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EEOC v. Sidal Inc d/b/a Rally's Hamburgers

Judge William T. Lawrence

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EEOC v. Sidal Inc d/b/a Rally's Hamburgers

Keywords

EEOC v. Sidal Inc d/b/a Rally's Hamburgers, 2:09-cv-0314-WTL-WGH, Sex, Sexual Harassment

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	2:09-cv-0314-WTL-WGH
)	
v.)	
)	
SIDAL, INC. d/b/a Rally’s Hamburgers,)	
)	
)	
Defendant.)	
_____)	

CONSENT DECREE

Civil Action No. 2:09-cv-0314-WTL-WGH was instituted by the Equal Employment Opportunity Commission (“EEOC” or “Commission”) under the authority granted to it under Sections 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission’s action was brought to correct alleged unlawful employment practices on the basis of sex. Defendant, Sidal, Inc. d/b/a Rally’s Hamburgers (“Sidal”) has denied these allegations.

The Commission and Sidal hereby stipulate to the jurisdiction of the Court over the parties and the subject matter of this action.

The Commission and Sidal have advised this Court that they desire to resolve Civil Action No. 2:09-cv-0314-WTL-WGH without the burden and expense of further litigation.

It is, therefore, the finding of this Court, based on the pleadings and the record as a whole that the applicable requirements of Title VII will be carried out by the implementation of this Decree, and this Decree resolves the issues raised by the Complaint of the Commission.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

Non-Monetary Relief to Remedy Class Violation

1. Defendant agrees that it will not discriminate against employees on the basis of sex and will maintain a work environment for all employees that is free from sexual harassment.

2. Defendant agrees that there will be no discrimination or retaliation of any kind against any person because of opposition to any practice made unlawful under Title VII, or because of the filing of a charge, the giving of testimony, assistance, or participation in any manner in an investigation, proceeding or hearing under Title VII.

3. Defendant agrees to post the Notice of Non-Discrimination Policy attached as Appendix A to this Decree in a conspicuous location on the premises of each of its Rally's locations. Said notices shall remain posted throughout the term of this Decree, which the parties agree to be five (5) years.

4. Defendant agrees to distribute to each new employee at each of its Rally's locations, the information sheet on sexual harassment/sexual harassment policy attached as Appendix B to this Decree. Defendant also agrees to provide each new Rally's employee with a laminated wallet sized card containing a toll free number for the Human Resources department and stating, "Please let us know of any problem that you are having that you do not think can be resolved by your supervisor. No action will be taken against you for calling." Appendix B and the wallet sized card shall be given to each new employee within seven (7) days of his or her start of employment. At the time of distribution, a manager shall explain Appendix B to the employee, both the employee and manager shall initial each paragraph on Appendix B and both the manager and employee shall sign and date the bottom of Appendix B. After each paragraph

of Appendix B has been initialed and both the employee and manager have signed the document, the employee shall receive a completed copy and the manager shall forward the original to the Human Resources Department.

5. Defendant agrees to distribute to each current employee at each of its Rally's locations, the information sheet on sexual harassment/sexual harassment policy attached as Appendix B to this Decree. Defendant also agrees to provide each current Rally's employee with a laminated wallet sized card containing a toll free number for the Human Resources department and stating, "Please let us know of any problem that you are having that you do not think can be resolved by your supervisor. No action will be taken against you for calling." Appendix B and the wallet sized card shall be given to each current Rally's employee within thirty (30) days of the entry of this Decree. At the time of distribution, a manager shall explain Appendix B to the employee, both the employee and manager shall initial each paragraph on Appendix B and both the manager and employee shall sign and date the bottom of Appendix B. After each paragraph of Appendix B has been initialed and both the employee and manager have signed the document, the employee shall receive a completed copy and the manager shall forward the original to the Human Resources Department.

6. The information sheet on sexual harassment/sexual harassment policy attached as Appendix B to this Decree shall remain posted throughout the term of this Decree. At each Rally's location, Appendix B shall be posted near the weekly schedule and in all restrooms.

7. Within seventy-five (75) days of the entry of this Decree, Defendant agrees to train all of its Rally's managers on sexual harassment. Said training shall be done in person and shall last at least 30 minutes. Said training shall be performed by a person experienced in the

field and agreed upon by both the EEOC and Sidal. Said training shall be followed by a multiple choice test to be taken by each manager. The person administering the test shall explain any incorrect answers to the manager. The trainer and manager shall certify completion of the training, the test and explanation of incorrect responses. All managers shall be trained on the sexual harassment policy at least once per calendar year. Twenty (20) business days prior to the date of the initial training, the Defendant shall provide notice to the Commission regarding 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 at the training.

