

Eastern District of Kentucky
FILED
MAR - 1 2010
AT LEXINGTON
LESLIE G. WHITMER
CLERK U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
WAL-MART STORES, INC.)
)
)
Defendant.)

CIVIL ACTION NO.
01-339-KKC

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the "Commission" or the "EEOC") commenced this action against Wal-Mart Stores, Inc. ("Wal-Mart") pursuant to Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 ("Title VII") to address allegations that Wal-Mart subjected a class of females to gender discrimination in hiring when filling open orderfiller positions in Wal-Mart's Distribution Center No. 6097 ("DC 6097"), located in London, Kentucky.

The Commission and Wal-Mart stipulate to the Court's jurisdiction over the parties. Further, the Commission and Wal-Mart desire to resolve Civil Action No. 01-339-KKC without the burden and expense of further litigation. As a result, and based on the pleadings and the record as a whole, the Court finds that: [i] the Court has jurisdiction over the parties and the subject matter of this action; [ii] the terms of this Decree are adequate, fair, reasonable, equitable and just; [iii] this Decree conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights or privileges of any person; [iv] this

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Decree will further the objectives of Title VII and will be in the best interests of the parties, the individuals for whom EEOC seeks relief, and the public; and [v] this Decree resolves all the matters in controversy between the parties as provided in sections one through eleven below. This Decree is entered into by Defendant without admission that any of its acts, past or present, are in violation of any law; and Defendant denies that any of its actions are or were unlawful: accordingly, the Decree shall not constitute an admission, adjudication or finding on the merits of the allegations made in the Commission's Complaint.

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

PART ONE: GENERAL PROVISIONS

Section 101: Scope of Decree

Unless otherwise stated, this Decree applies to DC 6097, located in London, Kentucky, and results in a complete resolution of all claims raised in the Commission's Complaint. EEOC hereby releases Defendant with respect to any and all such claims.

Section 102: Non-Discrimination in Employment

Wal-Mart, its officers, agents, servants, employees, successors in interest and all persons acting in concert with or on its behalf are hereby enjoined from discriminating against females in hiring for orderfiller positions.

Section 103: Non-Retaliation

Wal-Mart, its officers, agents, servants, employees, successors in interest and all persons acting in concert with or on its behalf shall not discriminate against any of its applicants, employees, or former employees, because the individual (a) made a charge or opposed an unlawful employment practice under Title VII or (b) assisted or participated in any manner in this case or any other investigation, proceeding, or hearing under Title VII.

Section 104: Effective Date

The effective date of this Decree shall be the date of the Court's entry of an Order approving the Consent Decree. This Decree does not affect the Commission's right to file suit on charges pending at the administrative level or on any subsequently filed charges, even if those charges allege violations occurring prior to the entry of this Decree.

Section 105: Record Retention

Wal-Mart will maintain all applications and employment records as required by Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and 29 C.F.R. § 1602.14. Further, Wal-Mart will retain, throughout the term of this Consent Decree, all applications for all hourly positions and will maintain applicant flow logs pertaining to all warehouse positions. Wal-Mart may maintain these applications and applicant flow logs in electronic or hard copy, so long as the applications or logs can be produced at any time during the term of the Consent Decree.

PART TWO: POSTING, TRAINING, RECRUITMENT, AND HIRING PROCESS

Section 201: Posting

Wal-Mart will post the Notice of Non-Discrimination Policy attached to this Decree as Appendix A in a conspicuous location visible to applicants and employees at DC 6097 and at each of its warehouse facilities in Kentucky. Said Notices shall remain posted throughout the term of this Decree at DC 6097 and for one year at other Kentucky warehouse facilities.

Section 202: Training

Wal-Mart shall provide training on what constitutes an unlawful employment practice under Title VII. At a minimum, this training will cover the prohibition on making hiring decisions on the basis of sex, Title VII's prohibitions against retaliation, and the obligation to retain applications and applicant flow logs during the term of this Consent Decree. The training will teach the trainees about stereotyping, conscious and unconscious, during the hiring process and how to avoid subjective biases; will instruct trainees on how to, and the need to, record full answers to questions asked during hiring interviews; and will cover how to conduct an "information exchange" and how to combine or weigh information from interviews and job tests to seek objectivity. The training will be given to managers, supervisors and all employees at DC 6097 who screen, hire, interview, or recommend for hire applicants for all warehouse positions, as well as all human resource employees. At a minimum, this training will cover stereotyping, conscious and unconscious, and how to avoid subjective biases.

