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EEOC v. Remo's Mushroom Services, Inc. (d/b/a Remo Toto's Mushroom Services)

Judge Eduardo C. Robreno

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EEOC v. Remo's Mushroom Services, Inc. (d/b/a Remo Toto's Mushroom Services)

Keywords

EEOC, Remo Mushroom Services, Inc., Remo Toto's Mushroom Services, 05-5131, Consent Decree, Hostile Work Environment, Retaliation, Termination, National Origin, Hispanic or Latino, Retail, Employment Law, Title VII

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

REMO'S MUSHROOM SERVICES, INC.
(also d/b/a Remo Toto's Mushroom Services),

Defendant.

CIVIL ACTION NO. 05-5131

Judge Eduardo C. Robreno

CONSENT DECREE

FILED MAR 15 2007

Introduction

A. This action was instituted by the U.S. Equal Employment Opportunity Commission ("EEOC" and/or "the Commission") on September 28, 2005 against Defendant Remo Mushroom Services, Inc. (referred to herein as "RMS" and/or "Defendant") to enforce provisions of Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"). In its Complaint, the Commission alleged that a group of Mexican employees were subjected to national origin harassment by Defendant RMS, which the EEOC alleged created an ethnically hostile and offensive work environment for them based on national origin. The Commission also alleged that this group of Mexican laborers was subjected to retaliation with further intimidation, unwarranted discipline and termination. Further, the Commission alleged that Defendant RMS failed to display the anti-discrimination Notice as required by Title VII. Defendant RMS denied all of the allegations in the EEOC's complaint.

B. This Consent Decree is entered into by and shall be final and binding between the EEOC and Remo's Mushroom Services, Inc., its directors, officers, shareholders, employees,

representatives, agents, successors, and assigns.

C. The EEOC and RMS agree to the entry of this Consent Decree, which shall fully and finally resolve all claims raised in the EEOC's Complaint in Civil Action No. 05-cv-5131 (ECR)(E.D.Pa).

D. This Consent Decree shall not constitute either an adjudication of or finding on the merits of the Complaint and shall not be construed as an admission by Defendant RMS of any violation of Title VII or any other anti-discrimination statute, law or regulation.

Findings

E. Having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the parties, the Court finds: (1) it has jurisdiction of the parties and subject matter jurisdiction of this action; and (2) the terms of this Decree are fair, reasonable, equitable and just, and adequately protect the rights of the parties, and the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination and Non-Retaliation

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Defendant will not ~~allow~~ ^{engage in} discrimination and/or harassment of any employee in violation of Title VII.
3. Defendant will not engage in any employment practice which retaliates in any manner against any person because of his/her opposition to any practice made an unlawful employment practice under Title VII or because either person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII.
4. Defendant shall only divulge to any identifiable employer or potential employer



of the identified classmembers the employee's start date, position title, final salary and end date, and indicate that such limited disclosure is part of its business practice.

5. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant RMS under Title VII or the EEOC's authority to process or litigate any charge of discrimination now pending or filed in the future against Defendant except for facts or claims alleged in the above captioned matter.

Monetary Relief

6. In full settlement of all the claims raised against Defendant RMS in the EEOC's Complaint, Defendant RMS agrees to pay the sum total of Twenty Five Thousand dollars (\$25,000.00) to be subdivided to the identified class members, as designated in Attachment C. Each class member will be required to promptly execute the attached Release (Attachment B, which is also translated to Spanish) which will be forwarded to Defendant RMS in both English and Spanish in order for each to receive the monetary payment.

7. Within forty (40) days after Defendant RMS has received the executed Release from each of the identified class members, Defendant will make the monetary payment to the identified class members, as designated by the Plaintiff EEOC in Attachment C. RMS will submit proof of payment by mailing a copy of each check issued in this matter to: Iris Santiago-Flores, Senior Trial Attorney, EEOC, 21 S. Fifth Street, Suite 400, Philadelphia, PA 19106. Late payment of the check will be subject to the accrual of interest on the unpaid amount, calculated pursuant to 28 U.S.C. § 1961.