8. Defendant agrees to provide the following reference for David Suggs, if contacted for a reference: "Mr. Suggs was terminated and is not eligible for re-employment at any of our facilities."

9. During the term of this Decree, Defendant agrees to assess and evaluate the feasibility of cameras inside its Rally's locations.

10. Within thirty (30) business days of the entry of this Decree, Defendant agrees to inspect and repair, if necessary, all locks on the doors of its Rally's restroom facilities.

11. Defendant's Human Resources Director or a designee of the Director (other than a person who routinely works at the inspected facility) who has reviewed a copy of this Decree and has been trained on Defendant's sexual harassment policy shall conduct unannounced random visits at each of Defendant's Rally's locations at least once per month beginning no later than October 1, 2010, to conduct unannounced interviews of randomly selected hourly non-management employees about: (1) any problems they may be experiencing, specifically asking about sexual harassment; (2) confirming that they have been given a laminated card containing

the number for corporate headquarters; and (3) confirming their training in and understanding of sexual harassment and the sexual harassment policy. These random visits must occur at varying times during the day including second shift and closing. During the visits, the inspector shall also: (1) inspect bathroom locks to ensure proper working condition; and (2) inspect postings, including the Notices attached as Appendix A and B to this Decree. Reports of the above inspections shall be maintained by the Human Resources Department and the results reported in accordance with paragraph 15 below.

Monetary Damages to Remedy Class Violation

12. Defendant agrees to pay Jane Doe I, or her heirs and assigns in the event of her death, a check payable to the order of Jane Doe I in the sum of \$3,000.00, less applicable federal, state, and local withholding taxes, in full settlement of Jane Doe I's claim of back pay damages, lost wages, and any other employment-related benefits; Defendant shall not deduct from this amount the employer's share of any costs, taxes or social security required by law to be paid by the Defendant.

13. In addition to the \$3,000.00 paid to Jane Doe I, Defendant agrees to pay an additional \$147,000.00 in damages to Jane Doe I, Jane Doe II, and Jane Doe III in full settlement for all claims for any damages authorized by Title VII of the Civil Rights Act of 1964, including all damages authorized under Section 102 of the Civil Rights Act of 1991. Distribution of the damages fund to Jane Doe I, Jane Doe II and Jane Doe III shall be at the discretion of the EEOC and the EEOC will direct Defendant, within five (5) days of the entry of the Decree, on the distribution and will provide addresses for Jane Doe I, Jane Doe II and Jane Doe III.

14. Upon entry of this Decree, the EEOC will forward releases (Appendix C) to Jane

Doe I, Jane Doe II and Jane Doe III for their execution. The EEOC will notify counsel for Sidal when it has received the executed releases and will transmit by facsimile, a copy thereof.

Defendant agrees to issue the checks referenced in paragraphs 12 and 13 above, by certified mail, within seven (7) business days after such notification, addressed as instructed by the EEOC. Defendant shall mail copies of the checks and proof of delivery (i.e., a copy of the signed certified mail receipts) to the Commission within five (5) business days of mailing said checks. Upon receipt of proof of delivery, the EEOC shall forward the original releases to counsel for Sidal.

Reporting, Enforcement and Miscellaneous Provisions

15. Defendant agrees to submit reports to EEOC detailing their compliance with this Decree. Within sixty (60) days of the entry of this Decree, Defendant will certify to the EEOC Regional Attorney that: (1) Pursuant to paragraph 3, notice posting (Appendix A) has been completed at each of its Rally's facilities; (2) Pursuant to paragraphs 4, 5 and 6, training of current and any new employees and posting of the information sheet/sexual harassment policy has been completed at each of its Rally's facilities, including the location of the required postings at each facility and that the wallet sized card has been provided to current and any new employees; and (3) Pursuant to paragraph 10, that all locks have been inspected and repaired. In addition, five (5) annual reports shall be submitted during the term of this Decree. The first report shall be due ninety (90) days from the entrance of this Decree and the subsequent reports shall be mailed to the Commission no later than December 31st of each year covered by the Decree. The report shall include the following information for the twelve (12) month period preceding the report: (1) information on all sexual harassment training of managers and

employees and policy/card distribution that has been completed during the reporting period, pursuant to paragraphs 4, 5, and 7, including completed copies of Appendix B and the manager training examinations; (2) information on all random facility visits that have been conducted pursuant to paragraph 11, along with a copy of all findings; and (3) information on any references given for David Suggs, in accordance with paragraph 8. Reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204.

16. The Defendant agrees that the Commission may review compliance with this Decree. As part of such review, and upon at least twenty-four (24) hours notice, the EEOC may inspect the premises, interview employees, examine and copy documents relevant to this Decree.