The training will be conducted within ninety days of the date of entry of this Decree and will be repeated annually thereafter, with appropriate updates and revisions. No fewer than thirty days before each training, Wal-Mart will provide notice to the Commission of the date, time, and place of the training, and will send to the Commission a copy of the training program and all written materials to be used. The Commission may provide reasonable input on the content of the training but shall do so no later than ten days prior to the training. The training will also be given to any individual promoted, transferred or newly hired into one of the positions (management, supervision, human resources)

identified above. These individuals will be trained within thirty days of hire, transfer or promotion, and the training repeated along with other individuals pursuant to the schedule in the this paragraph.

Section 203: Recruitment

To recruit female applicants for orderfiller employment, Wal-Mart will make an effort to place its advertisements for employment in local publications which are geared toward female readers and will indicate in all employment advertising that qualified male and female candidates will be considered on an equal basis for all positions, including orderfiller jobs.

Section 204: Hiring Practice or Process

Wal-Mart will use validated interview questions for the order filler position.

PART THREE: JOB OFFERS AND PLACEMENT

Section 301: List of Individuals

The EEOC will provide to Wal-Mart, on a rolling basis until the termination of this obligation as described in Section 303 below, a list of individuals for instatement, at DC 6097. The list shall include all eligible claimants, as defined in Section 402, who indicate an interest in instatement in a claim form submitted to the Administrator (Section 501). The Commission will provide its initial list to Wal-Mart no later than 180 days after the effective date of this Consent Decree. To the extent practicable, there shall be at least 25 names on the list at all times. Should Wal-Mart learn at any time that an address on this list is incorrect, incomplete, or ineffective, Wal-Mart shall notify the EEOC within 10 days of learning of the defect. The EEOC will promptly notify Wal-Mart of any corrected or updated addresses.

Section 302:--Instatement

For the first 50 openings for an orderfiller position at DC 6097 that Wal-Mart seeks to fill, Wal-Mart will fill the job with an individual on the list provided by the EEOC (Section 301) subject to criteria that is applicable for all new hires in the orderfiller position. For the next 50 openings for an orderfiller position, Wal-Mart will fill every other job with an individual on the list subject to criteria that is applicable for all new hires in the order filler position. Thereafter, Wal-Mart will fill one of every three orderfiller positions with an individual on the list provided by the EEOC (Section 301) subject to criteria that is applicable for all new hires in the orderfiller position. If any individual rejects the offer, Wal-Mart will continue to offer the job to another individual from the list until the job is filled or everyone on the list has rejected the job. An individual so offered a job shall have no fewer than three business days from receipt of such a job offer to accept the offer and upon request shall have no fewer than two weeks to begin the job at Wal-Mart. If an individual rejects a full time job offer, she will be removed from the list and the EEOC will be notified by the reporting procedures (Section 803).

Whenever an individual is hired in compliance with this section from the list provided by the EEOC, that individual shall be hired into the open position at pay no less favorable than the then existing rate of pay for the position.

Section 303: Termination of Rightful Place Hiring

Wal-Mart shall use the instatement list for filling the open orderfiller positions until the expiration of the term of this Consent Decree (Section 1101) or the list of females (Section 301) is depleted. An individual will be removed from the list if she rejects a full time job offer (see Section 302).

Section 304: Nonexclusivity

Nothing in this Consent Decree will preclude or prevent Wal-Mart from taking other steps to recruit or hire any potential class member.

PART FOUR: MONETARY RELIEF FOR CLASS MEMBERS

Section 401: Monetary Relief

Within fourteen (14) days of entry of this Decree, Wal-Mart shall pay \$11,700,000 in monetary relief into a Qualified Settlement Fund account ("QSF") to be established and administered by a third-party settlement claims administrator ("the Administrator"), discussed below. Of this amount, \$8,405,877 shall constitute back pay and the remaining \$3,294,123 shall constitute compensatory damages payable to Eligible Claimants as determined by the EEOC. Wal-Mart shall notify EEOC after they have completed payment into the QSF.

