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Equal Employment Opportunity Commission v. Eaglepicher, Inc. (f/k/a Eagle-Picher Industries, Inc.)

Judge James C. England

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Equal Employment Opportunity Commission v. Eaglepicher, Inc. (f/k/a Eagle-Picher Industries, Inc.)

Keywords

EEOC, Eaglepicher Inc., 03-5103, Consent Decree, Hostile Work Environment, Disparate Treatment, Retaliation, Sexual Harassment, Sex, Female, Title VII, Employment Law, Other

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 03-5103
)	
EAGLEPICHER, INC. (f/k/a EAGLE-PICHER)	
INDUSTRIES, INC.))	
)	
Defendants.)	

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission has instituted this action alleging that Defendant EaglePicher, Inc. (f/k/a Eagle-Picher Industries, Inc.), violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 when it discriminated against Brenda Lawrence McCollum, Shonna Peppers Hyde and other female employees by subjecting them to sexual harassment, a sex-based hostile work environment, discriminatory terms and conditions of employment, and retaliation for complaining about discriminatory treatment. For purposes of settlement and compromise only, the parties have advised the Court that they wish to resolve the instant controversy without the expense, delay and burden of further litigation;

THEREFORE, it is the finding of this Court, made on the pleadings and on the record as a whole and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action, (ii) the requirements of Title VII will be carried out by the implementation of this Decree, (iii) this Decree is intended to and does resolve all matters in controversy in this lawsuit among the parties, and (iv) the terms of this Decree constitute a fair and equitable settlement of all issues in this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

I. General Provisions

1. This Decree, being entered with the consent of the parties for purposes of settlement, shall not constitute an adjudication on the merits of this lawsuit and shall not be construed as an admission by Defendant of any violation of Title VII or any executive order, law, rule or regulation dealing with or in connection with sex discrimination in employment.

2. Defendant shall not discriminate or retaliate against any person because he or she has opposed any practices alleged in this action as unlawful under Title VII, has participated in an investigation conducted under Title VII with respect to this complaint, or because he or she has participated in this lawsuit or has benefitted in any way as a result of this Consent Decree.

II. Relief for Aggrieved Parties

3. Within fifteen (15) days after this Decree is approved by the Court, Defendant shall issue the following checks, except that no check shall be issued to any aggrieved party until after she has signed a Settlement Agreement, Waiver and Release, a copy of which is attached as Exhibit A.

- a. to Brenda Lawrence McCollum a check made payable to her in the gross amount of \$100,000.00, including:
 - i. \$8,000.00 for backpay, less only any applicable deductions for the employee's portion of FICA and applicable federal and state income tax withholdings;
 - ii. \$2,000.00 for interest on the backpay, less only the applicable federal and state income tax withholdings; and

- iii. \$90,000.00 for compensatory and punitive damages.
- b. to Shonna Peppers Hyde a check made payable to her in the gross amount of \$50,000.00, including:
 - i. \$15,000.00 for backpay, less only any applicable deductions for the employee's portion of FICA and applicable federal and state income tax withholdings;
 - ii. \$2,000.00 for interest on the backpay, less only the applicable federal and state income tax withholdings; and
 - iii. \$33,000.00 for compensatory and punitive damages.
- c. to Melanie Antwiler a check made payable to her in the gross amount of \$25,000.00, including:
 - i. \$ 10,000.00 for backpay, less only any applicable deductions for the employee's portion of FICA and applicable federal and state income tax withholdings;
 - ii. \$1,000.00 for interest on the backpay, less only the applicable federal and state income tax withholdings; and
 - iii. \$14,000.00 for compensatory and punitive damages.
- d. to Cindy Alexander a check made payable to her in the gross amount of \$5,000.00 for compensatory and punitive damages.
- e. to Seagren Cagle a check made payable to her in the gross amount of \$5,000.00 for compensatory and punitive damages.
- f. to Valerie Gilbert a check made payable to her in the gross amount of \$5,000.00 for compensatory and punitive damages.

g. to Carol Santizo a check made payable to her in the gross amount of \$5,000.00 for compensatory and punitive damages.

h. to Valerie Dempster a check made payable to her in the gross amount of \$5,000.00 for compensatory and punitive damages.

