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EEOC and Margaret L. McIlroy v. Kaiser Foundation Health Plan, Inc.

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EEOC and Margaret L. Mclroy v. Kaiser Foundation Health Plan, Inc.

Keywords

EEOC, Margaret L. Mclroy, Kaiser Foundation Health, Inc., 05-00564 HG KSC, Consent Decree, Disparate Treatment, Hiring, Sex, Female, Healthcare, Employment Law, Title VII

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

and

MARGARET L. McILROY,

Plaintiff-Intervenor,

vs.

**KAISER FOUNDATION
HEALTH PLAN, INC., et al.,**

Defendant.

CIV NO. 05-00564 HG KSC
SETTLEMENT AGREEMENT

1. Plaintiff U.S. Equal Employment Opportunity Commission (“Commission” or “EEOC”) brought this lawsuit under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of sex and to make whole Margaret McIlroy who was allegedly aggrieved by the alleged unlawful practices. The EEOC alleges that Kaiser Foundation Health Plan, Inc. (“Kaiser”) violated Title VII of the Civil Rights Act of 1964, as amended, by withdrawing an offer to Margaret McIlroy (“McIlroy”) for employment as a supervisory nurse in its Wailuku, Maui clinic because of her pregnancy.
2. Kaiser denies these allegations and asserts that its actions were in compliance with all applicable state and federal laws.
3. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the Commission and Kaiser (hereinafter referred to as “the Parties”) have agreed that this action should be finally resolved by entry of this Settlement Agreement. This Settlement Agreement is not an admission of liability by Kaiser and it shall not constitute an adjudication and/or finding on the merits of the case.
4. The parties agree that this Settlement Agreement resolves all claims that were made or could have been made, known and unknown, as of the date of this settlement arising out of any charge filed by McIlroy against Kaiser or any related or affiliated entity and pending with the EEOC, including but not limited to EEOC Charge Numbers 340-2003-11576 and 340-2003-11579 and the EEOC’s investigation of said charges and all claims pled in the complaint filed in this action.

5. This Settlement Agreement, along with the separate confidential agreement between Kaiser and McIlroy, comprises the full and exclusive agreement of the parties with respect to the matters discussed herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, IT IS ORDERED, ADJUDGED AND DECREED that:

6. This Court has jurisdiction over the subject matter of this action and over the Parties for the purposes of entering and enforcing this Settlement Agreement for a period of two years from entry of this Agreement.

7. This Settlement Agreement is final and binding upon the Parties, their successors and assigns.

8. This Settlement Agreement conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights or privileges of any person.

9. It is understood and agreed by and between the EEOC and Kaiser that this Agreement is in no way to be considered an admission of any violation of federal or state employment discrimination or retaliation laws, but is to be construed strictly as a compromise of contested claims. No finding of intent on the part of any Party was made prior to entry of this Agreement.

10. In view of the voluntary undertaking on the part of all Parties concerned, consent is hereby given and it is agreed that this shall be a public document, with the understanding however, that the contents of conciliation and settlement discussions between all the Parties hereto shall be considered and treated as confidential. In accordance with standard EEOC practices, it is the EEOC's intention to announce the resolution of this case in a press release and to provide a copy of this Agreement upon request. Kaiser reserves the right to issue its own press release with respect to the terms of this Agreement.

11. Each Party shall bear its own costs and attorney's fees.

GENERAL NON-MONETARY PROVISIONS

12. ***Compliance With Laws:*** Kaiser and its officers, agents, managers (including supervisory employees), successors and assigns, and all those in active concert or participation with them shall not discriminate on the basis of pregnancy or sex in the terms and conditions of employment and shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Settlement Agreement.

MONETARY RELIEF

13. In settlement of the EEOC's claims, Kaiser shall pay to Margaret McIlroy the gross sum of \$180,000.00 (One Hundred Eighty-Thousand Dollars and No Cents), inclusive of attorneys' fees and costs paid to McIlroy's attorney, and a portion of which shall be subject to federal and state employment withholdings.
14. The monetary relief for Ms. McIlroy shall be issued in one or more checks made payable as determined between Kaiser and counsel for Ms. McIlroy and shall be provided to Ms. McIlroy's attorney, Kevin Yuen. Payment shall be made no later than fourteen (14) calendar days after the effective date of this Settlement Agreement or the separate confidential agreement, whichever is later.

