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EEOC v. Von Maur, Inc.

Keywords

EEOC v. Von Maur Inc., 3:04-cv-00159-RP-RAW, Race, African American or Black, Hiring, Disparate Treatment, Title VII, Consent Decree

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

WALKESHEIA WARD, DARLENA McBRIDE,)
TANYA GARDNER, ROBERT DONELSON,)
RAQUEL MAIDEN, CHARLES SMITH,)
LATOYA YOUNG, MACHELLE GUY,)
ROSCOE HAYMON, ROBERT WILLIAMS,)
and DAMENICA JOHNSON,)

Plaintiffs,)

v.)

VON MAUR, INC.,)

Defendant.)

No. 3:04-cv-00159-RP-RAW

(Consolidated for pretrial purposes
with 4:06-cv-00182-RP-RAW)

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff, and)

DARLENA McBRIDE, TANYA GARDNER,)
ROBERT DONELSON, RAQUEL MAIDEN,)
CHARLES SMITH, LATOYA YOUNG,)
ROSCOE HAYMON, and ROBERT WILLIAMS,)

Plaintiff-Intervenors,)

v.)

VON MAUR, INC.,)

Defendant.)

CONSENT DECREE

This action began on December 29, 2004, when a group of plaintiffs filed Civil Action No. 3:04-cv-159 (the "*Ward* case") against Von Maur, alleging that Von Maur has violated the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"), and Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, by failing to hire African-Americans in

various jobs because of their race. The *Ward* plaintiffs also asserted various state law claims. Presently, the *Ward* plaintiffs are Walkesheia Ward, Darlena McBride, Tanya Gardner, Robert Donelson, Raquel Maiden, Charles Smith, Latoya Young, Machelie Guy, Roscoe Haymon, Robert Williams, and Damenica Johnson. Ward, who died in January 2008, is now represented by her estate.

On April 19, 2006, the United States Equal Employment Opportunity Commission (“EEOC”) filed Civil Action No. 4:06-cv-182 under Title VII and the Civil Rights Act of 1991, a class action alleging that Von Maur has violated the Title VII by failing to hire African-Americans in various jobs. The lawsuit sought back pay, compensatory and punitive damages, injunctive relief, and reinstatement for the *Ward* plaintiffs and for class members Paul Parks, Marlene Jacks, Havilah Johnson, La’Quan Miller, Lawanda Jones Allen, and Jacqueline Ash, all African-Americans who alleged that they were rejected for employment by Von Maur. In July 2006, this Court consolidated for discovery the lawsuits brought by the *Ward* plaintiffs and the EEOC against Von Maur. On August 29, 2008, this Court entered an order granting in part and denying in part Von Maur’s motion for summary judgment, dismissing the claims of class members Havilah Johnson, Jacqueline Ash, Marlene Jacks, La’Quan Miller, and Lawanda Jones Allen and certain of the *Ward* plaintiffs (the Estate of Walkesheia Ward, Tanya Gardner, Darlena McBride, Robert Donelson, Roscoe Haymon, Charles Smith, and Raquel Maiden). On September 22, 2008, the Court consolidated for trial all of the claims in those lawsuits.

Von Maur filed an Answer in which it denied the allegations of the EEOC’s Complaint. To avoid further litigation and to resolve disputed claims, the EEOC and Von Maur have agreed to this Consent Decree to fully and finally resolve all claims which were raised by the EEOC on behalf of Paul Parks, Marlene Jacks, Havilah Johnson, La’Quan Miller, Lawanda Jones Allen, and Jacqueline Ash in its Complaint in Civil Action No. 4:06-cv-182 (S.D. Iowa). The *Ward* plaintiffs are not a party to this Consent Decree.

This Consent Decree shall be final and binding on the EEOC and on Von Maur, Von Maur's directors, officers, agents, employees, successors, and assigns, and all persons in active concert or participation with Von Maur. This Decree does not constitute an adjudication of, or a finding on, the merits of the case for or against any party.

Unless otherwise indicated, any obligations contained or requirements of Von Maur contained in this Consent Decree shall apply only to Von Maur's facilities in Davenport, Iowa.

CONSENT DECREE

Upon the consent of the parties to this action, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

Non-Discrimination

1. Court's Jurisdiction. This Court has jurisdiction over the parties and the subject matter of this action.

2. Prohibition Against Title VII Violations. Von Maur is enjoined from engaging in any employment practice which constitutes unlawful race discrimination under Title VII. Specifically, Von Maur facilities are enjoined from refusing to hire applicants based on their race.

3. Compliance with Title VII. Von Maur will comply fully with all provisions of Title VII. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit Von Maur's obligations under Title VII or the EEOC's authority to process or litigate any charge of discrimination which may be filed against Von Maur in the future, or Von Maur's ability to defend against any such claims.

