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EEOC v. Les Schwab Tire Centers of Washington, et al

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EEOC v. Les Schwab Tire Centers of Washington, et al

Keywords

EEOC, Les Schwab Tire Centers of Washington, et al, 2:06-cv-0045-RSM, Consent Decree, sex, female, disparate treatment, retaliation, constructive discharge, hiring, promotion, training/advancement, retail, employment law, title VII

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Plaintiff,

v.

LES SCHWAB TIRE CENTERS OF
WASHINGTON, *et al.*,

Defendants.

CASE NO. 2:06-cv-0045-RSM

CONSENT DECREE

I. INTRODUCTION

1. This action originated with discrimination charges brought by Magen Morris and Jennifer Strange, filed with the Equal Employment Opportunity Commission (“EEOC”) on October 20, 2004. The charging parties alleged that Les Schwab: (a) failed to train and promote them to management positions; (b) retaliated against and constructively discharged them; and (c) failed to hire females for Sales & Service positions. The charging parties alleged that these acts violated Title VII.

CONSENT DECREE

Page 1

Equal Employment Opportunity Commission
909 First Avenue, Suite 400
Seattle, WA 98104-1061
(206) 220-6885

1 **III. SETTLEMENT SCOPE**

2 5. This Decree resolves all issues and claims arising out of the EEOC’s complaint.
3 This Decree does not affect the EEOC’s right to process, in accordance with standard
4 Commission procedures, other charges, if any, filed by individuals against the Les Schwab
5 Companies alleging violations of Title VII or any other statute enforced by the EEOC.
6

7 **IV. CLASS MONETARY RELIEF**

8 **6. Class Settlement Fund Amount**

9 Les Schwab shall pay the gross sum of \$2,000,000.00 (“Class Fund”) in resolution of the
10 EEOC’s claims of hiring discrimination based on sex. This Class Fund amount shall constitute
11 the total payment by Les Schwab, including, without limitation, any and all costs of
12 administration, and any tax withholding such as FICA or FUTA. The EEOC shall reasonably
13 allocate a portion of the Class Fund to back pay consistent with federal law.
14

15 **7. Class Fund Account**

16 The Class Fund shall be deposited and maintained in a segregated account in the manner
17 described herein:

- 18 a. Within thirty (30) days after the Effective Date (which shall be the date of
19 entry of the Decree by the Court), Les Schwab shall establish and maintain a
20 segregated account, which shall be known as the “Class Fund Account.” Les
21 Schwab shall fund the Class Fund Account with the full amount of the Class Fund
22 within thirty (30) days of the Effective Date.
23
24 b. The Class Fund Account shall be an interest-bearing account in an established
25 financial institution selected by Les Schwab.
26

1 c. The Class Fund will be distributed by Les Schwab as determined by the
2 EEOC, including any distribution approved by the EEOC and necessary for
3 payment of administration costs. Under no circumstances may Les Schwab make
4 withdrawals or expenditures from the principal or interest of the Class Fund,
5 except as provided in this paragraph c and paragraph d below. Under no
6 circumstances shall commitments for payments from the principal or interest of
7 the Class Fund, for purposes allowed by this Consent Decree, exceed the amount
8 of funds available in the Class Fund.
9

10 d. Any remaining interest not necessary for the administration of the Class Fund
11 after all payments from the Fund have been made shall be retained by Les
12 Schwab. Any unclaimed principal of the Class Fund shall be donated to
13 Apprenticeship and Nontraditional Employment for Women.
14

15 **8. Administration**

16 The parties will agree on an Administrator to administer the class claim process. All fees
17 of the Administrator and any other expenses of the administration will be paid from the Class
18 Fund, except that Les Schwab will be responsible for issuing tax reporting forms at its own
19 expense. Pursuant to agreement between the EEOC and the Administrator, only reasonable fees
20 authorized by the EEOC can be incurred against the fund account.
21

22 **9. Claim Process**

23 a. Within thirty (30) days after entry of the Decree, Les Schwab will provide
24 EEOC with a Unicru spreadsheet identifying all females who submitted
25 applications for Sales & Service positions during the period from December 1,
26

1 2007 to entry of the Decree, and were not hired for a Sales & Service position.
2 The Unicru spreadsheet will include the following data fields for each such
3 applicant for periods prior to July 2009: name, address, social security number,
4 date of application, store number, whether interviewed, interview date, whether
5 offer extended, offer extended date, remove reason code value, removed date,
6 score, and ApplicationID. For periods from July 2009 through the Effective Date,
7 the Unicru spreadsheet will include the comparable data fields available in Unicru
8 Version 8. In addition, Les Schwab will produce phone number information for
9 applicants from Unicru if the added cost of doing so is de minimus. Les Schwab
10 will also provide an Infinium spreadsheet identifying all males hired into Sales &
11 Service positions during the period from December 1, 2007 to entry of the
12 Decree. The Infinium spreadsheet will include the following data for each such
13 hire: name, social security number, date of hire, and store number.
14
15 b. Based on the data provided under paragraph a above, and the dataset provided
16 previously in discovery, EEOC will determine potential class members.
17
18 c. Notice of settlement will only be sent to individuals EEOC has determined to
19 be potential class members under paragraph b. The description of the case as
20 reflected in the first paragraph of the attached draft Notice (Attachment A) will be
21 the description used in the final notice and in any other communications with
22 class members. The EEOC will provide a copy of the final Notice to Les Schwab.
23
24 The EEOC will make best efforts to ensure the Administrator will not reference
25 this case in its advertising or marketing materials. If any information about the
26

