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EEOC v. BJ's Wholesale Club, Inc.

Judge Alan S. Gold

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EEOC v. BJ's Wholesale Club, Inc.

Keywords

EEOC, BJ's Wholesale Club, 3-94-0489, Consent Decree, Disparate Treatment, Hostile Work Environment, Race, National Origin, Retail, Employment Law, Title VII

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 06-22452 CIV-GOLD/TURNOFF

UNITED STATES EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
BJ's WHOLESALE CLUB, INC.,)
)
Defendant.)
)
)
)

CONSENT DECREE

1. This Consent Decree ("Decree") is made and entered into by and between Plaintiff, the United States Equal Employment Opportunity Commission (the "Commission" or "EEOC"), and Defendant, BJ's Wholesale Club, Inc. ("Defendant" or "BJ's"). The Commission and Defendant are collectively referred to as the "Parties" throughout this Decree.

2. The Commission filed this action on September 28, 2006 under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq.* ("Title VII") and Title I of the Civil Rights Act of 1991 based upon a charge of discrimination filed by Jesus Santos (EEOC Charge No. 150-2006-00747). The Complaint filed by the EEOC alleges that Defendant violated Title VII by subjecting Mr. Santos and similarly situated individuals William Lundy, Tarell Miller and Lonnie Brady to unlawful harassment based on their national origin and/or race at their place of employment in Homestead, Florida. The Commission only sought relief on behalf of Jesus Santos and William Lundy.

3. In the interest of resolving this matter, to avoid the cost of litigation, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding on the Parties, their successors and assigns.

4. The Parties agree that this Decree resolves all claims against Defendant alleged in EEOC Charge Number 150-2006-00747 and the Complaint filed in this action. The Parties further agree that this Decree does not resolve any future or pending EEOC Charges of Discrimination other than the Charge referred to in this paragraph.

I. FINDINGS

5. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the Parties.

b. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of the EEOC to bring an enforcement action in the event Defendant breaches any of the term(s) of this Decree. The terms of this Decree are adequate, fair, reasonable, equitable, and just.

c. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, and officers, successor and assigns of BJ's at its Homestead, Florida location.

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

II. GENERAL PROVISIONS

6. Defendant, its officers, managers, and employees at the Homestead, Florida location, agree not to engage in conduct that discriminates on the basis of national origin or race in violation of Title VII of the Civil Rights Act of 1964, as amended.

7. Defendant, its officers, managers, and employees at the Homestead, Florida location, agree not to discriminate or retaliate against any employee because he or she has opposed any of Defendant's practices which the employee believed to be a violation of Title VII, filed a charge of discrimination with the EEOC alleging violation(s) of such statute, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

III. ADOPTION AND DISTRIBUTION OF NEW POLICY AGAINST NATIONAL ORIGIN AND RACE DISCRIMINATION

8. Defendant will create a new written policy against discrimination ("Policy"). The Policy shall be distributed within one hundred and twenty (120) calendar days to all of Defendant's employees and management staff at its Homestead, Florida location, and shall be included thereafter in any relevant policy or employee manuals kept by Defendant's business. The Policy shall also be kept and maintained in a conspicuous and accessible place for all employees and printed in a font that is easily legible (at least 12 point font).

9. A copy of the Policy shall be forwarded to the EEOC within thirty (30) calendar days of entry of this Consent Decree. This and any other submissions, reports, certifications, notices, or other materials that are required to be submitted to EEOC shall be mailed to: BJs Settlement, c/o Supervisory Trial Attorney M. Kate Boehringer, United States Equal Employment Opportunity Commission, 1 Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

10. A copy of the Policy shall be distributed to each new regular full-time, part-time or temporary employee at its Homestead, Florida facility within their first month of employment. The manager responsible for distributing the Policy to each new employee shall review the Policy with the employee. BJ's shall maintain records demonstrating that each new employee discussed the Policy with the responsible manager.

IV. TRAINING

11. During each of the three (3) years covered by this Decree, Defendant shall provide training on equal employment opportunity laws over which the EEOC has jurisdiction (including national origin and race-based discrimination) and the new Policy to all BJ's employees at its Homestead, Florida location, including all of its managers and supervisory personnel. At the request of the EEOC, an attorney from Jackson Lewis shall be present during the training sessions. Additionally, Defendant agrees that the EEOC shall, at the EEOC's discretion, be in attendance at each training session, provided the EEOC informs Defendant's Legal Department, c/o McCray Pettway, Esq., Senior Counsel, Manager of Employment and Labor Law, P.O. Box 9601, One Mercer Road, Natick, MA, one week prior to the training. The first training shall take place within one hundred and twenty (120) calendar days of entry of this Decree. The remainder of the training sessions shall take place annually and no later than December 31st of each year throughout the duration of the Decree. Defendant agrees to provide the EEOC reasonable advance notice of the date and location of the training sessions.

12. Within forty-five (45) days of completion of the training, Defendant shall notify EEOC of the dates the training was conducted, the name and job title of the person(s) who conducted the training, and the name and job title of each person who received the training.

13. Defendant agrees to provide EEOC, upon request, with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants during the training sessions

V. POSTING

14. Within thirty (30) business days after entry of this Decree, BJ's shall post an eleven (11) inches by fourteen (14) inches laminated copy of the Notice attached as Exhibit B to this Decree. The notice shall be posted at Defendant's Homestead, FL facility for the duration of this Decree in a conspicuous location accessible to all employees (i.e. employee bulletin board or lunch room). The Notice shall remain posted for the duration of this Decree. Defendant shall take reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Defendant shall certify to EEOC in writing within forty-five (45) business days after entry of the Decree that the Notice has been properly posted.