4. No Retaliation. Von Maur will not engage in, implement, or permit any action, policy, or practice with the purpose of retaliating against any current or former applicant or employee because s/he opposed any action or practice which is unlawful under Title VII. Von

Maur will not retaliate against individuals who filed a charge of discrimination alleging any such action or practice; testified or participated in any manner in any investigation (including, but not limited to, any internal investigation undertaken by Von Maur), proceeding, or hearing relating to any claim of employment discrimination in this case or otherwise; or who was identified as a possible witness in this action; asserted any rights under this Decree; or sought and/or received any monetary and/or non-monetary relief in accordance with the law.

Monetary Relief

5. Payments to Certain EEOC Class Members. Von Maur agrees to pay a total of \$50,000 to Paul Parks, Marlene Jacks, Havilah Johnson, La'Quan Miller, Lawanda Jones Allen, and Jacqueline Ash in full settlement of the claims against Von Maur which were raised in the Complaints filed by the EEOC. The monetary relief will be paid in the following manner:

(a) The payments shall be treated as non-wage compensation (to be reported on a Form 1099) and not as taxable wages (subject to withholding on a Form W-2). Each class member shall be solely responsible for payment of his or her taxes relating to the respective payments. They shall not be responsible for any employer taxes for which Von Maur might be liable.

(b) Within 10 days of the entry of this Consent Decree, and Von Maur's receipt of the Release Agreements and tax information, attached hereto as Exhibit B, executed by each class member, Von Maur shall send a \$25,000 payment to Paul Parks, and payments of \$5,000 each to Marlene Jacks, Havilah Johnson, La'Quan Miller, Lawanda Jones Allen, and Jacqueline Ash. Before those payments are made, the EEOC shall provide Von Maur with the class members' addresses and Social Security numbers so that Von Maur can issue a Form 1099 to each individual receiving a payment.

(c) Von Maur shall mail the checks to Paul Parks, Marlene Jacks, Havilah Johnson, La'Quan Miller, Lawanda Jones Allen, and Jacqueline Ash by certified mail,

return receipt requested, at addresses provided by the EEOC. Von Maur also will mail a photocopy of each check to Dennis R. McBride, Senior Trial Attorney, EEOC, 310 West Wisconsin Avenue - Suite 800, Milwaukee, WI 53203-2292, on the same day that it mails the checks to Parks, Jacks, Johnson, Miller, Allen, and Ash.

Posting of Notice

6. Within 10 days of the entry of this Consent Decree, Von Maur shall post same-sized copies of the Notice attached as Exhibit A to this Decree on all non-public bulletin boards in Von Maur facilities in Davenport, Iowa, usually used by Von Maur for communicating human resources matters to employees. The notice shall remain posted for two years from the date on which this Decree is entered. Within 10 business days of the posting, Von Maur also shall send a letter to Dennis R. McBride, Senior Trial Attorney, EEOC, 310 West Wisconsin Avenue - Suite 800, Milwaukee, WI 53203-2292, enclosing a copy of the Notice, as signed by Von Maur, and stating the dates and locations of its posting. Von Maur shall ensure that the posting is not altered, defaced, or covered by any other material. If the posted copies become defaced, removed, marred, or otherwise illegible, as soon as practical Von Maur shall post a repost readable copy in the same manner as previously specified.

Training

7. During the duration of this Consent Decree, Von Maur shall provide the following training to managers and supervisors at all of its Davenport, Iowa, facilities:

(a) Von Maur shall provide semi-annual training sessions regarding the rights of applicants and employees under Title VII, and the employer's obligations under Title VII, with an emphasis on what constitutes differential treatment of minority employees in the workplace, how to keep Von Maur free of such forms of discrimination, and what constitutes unlawful retaliation.

(b) Each training session will include a live presentation by an executive, manager, or employee relations professional of Von Maur emphasizing Von Maur's commitment to prevent discrimination and harassment.

(c) Von Maur shall first provide training in accordance with Paragraph 8(a) above no later than December 31, 2008. Von Maur shall then also provide such training during each six-month period ending on June 30, 2009; December 31, 2009, and June 30, 2010.

8. In addition to the training described in Paragraph 7 above, Von Maur shall provide training to all managers and all employees and supervisors in its Human Resources Department(s) at its Davenport, Iowa, facilities regarding how to conduct a prompt and effective investigation into allegations, complaints, or charges of employment discrimination.

9. No later than 30 days prior to the first day of the proposed training, Von Maur shall submit the name(s), address(es), telephone number(s), and curriculum vitae/resume(s) of its trainer(s), together with the date(s) of the proposed training sessions, to Dennis R. McBride, Senior Trial Attorney, EEOC, 310 West Wisconsin Avenue - Suite 800, Milwaukee, WI 53203-2292. Von Maur also shall provide the EEOC with copies of all written materials provided to the participants of the training sessions.

10. Within five business days after the training sessions have occurred, Von Maur shall send a letter to Dennis R. McBride, Senior Trial Attorney, EEOC, 310 West Wisconsin Avenue - Suite 800, Milwaukee, WI 53203-2292, certifying to the EEOC that the training has taken place and that the required personnel have attended.

Reporting

11. For two years from the entry of this Consent Decree and Order, Von Maur shall report the following information to the EEOC's attorneys in writing on December 31, 2008; June 30, 2009; December 31, 2009, and June 30, 2010:

(a) The names, addresses, and telephone numbers of all applicants for employment in Von Maur's Davenport, Iowa, facilities.

