

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff)
)
and)
)
JANE DOE,)
)
Plaintiff-Intervenor)
)
v.)
)
BROOKSHIRE GROCERY COMPANY,)
)
Defendant.)

CIVIL ACTION NO. 5:06-cv-00115

CONSENT DECREE

The parties to this Consent Decree are Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) and Defendant Brookshire Grocery Company (“Defendant”). This Consent Decree resolves Plaintiff EEOC’s claims in the above-referenced Civil Action No. 5:06-cv-00115. Plaintiff EEOC initiated its lawsuit pursuant to the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* (“ADA”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

Plaintiff EEOC’s Complaint in this lawsuit asserts unlawful employment practices on the basis of disability, and seeks to provide relief to “Jane Doe,” the individual who filed EEOC Charge No. 310-2005-01872. Plaintiff EEOC alleges that Jane Doe was subjected to discrimination in violation of the ADA when she was required to submit to an unlawful medical exam, and constructively discharged because of her disability, Hepatitis C.

Plaintiff EEOC and Defendant wish to settle the claims raised by Plaintiff EEOC in this case, without the necessity of further litigation, pursuant to the terms delineated in this Decree.

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties, venue is proper, and all administrative prerequisites to the filing of this action have been met. Plaintiff EEOC's Complaint states claims on behalf of the charging party, hereinafter to be referred to as "Jane Doe," which, if proved, would authorize this Court to grant relief against Defendant, pursuant to the ADA.
2. This Consent Decree resolves all issues raised in Plaintiff EEOC's Complaint in this case. Plaintiff EEOC waives further litigation of all issues raised in the above-referenced Complaint. Plaintiff EEOC expressly reserves its right, however, to process and litigate any other charges which may now be pending or may in the future be filed against Defendant.
3. The duration of this Consent Decree shall be two years from the date of its filing with the Court. This Court shall retain jurisdiction of this action during the period of this Consent Decree, and may enter such other and further relief as it deems appropriate to ensure implementation and enforcement of this Consent Decree's provisions. Any violation of this Consent Decree by Defendant and/or its officers, employees, servants, successors, or assigns, shall toll the running of this two year period as of the date of the violation.
4. Defendant shall pay to Jane Doe the sum total of \$50,000, within 14 days of the filing date of this Consent Decree. The payment to Ms. Doe shall be sent to her attorney, Marshall Wood, at the following address: Norton & Wood, P.O. Box. 1808, Texarkana, TX 75504. A copy of any settlement check and any accompanying transmittal documents shall be forwarded to the EEOC to the attention of Tisha Dominguez, Trial Attorney, 300 E. Main, Suite 500, El Paso,

TX 79901. Plaintiff EEOC shall inform Defendant of the name to whom the settlement check should be made after the filing of this Consent Decree.

5. In providing employment references regarding Jane Doe, Defendant shall not make any mention of the filing of Plaintiff EEOC's Complaint, or the underlying charge of discrimination filed by Jane Doe.
6. Under no circumstances will Defendant, its agents, officers, employees, servants, successors or assigns, mention to anyone the fact that Jane Doe has Hepatitis C.
7. Defendant shall, within 30 days of the filing date of this Consent Decree, expunge the personnel file(s) of Jane Doe of any and all documents relating to the EEOC charge which she filed, of any and all documents relating to Plaintiff EEOC's Complaint, and of any and all documents which set out, describe, and/or relate to the fact that Jane Doe has Hepatitis C.
8. Defendant and its agents, officers, employees, servants, successors, and assigns, will not discriminate against any employee on the basis of disability.
9. Defendant will not require food employees who are believed to have Hepatitis C to take a medical exam, based on that belief. Nor will Defendant remove any food employee from his employment position solely because he has Hepatitis C.
10. Defendant will, within 30 days of the filing date of this Consent Decree, revise its Policy Concerning Sick Partners, so that it accurately describes diseases that are communicable through food.
11. Defendant will ensure that, before it removes an employee with a medical condition from his job due to concerns that the employee may transmit that medical condition to co-workers or customers, it has considered the most current information regarding the transmission of that medical condition available from public health authorities.

12. Defendant shall post a copy of Exhibit "A" on all employee bulletin boards and other areas where employees are likely to congregate, within thirty (30) days of the filing date of the Consent Decree and shall leave it posted for the duration of this Consent Decree. Additionally, Defendant shall, for the duration of this Consent Decree, educate all newly hired employees in deli/market operations regarding Exhibit "A."

