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EEOC v. MV Transportation, Inc

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EEOC v. MV Transportation, Inc

Keywords

EEOC v. MV Transportation Inc, 2:11-cv-02020-MCE-EFB, Sex, Female, Hostile Work Environment, Retaliation, Title VII, Consent Decree

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13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
16

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

19 Plaintiff,

20 v.

21
22 MV Transportation, Inc.

23 Defendant.
24

} Case No.: 2:11-cv-02020-MCE -EFB
} CONSENT DECREE; ORDER
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I.
INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or "Commission") and Defendant MV Transportation, Inc. ("MV Transportation") hereby stipulate and agree to entry of this Consent Decree to resolve the Commission's action filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"), alleging that Charging Party, Maria Gloria Rodriguez ("Charging Party") and a similarly situated Class Member, Lucia Rodriguez ("Class Member") (hereinafter collectively referred to along with the Charging Party as "Claimants" where appropriate) were subjected to unlawful employment practices on the basis of gender (female).

II.
PURPOSES AND SCOPE OF THE CONSENT DECREE

- A. The parties to this Consent Decree ("Decree") are the EEOC and MV Transportation. The parties have a common understanding that the MV Transportation Merced division was closed on July 1, 2005. Accordingly, the parties agree that the scope of this Decree only encompasses MV Transportation's division located in Hanford, California. This Decree shall be binding on and enforceable against MV Transportation and its officers, directors, agents, successors and assigns.
- B. The parties have entered into this Decree for the following purposes:
1. To provide appropriate monetary and injunctive relief;
 2. To ensure that MV Transportation's employment practices comply with federal law;
 3. To ensure a work environment free from discrimination, hostility and retaliation;

- 1 4. To ensure training for MV Transportation's managers and employees
- 2 with respect to their obligations under Title VII; and
- 3 5. To provide an appropriate and effective mechanism for handling
- 4 discrimination complaints in the workplace.

5

6 **III.**
RELEASE OF CLAIMS

7 A. This Decree fully and completely resolves all issues, claims and allegations
8 by the EEOC against MV Transportation that are raised in the Complaint filed in
9 this action in the United States District Court for the Eastern District of California
10 on July 29, 2011, captioned *U.S. Equal Employment Opportunity Commission v.*
11 *MV Transportation, Inc.*, Case No. 2:11-cv-02020-MCE-EFB (the "Complaint").

12 B. Nothing in this Decree shall be construed to preclude any party from
13 bringing suit to enforce this Decree in the event that any party hereto fails to
14 perform the promises and representations contained herein.

15 C. Nothing in this Decree shall be construed to limit or reduce MV
16 Transportation's obligation to comply fully with Title VII or any other federal
17 employment statute.

18 D. This Decree in no way affects EEOC's right to bring, process, investigate or
19 litigate other charges that may be in existence or may later arise against MV
20 Transportation in accordance with standard EEOC procedures.

21

22 **IV.**
JURISDICTION

23 A. The Court has jurisdiction over the parties and the subject matter of this
24 lawsuit. The Complaint asserts claims that, if proven, would authorize the Court to
25 grant the equitable relief set forth in this Decree. The terms and provisions of this
26 Decree are fair, reasonable and just. This Decree conforms with the Federal Rules
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1 of Civil Procedure and Title VII and is not in derogation of the rights or privileges
2 of any person.

3 B. The Court shall retain jurisdiction of this action during the duration of the
4 Decree for the purposes of entering all orders, judgments and decrees that may be
5 necessary to implement the relief provided herein.

6 **V.**

7 **EFFECTIVE DATE AND DURATION OF DECREE**

8 A. The provisions and agreements contained herein are effective immediately
9 upon the date which this Decree is entered by the Court ("the Effective Date").

10 B. Except as otherwise provided herein, this Decree shall remain in effect for
11 three (3) years after the Effective Date.

12 **VI.**

13 **MODIFICATION AND SEVERABILITY**

14 A. This Decree constitutes the complete understanding of the parties with
15 respect to the matters contained herein. No waiver, modification or amendment
16 of any provision of this Decree will be effective unless made in writing and
17 signed by an authorized representative of each of the parties.

18 B. If one or more provisions of the Decree are rendered unlawful or
19 unenforceable, the parties shall make good faith efforts to agree upon appropriate
20 amendments to this Decree in order to effectuate the purposes of the Decree. In
21 any event, the remaining provisions will remain in full force and effect unless the
22 purposes of the Decree cannot, despite the parties' best efforts, be achieved.

23 C. By mutual agreement of the parties, this Decree may be amended or
24 modified in the interests of justice and fairness in order to effectuate the
25 provisions of this Decree.
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VII.