Posting of Notice

8. Within twenty (20) business days after entry of this Decree, Defendant RMS shall post at its work site(s) on a bulletin board, used by Defendant for communicating with

employees, a same-sized copy of the attached Notice (Attachment A) in both English and Spanish. The Notice shall remain posted for two (2) years from the date of entry of this Decree. Defendant shall forward a certification that the Notice has been posted and dates of posting within 30 days after entry of this Decree to Iris Santiago-Flores, Senior Trial Attorney, EEOC, 21 South Fifth Street Suite 400, Philadelphia, PA 19106-2515. If posted copies become defaced, removed, marred or otherwise illegible, Defendant agree to post a readable copy in the same manner as heretofore specified.

Non-Discrimination and Anti-Harassment Policies and Complaint Procedures

9. Defendant agrees to draft a policy against discrimination, harassment and retaliation and complaint procedures, which shall be drafted in plain and simple language in both English and Spanish. Defendant shall ensure that its policy or policies against discrimination, harassment and retaliation and related complaint procedures meet the following minimum criteria:

(a) state that Defendant RMS: (i) prohibits discrimination against employees in violation of Title VII; (ii) prohibits retaliation against employees for opposing employment practices they reasonably believe are discriminatory or for participating in an investigation by the EEOC or a state or local governmental agency of a charge of discrimination under Title VII; (iii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of race and/or national origin and/or retaliation, in violation of Title VII; and (iv) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to employees through acts such as physical/verbal abuse and derogatory comments in violation of Title VII;

(b) includes a complaint procedure designed to encourage employees to come

forward with complaints regarding violations of its policy or policies against discrimination, harassment and retaliation, which shall meet the following minimum criteria: (i) provides effective mechanism(s) for reporting incidents of discrimination, harassment and retaliation; (ii) provides that the complaints of discrimination, harassment and/or retaliation can be made either in writing or verbally; (iii) identifies a neutral supervisor at Defendant' worksite(s) to whom an employee can make a complaint; (iv) encourages prompt reporting by employees; and (v) provides assurances that complainant(s) shall not be subjected to retaliation;

(c) provides for prompt investigation of complaints of harassment and/or retaliation;

(d) provides for prompt communication to the complaining party of the results of the investigation and any remedial actions taken or proposed; and

(e) provides for discipline up to and including discharge of an employee or supervisor who violates Defendant' policy or policies against discrimination, harassment and retaliation, and for increasingly severe discipline of repeat offenders.

10. Defendant RMS shall distribute to all of its employees and newly-hired employees its policy or policies against discrimination, harassment and retaliation within 60 days after entry of this Consent Decree.

11. Within sixty (60) days after entry of this Consent Decree, Defendant shall advise Iris Santiago-Flores, Senior Trial Attorney, EEOC's Philadelphia District Office, that its policy or policies against discrimination, harassment and retaliation have been distributed to current employees, including temporary employees, and that new employees, including temporary employees, will receive these policies and an opportunity to acknowledge receipt. Defendant will retain copies of any acknowledgment of receipt form for an employee in the employee's

personnel file.

12. Defendant RMS shall annually, for calendar year 2007 and 2008, give a copy of its policy or policies against discrimination, harassment and retaliation to each employee. The policy shall be available both in English and Spanish.

Supervisor Accountability

13. Defendant RMS shall promote supervisor accountability by the following conduct:

(a) providing annual anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraphs 14;

(b) disciplining, up to and including discharge, any supervisor or manager who violates Defendant's policy or policies against discrimination, harassment and retaliation;

(c) imposing on all managers and supervisory personnel a duty to administer their work areas to ensure compliance with Defendant's policy against discrimination, harassment and retaliation; and

(d) requiring all managers and supervisors to report any incidents and/or complaints of harassment and/or retaliation of which they become aware to the employee or employees designated to handle complaints of discrimination, harassment and retaliation.

Training

14. Defendant shall provide training on the requirements of Title VII as follows:

(a) Defendant agree to provide annual training sessions for any employee or employees at its worksites responsible for responding to Title VII complaints using a qualified independent vendor in 2007 and in 2008 subject to the provisions of Paragraph 14(b). The training will cover employee rights and employer obligations under both Title VII and relevant

state or local anti-discrimination laws, and will emphasize what constitutes unlawful harassment and discrimination in the workplace, how to keep the company free from such discrimination, what constitutes unlawful retaliation, and will summarize how to conduct a prompt and effective investigation into allegations, complaints or charges of discrimination;

(b) Defendant shall first provide training in accordance with Paragraph 14(a) by no later than six months after entry of this Consent Decree and also shall provide such training in calendar year 2008.