VI. RECORD KEEPING

15. For a period of three (3) years following entry of this Decree, BJ's shall retain and maintain all employment and/or investigative records of each person complaining about discrimination on the basis of national origin and/or race at Defendant's Homestead, Florida store.

16. Nothing contained in this Decree shall be construed to limit any obligation BJ's may otherwise have to maintain records under Title VII or any other law or regulation.

VII. REPORTING

17. BJ's shall furnish to EEOC the following written reports twice annually for a period of three (3) years following entry of this Decree. The first report shall be due no later than July 1st, 2008, and thereafter by January 1st and July 1st annually. Each such report shall contain:

a. A description of each complaint of national origin and/or race-based discrimination at Defendant's Homestead, Florida store, including the names, age, social security number, home address and phone number(s) of the complaining parties, and the names and addresses of witnesses, occurring within the six (6) month period preceding the report. Defendant will also state the actions taken in response to each such allegation.

b. A certification by BJ's that the Notice required to be posted in Paragraph 14, above, remained posted during the entire six (6) month period preceding the report

VIII. MONETARY RELIEF

18. Defendant shall pay an aggregate of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) to resolve this litigation as described in attached Exhibit C. All payments shall be issued within fifteen (15) calendar days from the Court's execution of this Decree, by certified mail to Jesus Santos, 16424 S.W. 304th Street, Apt. #107, Homestead, FL 33033; and William Floyd Lundy, 10825 S.W. 156th Terrace, Miami, FL 33157. A copy of the payments and I.R.S. Form 1099 shall be forwarded to the attention of M. Kate Boehringer, Supervisory Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

19. If Defendant fails to tender payment described in Paragraph 18 above, and Exhibit C in violation of this Decree, then Defendant shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid.

IX. NO ADMISSION OF WRONGDOING

20. It is understood that this Decree does not constitute an admission by Defendant, or a finding or judgment by the Court, that Defendant violated Title VII.

X. ENFORCEMENT

21. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.


XI. COSTS

22. Each Party shall bear its own costs associated with this litigation.

XII. DURATION OF CONSENT DECREE

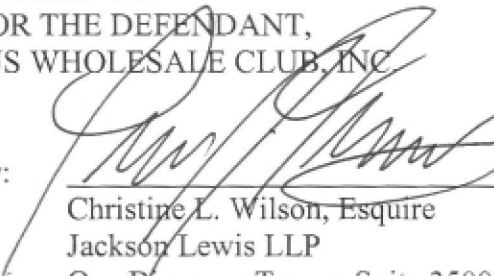
23. All provisions of this Decree shall be in effect for a period of three (3) years immediately following entry of the Decree.

AGREED TO:
FOR THE PLAINTIFF,
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

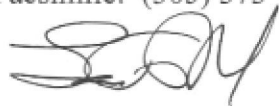
by: 
Nora E. Curtin
Regional Attorney
U.S. Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 808-1789
Facsimile: (305) 808-1835

Date: 3/27/08

AGREED TO:
FOR THE DEFENDANT,
BJS WHOLESALE CLUB, INC

by: 
Christine L. Wilson, Esquire
Jackson Lewis LLP
One Biscayne Tower, Suite 3500
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 577-7600
Facsimile: (305) 373-4466

Date: 3/27/08

by: 
Lon Povich, Esq.
Executive Vice President,
General Counsel, and
Secretary

Date: 3/27/08

EXHIBIT B

**NOTICE TO ALL EMPLOYEES
POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND
BJ'S WHOLESALE CLUB, INC.**

This notice is being posted pursuant to a Consent Decree entered by the Court in EEOC v. BJ's Wholesale Club, Inc., Case No. 06-22452-CIV-GOLD. BJ's Wholesale Club, Inc. ("BJ's") has adopted a policy that prohibits discrimination against employees based on national origin and/or race discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, and/or sex. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. BJ's will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, national origin and/or race discrimination.

Furthermore, BJ's assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC. Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

EEOC enforces federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. If you believe you have been discriminated against, you may telephone the Miami District Office of the Equal Employment Opportunity Commission at (305) 808-1740. EEOC charges no fees and has employees who speak languages other than English.

This Notice must remain posted for three (3) years from the date below, and must not be altered, defaced or covered by any other material. Any questions about this Notice of compliance with its terms may be directed to: BJ's Settlement, c/o EEOC, 1 Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

Signed this ____ day of _____, 2008.

PRESIDENT/CEO, BJ'S WHOLESALE CLUB, INC.

DO NOT REMOVE BEFORE _____ 2011.

EXHIBIT C

ALLOCATION OF MONETARY RELIEF

BJ's agrees to pay total gross amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) to resolve this litigation, which will be payable as follows:

1. A check made payable to Jesus Santos in the amount of Eighty Thousand Dollars and Zero Cents (\$80,000.00), with no deductions or withholdings, in settlement of claims for damages that are not wages. BJ's shall issue Mr. Santos a 1099 for this amount; and

2. A check made payable to William Floyd Lundy in the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00), with no deductions or withholdings, in settlement of claims for damages that are not wages. BJ's shall issue Mr. Lundy a 1099 for this amount.