COMPLIANCE AND DISPUTE RESOLUTION

A. The parties expressly agree that if the Commission has reason to believe that MV Transportation has failed to comply with any provision of this Consent Decree, the Commission may bring an action before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify MV Transportation and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes MV Transportation has breached. Absent a showing that the delay will cause irreparable harm, MV Transportation shall have sixty (60) days to attempt to resolve or cure the breach.

B. The parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After sixty (60) days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as the MV Transportation is shown to be in breach of the Decree, the Commission's costs incurred in securing compliance with the decree and any other relief the Court deems appropriate.

VIII.

MONETARY RELIEF

A. Payment to Charging Party and Named Class Member

In settlement of this lawsuit, MV Transportation shall pay a total of \$35,000.00. Within ten (10) business days of the Effective Date, MV Transportation shall forward, via certified mail, a check to the Charging Party and, separately, a check for the amount to the Named Class Member. EEOC will advise MV Transportation of the respective amounts of each check and the appropriate address

1 to which each check should be sent. All monetary relief shall be classified as
2 compensatory damages and no withholdings shall be made. MV Transport shall
3 prepare and distribute a 1099 tax reporting form to Charging Party and the Named
4 Class Member and shall make appropriate reports to the Internal Revenue Service
5 and other tax authorities. Within three (3) business days of the issuance the
6 settlement checks, MV Transportation shall submit a copy of each check and
7 related correspondence to the Regional Attorney, Anna Y. Park, U.S. Equal
8 Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los
9 Angeles, CA 90012.

10 **IX.**

11 **GENERAL INJUNCTIVE RELIEF**

12 **A. NON-DISCRIMINATION**

13 1. Harassment Based on Sex

14 MV Transportation, its officers, agents, management (including all
15 supervisory employees), successors, assigns, and all those in active concert or
16 participation with them, or any of them, are hereby enjoined for the duration of this
17 decree from: (a) harassing or tolerating harassment against persons on the basis of
18 sex in the terms and conditions of employment; (b) engaging in or being a party to
19 any action, policy or practice that is intended or is known to them to have the effect
20 of harassing or intimidating any employee on the basis of sex; and (c) creating,
21 facilitating or permitting the existence of a work environment that is hostile to
22 female employees.

23 2. Retaliation

24 MV Transportation, its officers, agents, management (including all
25 supervisory employees), successors, assigns, and all those in active concert or
26 participation with them, or any of them, are hereby enjoined from engaging in,
27 implementing or permitting any action, policy or practice with the purpose of
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1 retaliating against any current or former employee or applicant of MV
2 Transportation, or either of them, because he or she has in the past, or during the
3 term of this Decree: (a) opposed any practice made unlawful under Title VII; (b)
4 filed a charge of discrimination alleging such practice; (c) testified or participated
5 in any manner in any investigation (including without limitation, any internal
6 investigation undertaken by MV Transportation), proceeding in connection with
7 this case and/or relating to any claim of a Title VII violation; (d) was identified as
8 a possible witness or claimant in this action; (e) asserted any rights under this
9 Decree; or (f) sought or received any relief in accordance with this Decree.

10 B. VERIFICATION OF DOCUMENTS

11 MV Transportation currently has in place (1) policies setting forth complaint
12 procedures for filing complaints of discrimination, harassment, and retaliation; (2)
13 policies prohibiting discrimination, harassment, and retaliation; (3) anti-
14 harassment/anti-discrimination/anti-retaliation policies; and (4) policies regarding
15 investigation of complaints of discrimination, harassment and retaliation. MV will
16 verify to EEOC that these policies and procedures are in place.

17 C. POLICIES CONCERNING DISCRIMINATION AND HARASSMENT

18 MV Transportation shall, within twenty (20) business days after the
19 Effective Date, provide a copy to the Commission of MV Transportation's policy
20 discrimination and sexual harassment written in all languages predominately
21 spoken in the Hanford facility. The policy shall include:

- 22 1. A clear explanation of prohibited conduct;
- 23 2. Assurance that employees who make complaints of harassment/
24 discrimination or provide information related to such complaints will be protected
25 against retaliation;
- 26 3. A clearly described complaint process that provides accessible and
27 confidential avenues of complaint with contact information including name (if
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1 applicable), address, and telephone number of persons both internal (i.e., human
2 resources) and external to MV Transportation (i.e., Commission) to whom
3 employees may report discrimination, harassment and retaliation, including a
4 written statement that the employee may report the discriminatory behavior to
5 designated persons outside their chain of management;

6 4. Assurance that the employer will protect the confidentiality of
7 harassment/discrimination complainants to the extent possible;

8 5. A complaint process that provides a prompt, thorough, and impartial
9 investigation;

10 6. A procedure for communicating with the complainant in writing
11 regarding the status of the complaint/investigation, results of the investigation,
12 and any remedial action taken; and

13 7. Assurance that MV Transportation will take immediate and
14 appropriate corrective action when it determines that harassment/discrimination
15 and/or retaliation has occurred.