15. Defendant RMS shall obtain the EEOC's approval of its proposed trainer prior to the training session.

16. Defendant agrees that, at its expense, it will provide the EEOC with a copy of all pamphlets, brochures, outlines or other written materials provided to attendees of the training sessions.

17. Defendant shall certify to the EEOC in writing within 15 business days after the training sessions required by Paragraph 14 have occurred that the training has taken place and the personnel who attended. Such certification shall include: (i) the dates, location and duration of the training session; (ii) a copy of the registry of attendance, including the name and position of each person in attendance; and (iii) a listing of the employee or employees at Defendant's work site(s) responsible for responding to Title VII complaints made as of the date of the training.

Reporting

18. Defendant shall furnish to the EEOC the following written report by July 2007. The report shall contain:

(a) a certification by Defendant that the Notice required to be posted by

Paragraph 8 was posted in accordance with this Consent Decree;

(b) a certification by Defendant that it distributed the policy or policies against discrimination, harassment and retaliation annually to employees, and that Defendant have disseminated the policy against discrimination, harassment and retaliation to all new employees, including temporary employees, hired within the past six (6) month period preceding the report; and

(c) a certification that Defendant have complied with the 2007 training requirement of this Consent Decree.

Dispute Resolution

19. In the event either party to this Decree believes the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within twenty (20) days of the alleged non-compliance and afford the alleged non-complying party 20 business days to remedy the non-compliance or 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 or satisfied the complaining party that it has complied within twenty (20) business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

20. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

21. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Defendant in their capacities as representatives, agents, directors and officers of Defendant 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 any individual is found in contempt for a violation of this Decree.

22. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 05-cv-5131 (ECR) (E.D.Pa.).

23. This Consent Decree shall be filed in the United States District Court for the Eastern District of Pennsylvania and shall continue in effect for a period of three (3) years from July 1, 2006. During this time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate its purposes. Any application by any party to modify or vacate this Consent Decree during such period shall be made by motion to the Court on no less than thirty (30) days' written notice to the other party.

24. The Clerk of the District Court is hereby directed to send a file-stamped copy of this Consent Decree to counsel of record.

25. Upon the entry of this Consent Decree by the Court, this Court shall separately enter an Order of Dismissal, with prejudice.

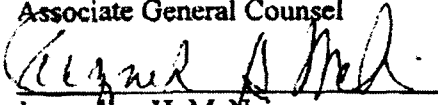
For Plaintiff EEOC:

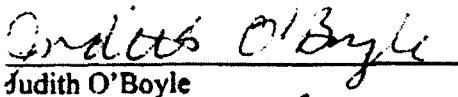
For Defendant Remo's Mushroom Services, Inc,

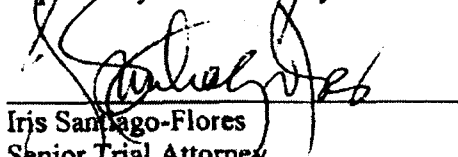
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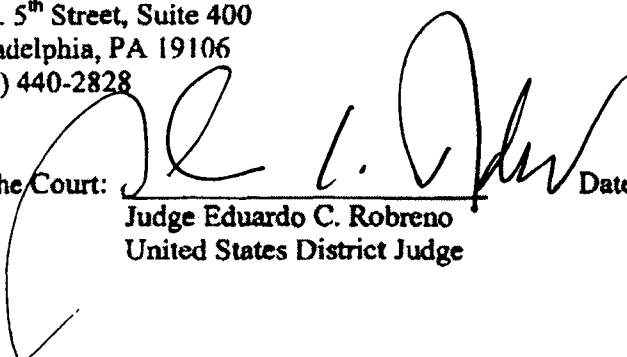

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By the Court: 

Judge Eduardo C. Robreno
United States District Judge

Date: 3/14/07

ENTERED

MAR 15 2007

CLERK OF COURT