17. In the event that EEOC alleges that a violation of this Decree has occurred, prior to exercising any remedy provided by law, EEOC will give notice in writing thereof, specifically identifying the alleged violation to Defendant. The Defendant will have thirty (30) days in which to investigate and respond to the allegation. Thereafter, the parties will have a period of thirty (30) days, or such additional period as may be agreed upon by them, in which to negotiate and confer regarding such allegation, before Plaintiff exercises any remedy provided by law.

18. The term of this Decree shall be for five (5) years following the date of the entry of this Decree.

19. The Commission and Defendant will bear their own costs and attorney fees.

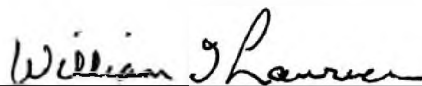
RETENTION OF JURISDICTION BY COURT

20. The Court shall retain jurisdiction of this cause throughout the duration of this Decree for purposes of monitoring compliance with this Decree and entry of such further orders

as may be necessary or appropriate.

10/26/2010

Date



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

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EMPLOYEE NOTICE
NOTICE TO ALL EMPLOYEES OF
SIDAL, INC.

1. This Notice is posted pursuant to an agreement between Sidal, Inc. (“Sidal”) and the United States Equal Employment Opportunity Commission resolving a lawsuit alleging sexual harassment.
2. Federal law requires that there be no discrimination against any employee because of the employee’s race, color, religion, sex, national origin, age (over 40) or disability.
3. The Civil Rights Act of 1964 (“Title VII”) prohibits employers from discriminating against employees, based on sex. Sexual harassment is a form of sex discrimination. Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct affects an individual’s work performance, or creates an intimidating, hostile, or offensive work environment. The law also prohibits employers and other covered entities from retaliating against employees who have exercised their rights.
4. Sidal supports and will comply with such Federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U.S. Equal Employment Opportunity Commission.
5. An employee may contact the U.S. Equal Employment Opportunity Commission at the address listed above for the purpose of filing a charge of employment discrimination. The toll free phone number is 1-800-669-4000.

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

This notice must remain posted for five (5) years from the date of posting and may not be altered, defaced or covered by any other material.

APPENDIX A

SEXUAL HARASSMENT IS NOT TOLERATED BY SIDAL, INC.

EE MGR

_____ Sexual harassment has a formal legal definition but you should understand that any unwelcome sexual or sex based comments or inappropriate touching will not be allowed at Sidal’s facilities.

_____ Conduct that is prohibited by Sidal includes unwelcome slapping, pinching, groping, hugging, kissing, sexual advances, or comments concerning one’s appearance or body parts.

_____ If you are the subject of unwelcome conduct, please report it immediately to your supervisor or store manager. No action will be taken against you for making a Complaint.

_____ If you are being harassed by your supervisor or you do not feel comfortable reporting the conduct to any supervisor at your store, you can call Sidal’s Human Resources Department at (877) 482-3212. No action will be taken against you for making a Complaint.

_____ Sidal has a zero tolerance policy for sexual harassment.

_____ This notice should remain posted in the bathroom and near the schedule board at each of Sidal’s Rally’s locations.

I acknowledge that I was provided the above sexual harassment policy and that I understand that Sidal has a zero tolerance for sexual harassment and that I will not suffer retaliation for making a complaint.

Employee

Date

Manager

Date

APPENDIX B

RELEASE

In consideration of the payment to me by Sidal, Inc. ("Sidal") of (\$xxxxx), and in consideration of the Consent Decree agreed to by the Equal Employment Opportunity Commission and Sidal in Civil Action 2:09-CV- 0314-WTL-WGH, entered by the Court of the _____ day of _____, 2010, of which this Release is a part, I, _____, hereby fully and forever release and discharge Sidal, its successors and assigns, including its present and former directors, officers, employees and agents, from any claim or obligation based on alleged discrimination in violation of Title VII, which was or could have been raised in Civil Action No. 2:09-CV- 0314-WTL-WGH.

I agree that, to the extent that such taxes are not initially withheld from any payments to me, I will be solely and individually responsible for paying any and all taxes which may be due and owing as a result of Defendant's payment of the sum set forth above. I acknowledge that I have not relied on any representations made by Defendant, Defendant's counsel, the EEOC, or its counsel regarding the tax treatment of the payments made to me pursuant to this agreement.

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

IN WITNESS WHEREOF, this Release is signed and executed by me on the _____ day of _____, 2010.

County of _____)

)SS

State of _____)

Subscribed and sworn to before me this _____ day of _____, 2010.

Notary Public

My Commission Expires: _____

County and State of Residence: _____

APPENDIX C