16 8. Assurance that MV Transportation's disciplinary policies hold
17 employees and managers accountable for failing to take appropriate action or for
18 engaging in conduct prohibited under this Decree;

19
20 MV Transportation agrees to allow EEOC to comment on its policy within
21 forty-five (45) days of receipt. The policy shall be distributed to all employees,
22 including management/supervisory staff during the training programs set forth
23 herein in paragraph D and all new hires thereafter and shall be included in any
24 relevant future policy or employee manuals distributed to employees by MV
25 Transportation. MV Transportation shall maintain acknowledgments from each
26 employee who receives the revised policy. Throughout the term of this Decree,
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1 MV Transportation shall also post the revised policy, in a place that is clearly
2 visible to all employees at the Hanford division in a legible font.

3 MV transportation acknowledges that the policy will be consistent
4 companywide and will be disseminated according to MV Transport's normal
5 update of policies and procedures.

6
7 D. TRAINING

8 MV Transportation and EEOC will agree to schedule mutually agreeable
9 dates within ninety (90) days after the Effective Date for all of MV
10 Transportation's managerial/supervisory and human resources employees to attend
11 mandatory two (2) hour training. All employees shall be required to attend a
12 training program of at least one (1) hour in order to review the revised policies and
13 procedures regarding sexual harassment, and to review EEO law. The training
14 shall be mandatory and shall occur once every year for the term of this Decree.
15 Any manager, supervisor, or employee who failed to attend scheduled training
16 shall be trained within (30) days of the live training set forth above.

17 1. All employees' training shall include coverage of the subjects of
18 equal employment opportunity rights and responsibilities, discrimination,
19 harassment, retaliation, and MV Transportation's revised policies and procedures
20 for reporting and handling complaints of discrimination, harassment and
21 retaliation.

22 2. The managerial/supervisory/hr training shall additionally include
23 training on how to properly handle and investigate complaints of harassment
24 and/or retaliation in a neutral manner, how to take preventive and corrective
25 measures against harassment and/or retaliation, and how to recognize and
26 prevent harassment and/or retaliation.

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1 3. For the remainder of the term of this Decree, all new managerial and
2 human resources employees and all employees recently promoted from a
3 staff/hourly to a managerial position shall receive the managerial/supervisory/hr
4 employee training, as appropriate, within thirty (30) days of hire or promotion.

5 4. After the initial training as specified above, all managerial and
6 human resources employees shall receive the training at least annually
7 thereafter for the remainder of the term of this Decree.

8 5. All employees required to attend such training shall verify their
9 annual attendance in writing.

10 6. Within sixty (60) days after the Effective Date MV Transportation
11 shall submit to the EEOC a description of the training to be provided, an outline of
12 the curriculum, and copies of training materials developed for the trainees. MV
13 Transportation shall give the EEOC a minimum of ten (10) business days' advance
14 written notice of the date, time and location of each training program provided
15 pursuant to this Decree, and agrees that an EEOC representative may attend any
16 such training program and EEOC will notify MV in advance if a representative is
17 to attend

18 7. Human Resources training shall be specific to their obligations,
19 including the handling and investigating of complaints of harassment and
20 retaliation. This training shall be above and beyond the supervisor/manager
21 training as set forth above for the regional human resources manager which covers
22 the Hanford.

23 E. PERFORMANCE EVALUATIONS

24 For the upcoming review cycle, MV Transportation shall revise its
25 performance evaluation forms for managers and supervisors in order to include as
26 measures for performance compliance with MV Transportation's Anti-
27 Discrimination and Retaliation Policies and Procedures.

28

1 At least thirty (30) days prior to implementing the performance evaluation
2 forms described above, MV Transportation will provide the EEOC and the
3 Consultant with the proposed revisions in order to provide an opportunity for
4 comment regarding the revisions. EEOC will provide comments, if any, within 30
5 days of receipt of the proposed revisions. MV Transportation shall respond to such
6 comments within thirty (30) days of receipt. If the parties cannot agree on the
7 proposed revisions, any disputes will be resolved according to the Dispute
8 Resolution Procedures set forth herein.

9 F. COMPLAINT PROCEDURE

10 Within ninety (90) days of the Effective date, MV Transportation shall re-
11 disseminate the complaint procedure and MV Transportation agrees to publicize
12 the EEOC complaint line number of (800) 669-4000 will be posted at the Hanford
13 facility. Additionally, thereafter MV Transportation shall track and collect all
14 complaints; investigate and resolve such complaints in a timely and effective
15 manner and retain records regarding resolution of all such complaints.