1 claims process is posted online, EEOC will determine the cost of ensuring that the
2 case name is not publicly available and afford Les Schwab the option to pay that
3 additional cost.

4 d. Determination of eligibility and claim share amount is entirely at the discretion
5 of the EEOC.

6 e. Les Schwab will issue final payment checks based on a single spreadsheet
7 identifying eligible class members and claim share amount.
8

9 **V. INJUNCTIVE RELIEF**

10 10. The terms of this Decree are an injunction and operate as an injunction as to Les
11 Schwab, its officers, agents, managers, assistant managers and other supervisors and all human
12 resource professionals who provide advice and assistance to the foregoing individuals. In
13 ongoing recognition of its obligations under Title VII, Les Schwab agrees to continue the
14 policies and practices set forth below.

15 **A. TRAINING AND AWARENESS PROGRAM**

16 11. For the duration of this Decree Les Schwab will continue to provide training to all
17 employees in all company-owned stores as set forth below.

18 12. The objectives of this training are to: (1) convey Les Schwab's commitment to
19 providing equal employment opportunities under laws against discrimination to all applicants
20 and employees, without regard to the gender of the applicant or employee; (2) provide
21 information and guidance to managers and employees on complying with laws against
22 discrimination, including Title VII; and (3) provide instruction on equal employment opportunity
23 issues, including preventing sex discrimination in hiring and promotion.
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1 13. It is the intention of Les Schwab to continue to provide EEO awareness to
2 management employees and its general workforce.

3 a. Les Schwab acknowledges that the effectiveness of its implementation of the
4 terms of this Decree is dependent on its workforce understanding that its efforts to
5 provide equal employment opportunities to all persons have the full commitment
6 of Les Schwab's upper-management, including the Board of Directors, Chief
7 Executive Officer, and top Company officials. Within thirty (30) days after the
8 Court approves this Decree, Les Schwab will reaffirm to its workforce its
9 commitment to equal employment opportunity, to achieving a diverse workforce,
10 and to the furtherance of the Decree's purpose. Within ten (10) days after Les
11 Schwab communicates its commitment to its workforce, it will certify to the
12 Commission its compliance with this paragraph, including the manner in which
13 the communication occurred.

14 b. During the term of this Decree, Les Schwab shall continue to provide training
15 on equal employment opportunity to all Regional Managers, Area Managers,
16 Store Managers, Assistant Managers, and other personnel, if any, who make store
17 hiring decisions, and human resources employees who support that process. The
18 training shall include the following topics: (1) federal, state and Company
19 prohibitions against unlawful discrimination, including sex discrimination, and
20 retaliation; (2) topics that will encourage equal employment in recruiting, hiring,
21 and promotion without engaging in sex discrimination and sex stereotyping; and
22 (3) Les Schwab's efforts to recruit, hire, and maintain a diverse workforce. No
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1 less than two (2) hours shall be devoted to training on these topics for each
2 participant within ninety (90) days following: (a) the date the Court approves this
3 Decree, and (b) on an annual basis thereafter throughout the term of the Decree.

4 c. Les Schwab shall continue to incorporate diversity training into its training for
5 executives, managers, and human resource associates.

6
7 14. Les Schwab understands that in order to carry out the objectives of this
8 Decree it must be recognized in local communities as an employer that supports and practices
9 equal employment opportunity. Therefore, within ninety (90) days after the Court approves this
10 Decree, Les Schwab will review its existing internal and external recruiting and hiring
11 documents (including materials on its external and internal websites) to confirm that they reflect
12 diverse images, including the presence of females in Sales & Service positions, and Les
13 Schwab's commitment to equal employment opportunity. Les Schwab will include the current
14 introductory statement (Attachment B) affixed to the book Les Schwab – Pride in Performance
15 whenever it is distributed by Les Schwab for any purpose. Within ten (10) days after Les
16 Schwab's review has been completed, it will certify to the Commission its compliance with this
17 paragraph.
18

19 **B. RECRUITMENT EFFORTS**

20 15. Les Schwab will continue its recruitment efforts to increase the flow of female
21 applicants for Sales & Service positions. Those efforts will include the following:
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1 a. In all recruiting and hiring materials, including but not limited to employment
2 applications, brochures, newspaper, radio, television, and internet advertisements,
3 and on its website, Les Schwab will state that “Les Schwab is an Equal
4 Opportunity Employer,” and will instruct store managers accordingly.