4. If any aggrieved party has not signed a Settlement Agreement, Waiver and Release within 180 days after this Decree is approved by the Court, the Defendant shall pay that aggrieved party's damages to Lafayette House, P.O. Box 1765, Joplin, Missouri 64802.

5. Defendant shall forward to each aggrieved party, with the checks described above, an itemized statement of withholdings for each amount withheld, including the employee share of FICA and the applicable federal and state income withholdings from each amount allocated separately as backpay, interest on backpay, and compensatory and punitive damages.

6. Within fifteen (15) days after this Decree is approved by the Court, Defendant will offer Shonna Peppers Hyde, Melanie Antwiler, and Carol Santizo full-time employment. If any of these women accept this offer in writing within fifteen (15) days of receipt, Defendant will employ the woman in the accepted position and take all actions necessary to place her in the position she would have been in had Defendant not terminated her employment and assign work schedules, vacation days, sick days and other non-monetary benefits of employment to the woman that would have been hers to enjoy had Defendant not terminated her employment.

7. Within five (5) days after this Decree is approved by the Court, Defendant shall restore Brenda Lawrence McCollum's hire / seniority date to June 23, 1998 and will grant McCollum all benefits that arise from having that hire / seniority date, including seniority for bidding for jobs and any employee benefits, including vacation time and retirement benefits.

III. Injunctive Relief

8. Defendant shall not discriminate on the basis of sex in hiring, firing, work assignment, pay, evaluation, promotion or any other term or condition of employment. Defendant shall not harass or subject any employee to a hostile work environment on the basis of sex. Defendant shall not retaliate against any employee who opposes any practice declared unlawful under Title VII; or files a charge; or gives testimony or assistance; or participates in any manner in any investigation, proceeding, or hearing under Title VII.

9. Defendant shall not re-hire or otherwise employ former employees Robert Garrison or Joel Alumbaugh.

10. Within sixty (60) days after this Decree is approved by the Court, Defendant shall provide live training for all management and supervisory employees at its Joplin facility regarding federal employment discrimination laws and employees' rights under these laws. This training shall cover various forms of discrimination, including harassment, hostile work environment, disparate treatment and retaliation, and shall instruct attendees regarding how to properly respond to complaints of discrimination or discriminatory behavior that they observe or of which they become aware. The training shall also cover Defendant's policies prohibiting discrimination, its procedures for handling discrimination complaints, and disciplinary actions the company will take against those who engage in or tolerate discriminatory behavior. Live training shall be presented by Human Resources personnel or Legal Department personnel, and may be attended by a representative of the EEOC. Training shall be performed for all new managers and supervisors at Defendant's Joplin facility within 30 days of hire, and follow up training shall be performed for all managers and supervisors at Defendant's Joplin facility annually. Follow up training and training for new managers and supervisors at Defendant's Joplin facility may be by audio-visual recording or by web-based training programs.

11. Prior to December 31, 2003, Defendant shall provide training for all employees at its Joplin facility regarding federal employment discrimination laws and employees' rights under these laws. This training shall cover various forms of discrimination, including harassment, hostile work environment, disparate treatment and retaliation. The training shall also cover Defendant's policies prohibiting discrimination, how and to whom complaints of discrimination may be made, the company's procedures for handling discrimination complaints, and disciplinary actions the company will take against those who engage in or tolerate discriminatory behavior. This training may be presented live, by audio-visual recording or by web-based training programs, and may be attended or reviewed by a representative of the EEOC. Training shall be performed for all new employees within 30 days of hire, and follow up training shall be performed for all employees annually.

IV. Posting and Policies

12. Defendant shall implement an anti-discrimination policy prohibiting discrimination on the basis of sex in hiring, firing, work assignment, pay, evaluation, promotion or any other term or condition of employment; harassment or creation of a hostile work environment on the basis of sex; and retaliation against any employee who opposes any practice declared unlawful under Title VII, including filing a charge, giving testimony or assistance, or participating in any investigation, proceeding, or hearing under Title VII. Defendant shall implement procedures for the reporting of complaints of discrimination, including multiple avenues for reporting and a toll-free hotline that is monitored by and responded to by off-site management. Defendant shall discipline, up to and including termination, employees (including managers and supervisors) who fail to adhere to the company's anti-discrimination policy and shall include adherence to the company's anti-discrimination policy in its evaluations of managers and supervisors.