15. Within ten (10) days of issuing the check(s) to Ms. McIlroy, Kaiser shall send written verification of its issuance of the check(s) to the EEOC at the following address: Marcia Mitchell, Equal Employment Opportunity Commission, 350 The Embarcadero, Suite 500, San Francisco, CA 94105.

SPECIFIC NON-MONETARY RELIEF

16. Consistent with its existing policies on equal employment opportunity and prohibiting discrimination on any basis protected by federal or state law, Kaiser affirms the following “Statement of Zero-Tolerance Policy and Equality Objectives”:

Kaiser is firmly committed: to maintaining a zero-tolerance policy concerning discrimination on the basis of sex and pregnancy and on the basis of retaliation against individuals who report such discrimination in Kaiser’s workplace; to swiftly and firmly responding to any acts of pregnancy discrimination and retaliation of which the company becomes aware; to implementing a disciplinary system that is designed to strongly deter future acts of pregnancy discrimination or retaliation; and to actively monitoring its workplace in order to ensure tolerance, respect and dignity for all people.

EEO Policies

17. No later than sixty (60) days after the effective date of this Agreement, Kaiser shall modify the Equal Employment Opportunity and Affirmative Action Policies (“EEO Policies”) that apply in the Hawaii Region to (a) expressly prohibit discrimination on the basis of pregnancy, (b) advise applicants of the policies, and (c) state that violation of the EEO Policies may result in disciplinary action.

- A. Kaiser shall effectively disseminate its policies and procedures in the Hawaii Region by:
- 1) Posting the revised policy on Kaiser's intranet, which is available to all current employees, within 30 days of its adoption or within 30 days of the effective date of this agreement, whichever is later, and providing a notice to all Hawaii Region employees (a) that the revised policy is available on the intranet, and (b) summarizing the revisions to the policy;
 - 2) Giving a copy of the revised policy to new employees in the Hawaii Region through the new hire orientation program and requiring each employee who receives a copy of the policy to sign an acknowledgment of their receipt of the policy;
 - 3) Including on its career website the statement, "Kaiser Permanente is an equal employment opportunity employer and has nondiscrimination policies that cover applicants. These policies may be obtained from the Human Resources Department";
 - 4) In the event that Kaiser decides to revise the pregnancy provisions of its EEO policies and procedures that apply to the Hawaii Region during the two-year period following entry by the Court of this Settlement Agreement, Kaiser will provide a copy of the revised EEO policies to the EEOC within thirty (30) days after implementation of the revision.

TRAINING

18. **Anti-Discrimination Training.** Kaiser certifies that it currently provides training for supervisors in the Hawaii Region that covers, among other things, pregnancy discrimination and retaliation under federal and state law and that specifies that failure to comply with or enforce Kaiser's EEO Policies may result in disciplinary action. For a two-year period following entry by the Court of this Settlement Agreement, Kaiser will maintain those topics as part of its training for supervisors in the Hawaii Region and will include those topics as part of its existing new hire training for nonsupervisory employees in the Hawaii Region and its annual Regional Mandatory Training for all employees in the Hawaii Region that are employed as full-time employees, part-time employees, or those call-in employees who work or are anticipated to work at least 160 hours in the year.

DISCLOSURE OF INFORMATION REGARDING MCILROY'S EMPLOYMENT

19. Kaiser shall not disclose any information or make references to any charges of discrimination or this lawsuit in responding to employment reference requests for information about Margaret McIlroy.
20. Kaiser represents that McIlroy's personnel file does not contain any references to a charge of discrimination or this lawsuit.
21. In the event a third party seeks information about McIlroy's employment with Kaiser, McIlroy shall direct such party to contact the Human Resources Director at Kaiser's Baldwin Park Medical Center, who shall only provide McIlroy's date(s) of employment, position(s)

held, whether the position was full-time or part-time and, if McIlroy so authorizes in writing, verification of McIlroy's pay.