5 b. Les Schwab will continue to contact entities such as technical schools and
6 community colleges that may be sources of qualified female applicants for Sales
7 & Service positions. In connection with this, Les Schwab will select at least one
8 organization in each state in which it operates that promotes the employment of
9 women in non-traditional fields and will invite such organizations to link to Les
10 Schwab’s Web site.

11 c. Les Schwab will continue to participate in relevant job fairs in states where it
12 operates. One purpose of attending the job fairs will be to encourage qualified
13 females to apply for Sales & Service positions. Les Schwab will communicate its
14 commitment to developing and maintaining a diverse workforce and to its status
15 as an equal opportunity employer.
16
17

18 **C. HIRING**

19 16. During the term of this Decree, Les Schwab will make best efforts to hire females
20 into Sales & Service positions in proportion to their availability in the qualified applicant pool.

21 17. Les Schwab agrees to continue (1) the use of standard application materials for all
22 Sales & Service applicants through the electronic hiring process known as “Unicru”; and (2)
23 periodic review of all hiring procedures by Les Schwab’s Human Resources Department. Les
24 Schwab further agrees to notify and consult with the EEOC if the Unicru system is to be
25

1 discontinued or materially modified.

2 **D. REPORTING, RECORD KEEPING AND COMPLIANCE REVIEW**

3 18. Les Schwab shall maintain the following records for the term of this Decree or as
4 required by state or federal law, whichever is longer:

5 a. Applications for Sales & Service positions, including hard copies bearing
6 handwritten notes as well as electronic files maintained by third party vendor
7 (Kronos, Inc.);

8 b. A list of job fairs attended by Les Schwab pursuant to paragraph 15(c), and all
9 recruiting materials as referenced in Paragraph 15(a) above, including job
10 advertisements;

11 c. Copies of Les Schwab's hiring policies and procedures;

12 d. Copies of notifications to the organizations referenced in Paragraph 15(b);

13 e. Copies of centralized marketing campaign materials;

14 f. Documentation of employee training undertaken pursuant to paragraph 13b
15 including, but not limited to, materials used during the training and employee
16 participation records.

17 g. At any point during the term of this Decree, with reasonable notice, the
18 Commission may inspect and copy such documents and records required to be
19 maintained or created by the express terms of this Decree, or referred to by Les
20 Schwab to prepare its reports to the Commission.
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1 19. Les Schwab will submit an initial report to the Commission concerning the
2 implementation of this Decree no later than 15 days after the expiration of the first six-month
3 period after the Court approves this Decree. Thereafter, reports will be submitted to the
4 Commission annually. Each report shall contain the information set forth below:

5 a. A list of the organizations Les Schwab has contacted pursuant to paragraph
6 15b, during the preceding reporting period.

7 b. A listing of all job fairs attended, in accordance with paragraph 15c including
8 the location held, during the preceding reporting period.

9 c. A spreadsheet containing all applicants for Sales & Service positions during
10 the preceding reporting period, including Unicru data fields for date of
11 application, sex, store number, and social security number.

12 d. A list of all hires into Sales & Service during the preceding reporting period,
13 including name, sex, date of hire, store number and social security number.

14 e. A listing of all training undertaken during the preceding reporting period in
15 accordance with paragraphs 11 and 13b, and a roster of participating employees.
16

17
18 **E. NOTICE POSTING**

19 20. For the pendency of the consent decree Les Schwab shall post a notice to
20 employees in each Les Schwab facility, attached hereto as Attachment C, informing them of this
21 settlement, its terms, and the company's commitment to compliance with federal laws relating to
22 equal employment opportunity.
23

24 **VI. DISPUTE RESOLUTION PROCEDURES**

25 21. The Commission shall have the right to initiate an action pursuant to the Court's
26

1 continuing jurisdiction for an unresolved dispute or for non-compliance with any provision of the
2 Decree, as follows:

3 a. If the EEOC believes that there is an issue to resolve, it shall promptly give
4 notice, in writing, to the company.

5 b. The parties shall promptly undertake efforts to resolve the areas of dispute or
6 alleged non-compliance.

7 c. If after 30 days the EEOC determines that efforts to resolve the matter have
8 failed, it shall notify Les Schwab in writing of such failure to resolve the matter
9 and may commence an action in the United States District Court to enforce the
10 terms of this Decree.
11

12 **VII. DURATION OF THE CONSENT DECREE**

13 22. This Consent Decree will become effective on the date approved and entered by
14 the United States District Court for the Western District of Washington, and it will remain in
15 effect for a period of four years. If the EEOC petitions the Court for violation of terms of the
16 Consent Decree, and the Court finds a violation, the Court may extend the duration of the
17 Decree.
18

19 **VIII. RETENTION OF JURISDICTION**

20 23. The United States District Court for the Western District of Washington shall
21 retain jurisdiction over this matter for the duration of the Consent Decree.
22

23
24 DATED this ___ day of ____

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CONSENT DECREE
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