13. Defendant shall post and cause to remain posted the posters required to be displayed in the workplace by Commission Regulations, 29 C.F.R. § 1601.30.

14. Defendant shall post and cause to remain posted copies of the notice attached hereto as Exhibit B in locations publicly visible to all employees at its Joplin facility.

V. Reporting

15. Within one hundred and eighty (180) days after this Decree is approved by the Court, Defendant shall forward to the Commission's Regional Attorney in its St. Louis District Office a copy of the checks and statements of withholdings described in paragraphs 3 and 5 above.

16. Within forty-five (45) days after this Decree is approved by the Court, Defendant shall forward to the Commission's Regional Attorney in its St. Louis District Office a letter signed by or on behalf of its chief officer stating that it has complied with the requirements of paragraphs 6 and 7 above, describing the manner and dates on which such compliance was effected.

17. Within seventy-five (75) days after this Decree is approved by the Court, Defendant shall forward to the Commission's Regional Attorney in its St. Louis District Office a letter signed by or on behalf of its chief officer stating that it has complied with the requirements of paragraphs 10 and 12 above, describing the manner and dates on which such compliance was effected.

18. Within fifteen (15) days after the completion of the training required in paragraph 11 above, Defendant shall forward to the Commission's Regional Attorney in its St. Louis District Office a letter signed by or on behalf of its chief officer stating that it has complied with the requirements of paragraph 11, describing the manner and dates on which such compliance was effected.

19. Within forty-five (45) days after this Decree is approved by the Court, Defendant shall prepare and submit to the Commission's Regional Attorney in its St. Louis District Office a letter signed by or on behalf of its chief officer stating that the notices have been posted as required by paragraphs 13 and 14 above.

20. Beginning ninety (90) days after this Decree is approved by the Court, the Defendant will send to the Commission's Regional Attorney in its St. Louis District Office quarterly reports identifying any complaints of sex discrimination or retaliation it received from employees of its Joplin facility during the previous quarter. The reports will include a short description of the complaint, including the name, address and telephone number of the employee making the complaint, a description of the company's response to the complaint, and a description of how the complaint was resolved.

VI. Notice and Opportunity to Cure

21. If, during the term of this Decree, the Commission believes that Defendant is in violation of this Decree, the Commission shall notify Defendant in writing about the alleged violation, describing the nature of the alleged violation and the relevant portion of the Decree.

22. Within ten (10) days of receiving a notice described in paragraph 18, Defendant shall respond to the Commission in writing with Defendant's position with respect to the alleged violation, including what steps, if any, Defendant has taken or will take to cure the alleged violation. If the Commission is satisfied that the alleged violation of the Decree has been corrected, it will take no further action against Defendant and will not bring the matter before the Court.

23. The Commission shall not be entitled to seek relief from the Court for any alleged violation of this Decree until it has provided Defendant with notice and an opportunity to cure the alleged violation as provided in paragraphs 21 and 22.

VI. Term and Effect of Decree

24. By entering into this Decree the parties do not intend to resolve any charges of discrimination currently pending before the Commission other than the charges that created the procedural foundation for the complaint in this case.

25. This Decree shall be binding upon the parties hereto, their successors and assigns.

26. This Decree shall be for a period of two years and six months after its approval by the Court and can be extended by Order of the Court only for good cause shown or by mutual agreement of the parties. By Order of the Court, the term of this Decree may be shortened by mutual agreement of the parties.