(b) The names and races, if known, of applicants hired for employment in Von Maur's Davenport, Iowa, facilities, and the titles of the jobs for which each applicant was hired.

(c) The names, addresses, and telephone numbers of all applicants to Von Maur's Davenport, Iowa, facilities who make a formal or informal complaint of race discrimination and/or retaliation, including a summary of the nature of the complaint or retaliation allegation.

Von Maur shall maintain all documents pertaining to such complaints and/or applications for the full two-year reporting period, and shall make such documents available for inspection by EEOC on 48 hours' written notice (excluding weekends and holidays).

Dispute Resolution

12. If any party to this Consent Decree believes that another party has failed to comply with any provision of the Decree, the complaining party shall notify the other party of the alleged non-compliance within 10 business days of the alleged non-compliance and shall afford the alleged non-complying party 10 business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance within 10 business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

13. Each party to this Decree shall bear its own costs, attorneys' fees, and expenses. This includes, but is not limited to, the costs and expenses claimed by Von Maur in the "Bill of Costs" which it filed with the Court on September 12, 2008, and, as part of the agreements stated in this Decree, Von Maur has waived any right to tax those costs and expenses against the

EEOC. Von Maur also has waived any right to tax those costs and expenses against the *Ward* plaintiffs.

14. The terms of this Decree are and shall be binding upon Von Maur's present and future representatives, agents, directors, officers, assigns, and successors, in their capacities as representatives, agents, directors, and officers of Von Maur and not in their individual capacities. This Paragraph shall not be construed as placing any limit on remedies available to the Court in the event that any individual is found to be in contempt for a violation of this Decree.

15. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC on behalf of Paul Parks, Marlene Jacks, Havilah Johnson, La'Quan Miller, Lawanda Jones Allen, and Jacqueline Ash in its Complaint in Civil Action No. 4:06-cv-00182-RP-RAW. It shall not affect the *Ward* plaintiffs in the litigation of their Complaint in Civil Action No. 3:04-cv-00159-RP-RAW.

16. This Consent Decree shall be filed in the United States District Court for the Southern District of Iowa, and shall continue in effect for two years. Any application by any party to modify or vacate the Decree during that period shall be made by motion to the Court on no less than 30 days' notice to the other party.

17. This Court shall retain jurisdiction over this action in order to enforce the terms of this Consent Decree.

SO ORDERED, ADJUDGED, AND DECREED this ____ day of _____, 2008.

By the Court:

Robert W. Pratt
United States District Judge

Agreed to in form and content:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

By its attorneys:

Dated: October 29, 2008

s/ Dennis R. McBride
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VON MAUR, INC.

By its attorneys:

Dated: October 29, 2008

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Exhibit A

NOTICE TO ALL VON MAUR, INC. EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court resolving a lawsuit filed by the Equal Employment Opportunity Commission (“EEOC”) against Von Maur Inc.

In its lawsuit, the EEOC alleged that Von Maur discriminated against certain African-American applicants in regard to hiring in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). Title VII is a federal law which prohibits discrimination against employees and applicants for employment based upon race, color, sex, religion or national origin. Title VII also forbids employers to retaliate against employees or applicants who oppose discriminatory employment practices, file a charge of discrimination with a government agency, or testify or participate in an EEOC investigation.

To resolve this case, Von Maur and the EEOC have entered into a Consent Decree (without any admission of liability by Von Maur) which provides for monetary relief and also provides that:

- Von Maur will not discriminate in hiring on the basis of race.
- Von Maur will not retaliate against any person because (s)he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree.
- Von Maur will train all supervisory, management and human resources department employees at its Davenport, Iowa, facilities regarding race discrimination and Von Maur’s policy prohibiting race discrimination.

The EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age, or disability. If you believe you have been discriminated against, you may call the EEOC at (414) 297-1110 or at (800) 669-4000. The EEOC does not charge fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. This Notice must remain posted for 24 months from the date below and must not be altered, defaced or covered by any other material.

Date: _____

By: _____
Chairman and Chief Executive Officer
Von Maur, Inc.

Exhibit B

RELEASE

In consideration for \$ _____ paid to me by Von Maur, Inc. in connection with the resolution of *EEOC v. Von Maur, Inc.*, Civil Action 4:06-cv-182 (S.D. Iowa), I waive my right to recover for any claims of race discrimination arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Civil Rights Act of 1991, 42 U.S.C. § 1981a, that I had against Von Maur, Inc. prior to the date of this release and that were included in the claims alleged in EEOC's complaint in *EEOC v. Von Maur, Inc.*, Civil Action 4:06-cv-182 (S.D. Iowa). I understand that I will be solely responsible for the payment of any and all income taxes related to this payment and that I will be issued an IRS Form 1099 for this payment.

Dated: _____, 2008

[EEOC Class Member]

State of _____)

) ss

County of _____)

Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared _____, to me known to be the person described herein and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Signed and sworn to before me on this _____ day of _____, 2008.

Notary Public