Section 402: Determination of Individuals Who Are Eligible Claimants

EEOC shall use the following minimum eligibility criteria to identify persons to receive monetary awards regarding its hiring discrimination claim: persons who (a) are female; (b) sought employment with Wal-Mart at DC 6097 at any time starting from January 1, 1998 through February 15, 2005 ("relevant time period"); (c) whose applications do not contain any exclusionary criteria as determined by EEOC expert Dr. Barnow;¹ and (d) were denied employment at least once as a result of an application submitted to Wal-Mart during the relevant time period. These individuals are deemed to be "Eligible Claimants." If an applicant fails to respond to the inquiries of the Administrator or indicates

¹ To the extent a class member challenges the basis for her exclusion, a final determination will be made by the EEOC.

that she is not interested in receiving relief, such applicant will be ineligible for relief pursuant to this Consent Decree and will not be included in the proposed notice of distribution. If an applicant cannot be located, even after the conduct of an Accurant search, such applicant shall not be included in the proposed notice of distribution.

Section 403: Mechanism for Challenges to Proposed Distribution

The Commission's determinations including the methodology for allocating the QSF may be subject to review at a fairness hearing conducted by the Court. Should any potential Eligible Claimant object to her exclusion from the group of Eligible Claimants or to the methodology or believe that an error was made in the calculation of her payment under the methodology, she may comment or object to the distribution, in writing, by filing a letter of disagreement with the EEOC (see Section 603). The EEOC will file the letters of disagreement with the Court which will schedule a fairness hearing (Section 604). Wal-Mart may not challenge the Commission's determinations as to the identity of Eligible Claimants, the methodology or individual determinations under the methodology.

Section 404: Distribution of Monetary Relief

Distribution of monetary relief to EEOC's Eligible Claimants shall be made by the Administrator. Within sixty (60) days of entry of the Consent Decree, the EEOC shall provide instructions to the Administrator regarding the criteria for inclusion in applicant sub-classes and corresponding levels of relief. All distributions of monetary relief, both backpay and damages, to and among Eligible Claimants will be determined by the EEOC. Wal-Mart shall not have any participation or role in determining the identities of Eligible Claimants or amounts payable to such persons. Any Eligible Claimant who receives \$100,000 or more shall not be included on the Instatement List pursuant to Section 301.

Section 405: Defendant's Responsibility for Withholding

Defendant shall be responsible for paying its share of all applicable payroll taxes (e.g., FICA) to the QSF.

Section 406: Duration of Period for Payments Made to Eligible Claimants

EEOC shall have six (6) months from the final deadline for receipt of claim forms from potential Eligible Claimants, or within a reasonable time thereafter, within which to file with the Court the proposed notice of distribution to be made to Eligible Claimants from the QSF, as referenced in Section 601 below.

PART FIVE: CLAIMS ADMINSTRATOR

Section 501: Administration of Payments

The QSF, and payments made from the QSF, shall be administered by the Administrator, which shall be Settlement Services, Inc., a qualified third-party settlement administrator that was selected by EEOC and Wal-Mart prior to entry of this Decree. Upon entry of this Decree, the Administrator shall commence its duties in accordance with this Decree and instructions received from EEOC. If EEOC determines that the Administrator cannot perform its duties in a proficient, cost-effective manner, EEOC may file a motion with the Court for appointment of a new Administrator. Prior to filing such motion, EEOC shall confer with Wal-Mart in a good faith effort to identify a new Administrator satisfactory to both parties for presentation to the Court.

The Administrator shall provide the following services pursuant to this Decree: (a) using parameters approved by EEOC and paper applicant materials, assist in identification of Eligible Claimants and applicant sub-classes; (b) locating and corresponding with such persons, including making inquiries as to interest in instatement by mailing a claim form;

(c) receiving and processing telephone and written inquiries, including claim forms, from potential Eligible Claimants; (d) calculating back pay relief using a methodology approved by EEOC; (e) tracking data regarding potential Eligible Claimants and payments made from the QSF; (f) issuing payment to Eligible Claimants from the QSF, making necessary payroll tax withholdings, reporting and remitting taxes, and tracking and accounting for all undeliverable payments; (g) periodic reporting of activities to EEOC; (h) conferring with EEOC regarding administration of the QSF; and (i) any other duties that EEOC reasonably determines are necessary to administer the QSF.