27. During the Decree's term the Court shall retain exclusive jurisdiction of this cause.

28. Each party shall bear its own costs and attorneys' fees.

BY CONSENT:

FOR PLAINTIFF:

ERIC S. DREIBAND
General Counsel

/s/ Robert G. Johnson
ROBERT G. JOHNSON
Regional Attorney
DONNA L. HARPER
Supervisory Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
St. Louis District Office
1222 Spruce St., Room 8.100
St. Louis, MO 63103
(314) 539-7910 (telephone)
(314) 539-7895 (facsimile)
bob.johnson@eoc.gov (e-mail)
donna.harper@eoc.gov (e-mail)

/s/ Andrea G. Baran
ANDREA G. BARAN MO Bar # 46520
Senior Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Kansas City Area Office
400 State Ave., Ste. 905
Kansas City, KS 66101
(913) 551-5848 (telephone)
(913) 551-6957 (facsimile)
andrea.baran@eoc.gov (e-mail)

FOR DEFENDANT:

BRYAN CAVE LLP

By: /s/ Elaine Drodge Koch
Elaine Drodge Koch MO Bar #38366
3500 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2100
(816) 374-3200 (telephone)
(816) 374-3300 (facsimile)
EDKoch@BryanCave.com (e-mail)

SO ORDERED:

October 8, 2003
Date

/s/ JAMES C. ENGLAND
JAMES C. ENGLAND
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

**SETTLEMENT AGREEMENT,
WAIVER AND RELEASE**

In consideration of the payment to me by EaglePicher, Inc. (f/k/a Eagle-Picher Industries, Inc.) in the amount of \$_____ and in consideration of the Consent Decree proposed by the Equal Employment Opportunity Commission and EaglePicher, Inc. (f/k/a Eagle-Picher Industries, Inc.), to the United States District Court for the Western District of Missouri on September 11, 2003 (currently pending approval by the Court), of which this release is part, I, _____ (aggrieved party) hereby fully and forever release and discharge EaglePicher, Inc. (f/k/a Eagle-Picher Industries, Inc.), its subsidiaries, and each of their successors and assigns, including their directors, officers, employees and agents, from any claim or obligation based on discrimination, sexual harassment or retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., through the date of the execution of this release. I also agree to keep confidential the amount of monetary relief I will receive from this settlement, except that I may share that information with my attorney or any attorney for the Equal Employment Opportunity Commission, my spouse and my tax preparer(s) or accountant(s).

I have read this release and I execute it voluntarily, without coercion or threat of reprisal.

IN WITNESS WHEREOF, this Release is signed and executed by me on this ____ day of _____, 200__.

(Name)

EXHIBIT B

NOTICE TO EMPLOYEES

This Notice is posted as part of a remedy agreed to pursuant to a Consent Decree entered in the case of *Equal Employment Opportunity Commission (EEOC) v. Eagle-Picher Industries, Inc.*, on file in the United States District Court for the Western District of Missouri, Western Division in Kansas City, Missouri. The agreed remedy as set forth in the Consent Decree includes monetary relief for eight former and current female employees, injunctive relief in the form of job offers, training, and revised anti-discrimination policies and procedures, and an agreement by Eagle-Picher to not discriminate on the basis of sex and to not retaliate against employees who report discriminatory treatment.

Federal law prohibits discrimination against any employee because of race, national origin, color, religion, sex, disability or age (forty and over) with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment. Federal law also prohibits retaliation against persons who complain of or oppose practices they believe are discriminatory on the basis of race, national origin, color, religion, sex, disability or age (forty and over), and it prohibits retaliation against persons who file charges with the EEOC, or who participate in or cooperate with an EEOC investigation.

Eagle-Picher supports and will comply with such federal law in all respects and will not take any action against employees because they have exercised their rights under the law. Specifically, Eagle-Picher will not tolerate discrimination in employment, nor will it tolerate retaliation against any employee for exercising rights under law.

Employees should feel free to report instances of discriminatory treatment to their supervisor, human resources manager, or the general manager at any time. Eagle-Picher has established policies and procedures to promptly investigate any such reports and to protect the person making the reports from retaliation, including retaliation by the person allegedly guilty of the discrimination. Employees are also free to make complaints about employment discrimination to the Office of the Regional Attorney, United States Equal Employment Opportunity Commission, Kansas City Area Office, 400 State Avenue, Suite 905, Kansas City, KS 66101 (Attention: Andrea G. Baran, Senior Trial Attorney) or by telephone to (913) 551-5848.