16 G. PUBLICATION OF THE INTERNAL COMPLAINT
17 PROCEDURE

18 MV Transportation shall publish with the Internal Complaint
19 Procedure the following elements that will be included in the procedure:

20 1. A statement that it is unacceptable to retaliate against any employee
21 for use of the Internal Complaint Procedure, for assisting in the investigation of a
22 complaint, or for otherwise assisting in the utilization of the procedure.

23 2. A statement that if an allegation of harassment or retaliation against
24 a manager or other employee is substantiated, then such conduct will result in
25 appropriate discipline, up to and including discharge.
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1 X.

2 **RECORD KEEPING AND REPORTING**

3 A. **RECORD KEEPING**

4 MV Transportation shall establish a record-keeping procedure that
5 provides for the centralized tracking of discrimination and harassment
6 complaints and the monitoring of such complaints to prevent retaliation. The
7 records to be maintained shall include:

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

12 2. All forms acknowledging employees' receipt of MV
13 Transportation's revised discrimination and anti-retaliation policy;

14 3. All documents verifying the occurrence of all training sessions and
15 names and positions of all attendees for each session as required under this
16 Decree; and

17 4. Documents tracking and analyzing complaints filed against the same
18 employee and location.

19 The foregoing documents shall be summarized in the semi-annual reports
20 set forth below.

21 B. **REPORTING**

22 In addition to the notices to the EEOC specified above, MV Transportation
23 shall provide the following reports to the EEOC in writing, by mail or facsimile:

24 1. Within one hundred and twenty (120) days after the Effective Date,
25 MV Transportation shall submit to the EEOC an initial report which contains:

26 (a) A copy of any revised harassment and anti-retaliation
27 policies:
28

1 (b) A summary of the procedures and record-keeping methods used
2 to track and monitor the complaints;

3 (c) Copies of all employee acknowledgment forms indicating receipt
4 of the revised harassment and anti-retaliation policy.

5 2. MV Transportation shall also provide the following reports
6 annually throughout the term of this Decree:

7 (a) The attendance lists of all attendees for training session
8 required under this Decree

9 (b) Confirmation that the revised harassment policy was distributed to
10 any employees and copies of acknowledgments of receipt of any
11 revised harassment policy;

12 (c) A description of all harassment and/or retaliation complaints
13 made by employees of the Hanford division since the submission of
14 the immediately preceding report hereunder. This description shall
15 include the names of the individuals alleging harassment or
16 retaliation, the nature of the harassment or retaliation, the names of
17 the alleged perpetrators of harassment or retaliation, the dates of the
18 alleged harassment or retaliation, a brief summary of how each
19 complaint was resolved, and the identity of the MV Transportation
20 employee(s) who investigated or resolved each complaint. If no
21 results have been reached as of the time of the report, the result shall
22 be included in the next report;

23 (d) An analysis of the monitoring done for repeat complaints by
24 employees and investigation of complaints; and

25 (e) MV Transportation shall provide a report to the EEOC detailing
26 any changes of the procedures or record-keeping methods for
27 centralized tracking of harassment complaints and the monitoring of
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1 such complaints within sixty (60) days before implementing such
2 changes.

3 **XI.**

4 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**
5 **OF CONSENT DECREE**

6 MV Transportation shall bear all costs associated with its administration and
7 implementation of its obligations under this Consent Decree.

8 **XII.**

9 **COSTS AND ATTORNEYS' FEES**

10 Each party shall bear its own costs of suit and attorneys' fees.

11 **XIII.**

12 **MISCELLANEOUS PROVISIONS**

13
14 A. During the term of this Consent Decree, MV Transportation shall provide
15 any potential successor-in-interest with a copy of this Consent Decree within a
16 reasonable time of not less than sixty (60) days prior to the execution of any
17 agreement for acquisition or assumption of control of any or all of MV
18 Transportation's facilities, or any other material change in corporate structure, and
19 shall simultaneously inform the EEOC of same.

20 B. During the term of this Consent Decree, MV Transportation and its
21 successors shall assure that each of its officers, managers and supervisors is aware
22 of any term(s) of this Decree which may be related to his/her job duties.

23 C. Unless otherwise stated, all notices, reports and correspondence required
24 under this Decree shall be delivered to the attention of the Regional Attorney,
25 Anna Y. Park, U.S. Equal Employment Opportunity Commission, Los Angeles
26 District Office, 255 E. Temple St., 4th Fl., Los Angeles, CA. 90012.

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1 D. The parties agree to entry of this Decree and judgment subject to final
2 approval by the Court.

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EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Dated: 8/3/11

By: /s/ _____
Anna Y. Park
Attorneys for Plaintiff

MV Transportation, Inc.

Dated: 7/13/11

By: /s/ _____
Cynthia J. Haston
Attorneys for Defendant

ORDER

Good cause appearing, the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is hereby ordered. The Court shall retain jurisdiction to enforce the provisions of the Consent Decree as necessary.

IT IS SO ORDERED.

DATE: May 7, 2012



MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE