump sum constitutes emotional distress damages because none of the Class Members seek any loss wages or benefits because of the alleged sexual harassment. A Form 1099 will be issued to Ms. Morrow and each EEOC class member.

## **VI. INJUNCTIVE AND OTHER RELIEF**

### **A. General Provisions**

9. Fred Meyer, its officers, agents, managers, assistant managers and other supervisors, and all human resource and loss prevention professionals who provide advice and assistance to the foregoing individuals, are enjoined from engaging in practices which constitute harassment based on an employee's sex, and which constitute retaliation for an individual engaging in protected Equal Employment Opportunity ("EEO") activity. In recognition of its obligations under the Title VII, Fred Meyer shall institute the policies and practices set forth below.

### **B. Anti-Discrimination Policies and Procedures**

10. Fred Meyer shall take steps to prevent sex harassment, discrimination and retaliation. Fred Meyer shall provide training to its employees, managers, and supervisors as described in Paragraph 12, so they understand its sex harassment policies and how those policies define and identify what constitutes harassment, discrimination and retaliation.

11. Within ninety (90) days of the date of the effective date of this



Consent Decree, Fred Meyer shall: (a) institute an EEO policy which adequately prohibits harassment, discrimination and retaliation, and addresses Fred Meyer's obligation to provide a work environment free of harassment, discrimination and retaliation for its employees and confirms that a prompt investigation of harassment by a customer will be conducted with the same thoroughness, utilizing the same practices and procedures, and applying the same standards for evaluating the results of the investigation and for considering appropriate remedial action, as when the alleged harasser is employed by Fred Meyer; and (b) distribute its EEO policy to all present and future Oak Grove store employees, both management and nonmanagement, to managers, supervisors, human resources and loss prevention staff who were employed at its Oak Grove Store during the period of January 1, 2007 through June 30, 2009, and to its regional human resources and loss prevention managers at its Portland District 1 Corporate Office.

**C. Training**

12. Within one hundred twenty (120) days of the date of entry of this Consent Decree, Fred Meyer shall present to all managers, assistant managers, supervisors, human resources and loss prevention staff at its Oak Grove store, including those managers, assistant managers, supervisors, human resources and loss prevention staff who were employed at its Oak Grove Store during the period of January 1, 2007 through June 30, 2009, and its regional human resources and loss prevention managers at its Portland District 1 Corporate Office, no less than two and one-half (2 1/2) hours of face-to-face training by a qualified trainer on harassment, and employment discrimination. The EEOC will have an opportunity to view the training materials prior

to the training date.

Annually thereafter for the life of this Consent Decree, Fred Meyer will require: (1) all managers, assistant managers, supervisors, human resources and loss prevention staff at its Oak Grove store, including those managers, assistant managers, supervisors, human resources and loss prevention staff who were employed at its Oak Grove Store during the period of January 1, 2007 through June 30, 2009, and its regional human resources and loss prevention managers at its Portland District 1 Corporate Office, to complete two and one-half (2 1/2) hours of face-to-face training by a qualified trainer on harassment and employment discrimination.

**D. Employee Records and Neutral Employment Reference**

13. Fred Meyer shall 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. Morrow and any other EEOC Class Member.

14. Fred Meyer hereby certifies that the personnel files of Ms. Morrow and each Class Member has no reference to any charge or allegation of discrimination against Fred Meyer and this lawsuit. Fred Meyer shall not disclose any information or make reference to any charge of discrimination or this lawsuit in responding to requests for information about Ms. Morrow or any other EEOC Class Member.

**E. Policies Designed to Promote Supervisor Accountability**

15. Fred Meyer shall specifically advise managers and supervisors at its Oak Grove store, including those managers and supervisors who were employed at its Oak Grove Store during the period of January 1, 2007 through June 30, 2009, and its



regional human resources and loss prevention managers at its Portland District 1 Corporate Office of their duty to ensure compliance with its EEO policies, and to report any incident or complaint of harassment, or discrimination of which they become aware. If such a manager or supervisor violates Fred Meyer's EEO policies, he or she may be subject to discipline up to and including termination and his or her compensation may be affected.

16. Fred Meyer shall include "commitment to equal employment opportunity" or similar designation as a criterion for qualification for evaluation of supervisory positions at its Oak Grove store and of human resource and loss prevention managerial positions at its Portland District 1 Corporate Office.