REPORTS TO THE COMMISSION

22. **Training Report:** On the anniversary of the effective date of this agreement, for a period of two years following entry by the Court of this Settlement Agreement, Kaiser will send the EEOC sworn verification of its completion of training for its employees in the Hawaii Region as required by paragraph 18, above, from an appropriate Human Resources representative that shall state the period during which Regional Mandatory Training modules were available and specify the number of employees who completed training during the prior calendar year and the total number of active employees (full-time employees, part-time employees and those call-in employees who work or are anticipated to work at least 160 hours in the year) as of the last pay period of that calendar year.
23. **Pregnancy Discrimination Complaint Reports:** On the anniversary of the effective date of this Agreement for a period of two years following entry by the Court of this Settlement Agreement:
 - A. With respect to all internal complaints alleging pregnancy discrimination which have been made by Kaiser applicants and employees in the Hawaii Region during the period of this Settlement Agreement via (i) Kaiser's internal EEO process, or (ii) Kaiser's hotline compliance process, and that have been investigated by Kaiser, since entry of this Settlement Agreement or since Kaiser's submission of the immediately preceding report hereunder, Kaiser shall submit to the EEOC San Francisco District

Office a statement describing the allegations in each complaint, and summarizing the information gleaned from the investigation.

- B. Additionally, Kaiser will provide a unique identifier for each complaint. A copy of all records, documents and other writings relevant to such complaints and investigations, including the name, address and telephone number of the complainant shall be maintained by Kaiser during the period of the Settlement Agreement and will be made available to the Commission within thirty (30) days, or as may otherwise be mutually agreed upon by the parties, following receipt of a written request from the Commission to Kaiser's attorney.

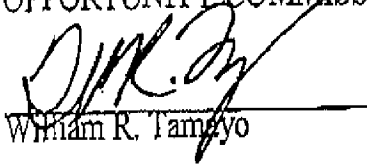
**RETENTION OF JURISDICTION
AND EXPIRATION OF SETTLEMENT AGREEMENT**

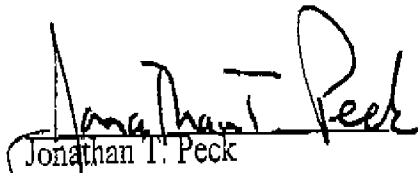
24. The Court's jurisdiction regarding enforcement of this Settlement Agreement shall terminate two (2) years from the date of entry by the court, unless the Commission petitions this court for an extension of the Agreement because of noncompliance by Kaiser. If the Commission determines that Kaiser has not complied with the Settlement Agreement, the Commission will provide written notification of the alleged breach to Kaiser and will not petition the court for enforcement sooner than sixty (60) days after providing written notification. The sixty-day period following written notice shall be used by the parties for good faith efforts to resolve the issue. If the Commission petitions the court and the court finds Kaiser to be in substantial violation of the terms of the Agreement, the court may extend its jurisdiction to enforce this Settlement Agreement.


25. This Court shall retain jurisdiction over this action for the purposes of enforcing the provisions of this Settlement Agreement pursuant to *Kokkenen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994) and *Flanagan v. Arnaiz*, 143 F.3d 540, 543-44 (9th Cir. 1998). The parties agree that any proceedings related to enforcement of the Settlement Agreement shall be heard by a United States Magistrate Judge.

On Behalf Of Plaintiff:

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION


William R. Tamayo


Jonathan T. Peck


Marcia L. Mitchell

On Behalf of Defendant:

MARR HIPP JONES & WANG, LLLP

/s/ Sarah O. Wang
Barry W. Marr
Sarah O. Wang
Jan M. Boivin

On Behalf of Plaintiff-Intervenor:

LAW OFFICES OF KEVIN YUEN

/s/ Kevin H. S. Yuen
Kevin H. S. Yuen