Section 502: Wal-Mart's Obligation to Assist Administrator

Within sixty (60) days of the entry of this decree, Wal-Mart will forward to the Administrator the application packets for each applicant listed on Dr. Barnow's April 30, 2009 class list.

In addition, Wal-Mart shall produce to the EEOC all application packets for the period of January 1, 1998 through April 17, 1998, and January 1, 2005 through February 15, 2005. The application packets shall be produced separated by the time periods described above and in alphabetical order for each time period. The EEOC, with the assistance of the Administrator, shall determine the gender of applicants for these time periods. In addition, the EEOC, with the assistance of the Administrator, shall determine whether the applicants meet the eligibility criteria discussed in Section 402.

Section 503: Expenses of Administrator

Wal-Mart shall pay the first \$250,000 of the expenses of the Administrator incurred in the course of carrying out its duties under this Decree.

Section 504: Communication between Wal-Mart and Administrator

The Administrator shall inform Wal-Mart of the amounts of back pay distributed to each Eligible Claimant from the QSF and all other information necessary for Wal-Mart to pay to the QSF its employer payroll tax liabilities. Wal-Mart shall provide the Administrator with all information and documents necessary to carry out its functions, including information to enable the Administrator to make payroll tax withholdings.

PART SIX: ELIGIBILITY DETERMINATIONS AND FAIRNESS HEARING

Section 601: Notice of Proposed Distribution

Within six (6) months from the final deadline for receipt of claim forms from potential Eligible Claimants, the EEOC will file with the Court a proposed distribution, including the distribution methodology, itemizing the amount of monetary relief for each Eligible Claimant. The Court will then issue a Notice of Proposed Distribution. The Administrator will send, via U.S. mail, a copy of the Notice to each Eligible and Non-eligible Claimant at her last known address along with, in the case of an Eligible Claimant a brief explanation stating how the amount for that individual was calculated. If any notices are returned to the Administrator as undeliverable, the Administrator will attempt to find a more current address for those individuals via an Accurant search. If a more current address is found, the Administrator will re-mail the Notice to the more current address.

Section 602: Eligible Claimants Who Cannot be Located

Any individual for whom the Administrator or the EEOC is unable to find a current address even after an Accurant search will not be eligible for relief under this Consent Decree.

Section 603: Letters of Disagreement

Individuals may submit to the EEOC letters indicating any disagreement with the proposed distribution, including any disagreement they may have with not being listed among the individuals who will receive an award or with the amount of any proposed payment.

This procedure will be the sole means by which individuals may challenge the proposed distribution under this Consent Decree.

Section 604: Fairness Hearing

If no letters of disagreement (Section 603) are submitted to the Court within 60 days of the Administrator's last mailing of the Notice of Proposed Distribution (Section 601), the Court will issue a final order of distribution.

If a letter of disagreement is submitted to the EEOC within 60 days of the Administrator's last mailing of the Notice of Proposed Distribution, the EEOC shall file the letter of disagreement with the Court. The Court will schedule a fairness hearing. The Court will serve notice of the fairness hearing on the parties, all eligible claimants, and any individuals who have submitted a letter of disagreement to the Court. At the fairness hearing, eligible claimants and individuals who have submitted letter objections will have an opportunity to be heard. At the conclusion of the fairness hearing, the Court shall issue an order that approves the EEOC's distribution, corrects errors that are brought to the

Court's attention through the comment and objection process, or establishes a new methodology for distributing the QSF. However, neither the amount of the QSF, nor Defendant's obligations under this Decree shall be increased.

Section 605: Payments to Class Members

The Administrator will pay class members in accordance with the Court's final order of distribution (Section 604). The Administrator will prepare and furnish W 2's and, as appropriate, 1099 MISC forms to the Eligible Claimants.