**F. Reporting**

17. Fred Meyer shall report to the EEOC for a period of three (3) years. The reports shall be in writing and submitted on an annual basis during the three-year (3) reporting period. The reporting period will run from the date of the entry of this Consent Decree, and shall include the following information:

- a. Certification of the completion of training and list of attendees set forth in Paragraph 12 above, and a list of all attendees including 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 copy of its EEO policy and a list of any changes, modifications, revocations or revisions to its EEO policies and procedures if any, which concern or affect the subject of harassment and discrimination; and

d. A summary of all complaints of sex harassment and discrimination brought by Fred Meyer employees its Oak Grove store, if any. The summary will include the nature of the complaint and indicate what actions, if any, Fred Meyer took in response, the complaining party by name, the alleged discriminator/harasser/retaliator by name, the time during which the actions given rise to the complaint occurred, and the resolution of each such complaint.

**G. Posting**

18. Fred Meyer shall post a Notice, attached as Exhibit A to this Consent Decree. The Notice shall be posted on a centrally located bulletin board at Fred Meyer's Oak Grove Store and all stores operating under the supervision of its Portland District 1 Corporate Office, including at its Portland District 1 Corporate Office, for the duration of the Consent Decree.

**VII. ENFORCEMENT**

19. If the EEOC determines that Fred Meyer has not complied with the terms of this Consent Decree, the EEOC shall provide written notification of the alleged breach to Fred Meyer. The EEOC shall not petition the Court for enforcement of this Consent Decree for at least thirty (30) days after providing written notification of the alleged breach. The thirty (30)-day period following the written notice shall be used by the EEOC and Fred Meyer for good faith efforts to resolve the dispute. If Fred Meyer is taking reasonable steps to cure the breach within the thirty (30) day period, the EEOC may agree to a reasonable extension of additional time.

**VIII. RETENTION OF JURISDICTION**

20. The United States District Court for the District of Oregon shall

retain jurisdiction over this matter for the duration of this Consent Decree.

**IX. DURATION AND TERMINATION**

21. This Consent Decree shall be in effect for three (3) years from the date of entry of the Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court finds The Company to be in violation of the terms of the Consent Decree, the Court may extend the duration of this Consent Decree.

22. The parties are not bound by any provision of this Consent Decree until it is signed by an authorized representative of each party and is entered by the Court.

DATED: April 29, 2014.

WILLIAM TAMAYO  
Regional Attorney

P. DAVID LOPEZ  
General Counsel

JOHN F. STANLEY  
Supervisory Trial Attorney

JAMES L. LEE  
Deputy General Counsel

MAY CHE  
Senior Trial Attorney

GWENDOLYN Y. REAMS  
Associate General Counsel

TERI HEALY  
Senior Trial Attorney

BY: s/William Tamayo

Seattle Field Office  
909 First Avenue, Suite 400  
Seattle, WA 98104

Office of the General Counsel  
131 M Street, NE  
Washington, D.C. 20507

Attorneys for Plaintiff

By s/ Francis Barnwell

Maryann Yelnosky, OSB No. 863200  
[myelnosky@bullardlaw.com](mailto:myelnosky@bullardlaw.com)  
Francis T. Barnwell, OSB No. 841623  
[fbarnwell@bullardlaw.com](mailto:fbarnwell@bullardlaw.com)  
503-248-1134/Telephone  
503-224-8851/Facsimile  
Attorneys for Defendant  
Fred Meyer Stores, Inc.

Attorneys for Defendant

### CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2014, I served the foregoing CONSENT

DECREE on:

Maryann Yelnosky, OSB No. 863200	myelnosky@bullardlaw.com
Francis T. Barnwell, OSB No. 841623	fbarnwell@bullardlaw.com
David J. Riewald, OSB No. 880969	driewald@bullardlaw.com
Emily Q. Shults, OSB No. 072946	eshults@bullardlaw.com

Bullard Smith Jernstedt Wilson  
200 SW Market Street, Suite 1900  
Portland, OR 97201  
Tel: 503-248-1134

*Attorneys for Defendant*

- by **electronic** means through the Court's Case Management/Electronic Case File system, which will send automatic notification of filing to each person listed above.
- by **mailing** a true and correct copy to the last known address of each person listed. It was contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with the U.S. Postal Service in Portland, Oregon.
- by causing a true and correct copy to be **hand-delivered** to the last known address of each person listed. It was contained in a sealed envelope and addressed as stated above.
- by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- by **faxing** a true and correct copy to the last known facsimile number of each person listed, with confirmation of delivery. It was addressed as stated above.
- by **emailing** a true and correct copy to the last known email address of each person listed, with confirmation of delivery.

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Rebecca Eaton  
EEOC Legal Technician