13. Within one hundred eighty (180) days of the effective date of this Consent Decree, every employee of Defendant who is in a supervisory position over retail market and deli operations shall participate in no less than two (2) hours of training to include information regarding food safety and handling, and the application of the ADA. This training shall explain the law relating to discrimination in employment based on disability, with particular attention to the ADA's improper inquiry provisions, which are codified at 42 U.S.C. §12112(d)(4), and with particular attention to the fact that no Brookshire employee with a medical condition may be required to submit to a medical exam, or subjected to any medical inquiry, solely based on Brookshire's concern that the employee might transmit their medical condition to their customers or their co-workers, unless Brookshire Grocery Company has first considered the most current medical information available from public health authorities regarding the transmission of any such medical condition. The training shall also teach the steps which supervisory employees and human resources personnel must follow, if they receive a complaint from an employee who believes that he or she is being subjected to an inappropriate medical inquiry and/or required to submit to a medical exam which the employee believes to be inappropriate, or from an employee who believes that he is being discharged, and/or threatened with discharge because of a disabling condition. Additionally, the training shall include pertinent information from the following

EEOC guidance document: How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers.

14. Defendant will, within 40 days of the filing date of this Consent Decree, send a written report to the EEOC which: (a) describes the specific items expunged from Jane Doe's personnel file(s); (b) includes a copy of Defendant's revised Policy Concerning Sick Partners; and (c) confirms that the Exhibit "A" is posted, in compliance with this Consent Decree.

15. Defendant will, within 190 days of the filing date of this Consent Decree, furnish to Plaintiff EEOC a written report describing the training attended by its employees who are in a supervisory position over retail market and deli operations, and provide an overview of the training provided, with a listing of materials provided which pertain to partners involved with food handling.

16. Plaintiff EEOC shall have the right to ensure compliance with the terms of this Consent Decree and may examine relevant documents.

17. All reports to the EEOC required by this Consent Decree shall be sent to Tisha Dominguez, Trial Attorney, 300 E. Main, Suite 500, El Paso, TX 79901.

18. The terms of this Consent Decree shall be binding upon Defendant, its agents, officers, employees, servants, successors, and assigns, as to the issues resolved herein.

19. Each party shall bear its own costs, including attorneys' fees incurred in this action.

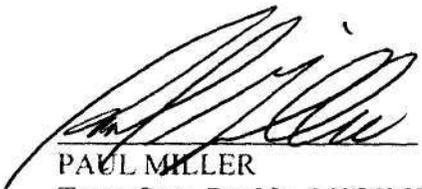
SO ORDERED.

Signed this day of 2007.

CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE

Dated: February 28, 2007

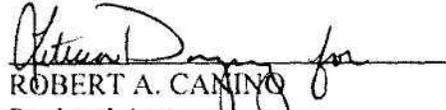
Respectfully submitted,


PAUL MILLER
Texas State Bar No. 14056050

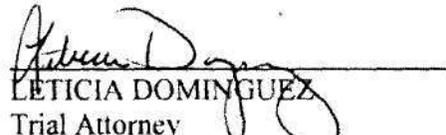
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ATTORNEYS FOR INTERVENOR

EXHIBIT A

NOTICE TO ALL EMPLOYEES

Brookshire Grocery Company is firmly committed to treating employees according to merit, without regard to their race, religion, color, national origin, sex, age, disability, or their having engaged in activity protected by the Americans with Disabilities Act. This policy applies to all employment decisions, and all other terms and conditions of employment. Brookshire Grocery Company will specifically not require any of its employees who have medical conditions to be subjected to a medical inquiry or exam, solely because Brookshire is concerned that the employee might transmit that medical condition to his customers or co-workers, unless Brookshire Grocery Company has first considered the most current medical information available from public health authorities, regarding the transmission of such medical conditions. Brookshire Grocery Company will also not discharge any qualified employee with a disability, because of that employee's disability.

If you believe that you are being discriminated against in any term or condition of your employment because of your race, religion, color, sex, age, disability or national origin, including being inappropriately subjected to a medical inquiry and/or required to take a medical exam which you believe to be inappropriate, or if you believe that you are being discharged, or threatened with discharge, because of your disability, you are encouraged to seek assistance from supervisory personnel, from human resources personnel, or from the United States Equal Employment Opportunity Commission, which is also known as the EEOC. You can find the EEOC office which is closest to you through the EEOC's web site, www.eeoc.gov. You may also reach the EEOC through the following 800 number: 1-800-669-4000. No retaliatory action may be taken against you for seeking assistance from, filing a charge with, or communicating with the EEOC.

In addition to enforcing the provisions of the Americans with Disabilities Act which prohibit employment discrimination against people with disabilities, the EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin; the Age Discrimination in Employment Act, which prohibits employment discrimination against people because they are forty years old or older; the Equal Pay Act; and sections of the Civil Rights Act of 1991.