PART SEVEN: CONTINGENCY FOR REMAINING FUNDS

If for whatever reason any part of the monetary amount of \$11,700,000 pursuant to Sections 401 is unable to be paid as designated above, the remainder shall be split evenly among the Eligible Claimants who receive an award pursuant to the Decree. In the event any part of the monetary amount is unable to be paid after attempting said additional distribution among the Eligible Claimants, the remainder shall be donated to United Way of Laurel County, London, Kentucky.

PART EIGHT: REPORTING REQUIREMENTS

Section 801: Procedure

All reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis, IN 46204-4239.

Section 802: Initial Report

Wal-Mart will submit a report to the EEOC detailing compliance with this Decree within 120 days of the date of the Decree. Wal-Mart will certify to the EEOC's Regional Attorney that it has complied with Sections 201, 204, and 302 of this Decree and will provide the Commission with a current copy of the materials created pursuant to Section 204; specifically, Wal-Mart shall provide the EEOC with a copy of the validated interview questions for the orderfiller position and the validation study of these questions.

Section 803: Annual Reports

Wal-Mart shall submit five annual reports to the EEOC, the first due by November 1, 2010, the others by November 1 of the succeeding years. In each report, Wal-Mart shall include the following information for the previous 12-month period:

- (i) the dates and topics of all training programs offered pursuant to Section 202;
- (ii) a copy of all written materials relied on or disseminated at the training;
- (iii) the name and position of each employee who attended training;
- (iv) any contacts Wal-Mart has had pursuant to Section 203 and any recruiting done, including a copy of all notices posted pursuant to Section 203;
- (v) an explanation of any changes made to recruiting methods or practices;
- (vi) the number of males and females who applied for an orderfiller position or for an unspecified hourly warehouse job and the number of males and females who were hired for an orderfiller positions at DC 6097;
- (vii) a list of individuals identified by name, sex, prior job held, and date of promotion or transfer whom Wal-Mart has promoted or transferred to an orderfiller position at DC 6097;

- (viii) a copy of all correspondence (including text and emails) sent to, or received from, any Eligible Claimant or on behalf of any Eligible Claimant;
- (ix) for each Eligible Claimant, all jobs offered to the individual, which job(s) the individual accepted, which job(s) the individual was placed into, when the individual began the job(s), individual's current employment status with Wal-Mart, and the reason for termination (if applicable) and
- (x) copies of all advertisements for the orderfiller position that were published during the reporting period and the publications in which the advertisements appeared.

Section 804: Other Reports

Wal-Mart shall also report to the EEOC each time that it rejects an individual whom it was required to consider for employment pursuant to Section 302 of the Decree. This report shall include the name of the applicant, the date of rejection, and the reason for the rejection. This report shall be submitted to the EEOC within thirty (30) days from date of rejection.

Wal-Mart will notify the EEOC if it makes any alterations to anti-discrimination training during the term of this Consent Decree. Wal-Mart will send such notification within (30) thirty days of any alterations.

PART NINE: ADMINISTRATION OF THE DECREE

Section 901: Role of EEOC

The EEOC may review compliance with this Decree. As part of such review, the EEOC may inspect the premises, interview employees, and request, examine, and copy documents upon reasonable notice. From time to time, the Commission may request the opportunity to review all, or a portion, of Wal-Mart's applications or applicant flow logs.

Section 902: EEOC Monitoring

In the event that the EEOC alleges that a violation of this Decree has occurred, the EEOC shall give notice to Wal-Mart in writing specifically identifying the alleged violation. Wal-Mart will have (45) forty-five days in which to investigate and respond to the allegation.

PART TEN: COSTS

The Commission and Wal-Mart will bear their own costs and fees of the litigation.

PART ELEVEN: RETENTION OF JURISDICTION

Section 1101: Term of the Decree


The term of this Consent Decree shall be for five (5) years following the date of entry of the Decree.

Section 1102: Retention of Jurisdiction

Upon entry by the Court of the Order under Section 604, the parties agree to submit an Order of Dismissal, dismissing this action with prejudice, with the Court to retain jurisdiction for five (5) years solely for purposes of enforcing the terms of this Decree.

Agreed to this 25th day of February 2010:

FOR WAL-MART
DINSMORE & SHOHL LLP
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Becky Anderson
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Nancy Dean Edmonds
Senior Trial Attorney

ENTERED

Dated:





HONORABLE KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE