

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Civil No. 14-2138 (JRT/HB)

v.

BALDWIN SUPPLY CO.,

CONSENT DECREE

Defendant.

INTRODUCTION

Plaintiff Equal Employment Opportunity Commission (“EEOC”) has filed a Complaint *EEOC v. Baldwin Supply Co.*, Civil No. 0:14-cv-02138 (JRT-HB), alleging that Defendant Baldwin Supply Co. (“Defendant”) discriminated against Timothy E. Collins when it terminated his employment because of his disability in violation of Section 102(a) of the ADA, 42 U.S.C. § 12112. Baldwin Supply has filed an Answer to the Complaint, denying all of the EEOC’s allegations.

In reaching this Consent Decree, the EEOC and Defendant, acting by and through their counsel, engaged in negotiations and an exchange of information. The parties have obtained sufficient information to assess reliably the relative merits of the claims and defenses. Throughout this process, the EEOC and Defendant were represented by counsel

knowledgeable in this area of the law.

THEREFORE, upon the consent of the parties, and upon review by the Court of these terms, it is ORDERED, ADJUDGED, and DECREED that the following terms are approved as set forth herein:

SECTION I.

A. This Court has jurisdiction over the parties and the subject matter of this action.

B. This Court shall retain jurisdiction of this action during the duration of this Decree for the purposes of entering all orders, judgments, and decrees that may be necessary to implement the relief and enforcing compliance with the terms provided herein.

SECTION II.

A. The purposes of the ADA and the public interest will be furthered by the entry of this Decree.

B. The terms of this Decree constitute a fair and equitable settlement of this action.

SECTION III.

The EEOC agrees that it will not bring any further claim against Defendant based on the charge of discrimination filed by Timothy E. Collins underlying this lawsuit. By entering into this Decree the parties do not intend to resolve any other charges of discrimination currently pending before the EEOC other than the charge that created the

procedural foundation for the Complaint in this case, and the EEOC does not waive or in any manner limit its right to process or seek relief in any other charge or investigation.

SECTION IV.

As used herein, “Baldwin Supply Co.” shall mean Defendant’s business headquartered at 601 11th Ave. S., Minneapolis, MN 55415, and its Hibbing facility located at 3730 13th Ave. E., Hibbing, MN 55746.

SECTION V.

The Term of this Decree and all obligations hereunder shall be two (2) years from the Effective Date hereof. The Effective Date hereof shall be the date that the District Court approves this Consent Decree.

SECTION VI.

Baldwin Supply Co., and its officers, agents, management (including supervisory employees), successors, assigns and all persons acting in concert with it shall not engage in any form of discrimination against any Baldwin Supply employee based on that employee’s disability.

Baldwin Supply Co. shall not engage in retaliation against any Baldwin Supply employee because such employee has opposed any practice made unlawful under the ADA, made a complaint of disability discrimination, filed a Charge of Discrimination under the ADA, testified or participated in any manner in any investigation, proceeding, or hearing under the ADA, or asserted any rights under this Decree.

SECTION VII.

A. Within sixty (60) days after the Effective Date hereof, Baldwin Supply Co. will review its workplace policies relating to disability discrimination, procedures for employees to complain of disability discrimination, and investigation of discrimination complaints. Baldwin Supply Co. will also review its recordkeeping obligations and determine whether any policies, in its discretion, are inconsistent with the ADA. Baldwin Supply Co. will provide a copy of its policies, and any changes, to the EEOC.

B. On an annual basis for the term of this Consent Decree, Baldwin Supply Co. will train all of its Hibbing-based management personnel on the ADA including its prohibitions against disability discrimination. The training may also include information about other laws prohibiting discrimination in the workplace and about Defendant's equal employment opportunity policies. Such training must be provided by a live, in-person trainer. An agenda for the training, training materials, and a resume or biography relating to the presenter(s) will be provided to the EEOC at least 30 days before each training session. The EEOC will have the opportunity to comment on the agenda and suggest changes to the presenters, the agenda and the materials until a week before each training. The first annual training shall total no less than one hour. Each subsequent training shall total no less than one hour, which may be presented in a one hour session, or as two thirty-minute training sessions.

C. On an annual basis, Baldwin Supply Co. will train all of its Hibbing-based non-management employees, who have worked a total of 40 hours in the preceding three (3) months prior to the training, on their rights under the ADA. Baldwin Supply Co. will

inform employees about the training, and inform employees that they will be paid for their time spent attending the training. Training materials will be placed on Baldwin Supply Co.'s intranet, and employees will be notified of the log-in information. Baldwin Supply Co. will not be responsible for employees who do not attend. The training shall include Defendant's equal employment opportunity policies. The training will also advise employees of their right to file charges of discrimination with the EEOC or other fair employment practices agencies. An agenda for the training, training materials, and a resume or biography relating to the presenter(s) will be provided to the EEOC at least 30 days before each training session. The EEOC will have the opportunity to comment on the agenda and suggest changes to the presenters, the agenda and the materials until a week before each training. Defendant may use a computer module, video or other non-live training curriculum to complete this training. Defendant may choose to train employees under this paragraph during the training for management employees, so long as the trainer explains how the obligations of management employees to respond to complaints of discrimination differ from those of non-management employees.

D. The EEOC shall be notified of the time and date of each scheduled management employee training and one EEOC representative will be entitled to attend the management training sessions held pursuant to this Decree as a silent observer. The EEOC shall be notified of the date and method of the scheduled training for non-management employees.

E. At the beginning of each training session held under this Decree, Defendant's Hibbing Branch Manager Scott Anderson will introduce the trainer and

affirm that Defendant takes its obligations under all EEO laws and prohibitions seriously. Also at this time, Anderson will describe Defendant's policy of non-retaliation for individuals who engage in protected activity under federal EEO laws and identify the name and contact information of management personnel who are responsible for receiving and responding to workplace complaints.

F. Baldwin Supply Co., will develop, implement, or revise its performance evaluation criteria for managers and supervisors to include measures for performance compliance with EEO laws and with its own anti-discrimination and retaliation policies and procedures.

SECTION VIII.

A. If not already posted, Baldwin Supply Co. will post and cause to remain posted the posters required to be displayed in the workplace by EEOC regulation 29 C.F.R. §1601.30 in its facilities in Minneapolis and Hibbing.

B. Baldwin Supply Co. will post the Notice attached as **Exhibit A** at its Hibbing facility. **Exhibit A** will be posted in locations where notices for employees are generally posted, and shall remain in place for the term of this Decree. Defendant shall take steps to ensure that the posted Notice remains unobscured and, during the term of this Decree, will replace any damaged or defaced Notices.

SECTION IX.

A. Baldwin Supply Co. will comply with all recordkeeping obligations under the laws prohibiting discrimination as outlined in 29 C.F.R. §1602 and §1602.14.

Defendant will review and, as necessary in its discretion, revise any document retention

policies, human resources policies, or employee materials to comply with the record-keeping requirements under the ADA. Baldwin Supply Co. will provide a copy of its policies, and any changes, to the EEOC.

B. For the duration of this Decree, Baldwin Supply Co. shall document, and retain all documents associated with any complaint of disability discrimination, whether or not such complaint is found to be meritorious or results in the filing of a charge of discrimination.

C. On an annual basis during the term of this Decree, Baldwin Supply Co. shall submit to the EEOC a certification of compliance with this Decree, including that it has reviewed its workplace policies, revised any policies inconsistent with the ADA, and it has conducted the training of its personnel as required by this Decree. After the first report to the EEOC, Defendant's subsequent annual reports shall document any further revisions or changes to its workplace policies, describe how such revisions are consistent with the ADA, and provide a copy of the revisions to the EEOC.

D. Every six months during the term of this Decree, Baldwin Supply Co. shall provide the EEOC with a list of all complaints of discrimination on the basis of disability made during that period with a description of the allegation made, including: (1) the name of the complaining party; (2) a description of the facts of the complaint; and (3) a description of Defendant's actions in response to the complaint. Upon the EEOC's request, Defendant shall make the underlying documents or records available to the EEOC within ten days of request.

E. Every six months during the term of this Decree, Baldwin Supply Co. shall

provide the EEOC with a list of all employees in the Hibbing branch who requested and were granted a leave of absence based on a medical condition, and did not return to work. In this list, include: (1) the name of the employee; (2) the date the medical leave started; (3) the date the employee was released by his or her doctor to return to work; and (4) state in detail the reason the employee did not to return.

SECTION X.

A. Baldwin Supply Co. agrees to pay fifty thousand dollars and no cents (\$50,000.00) to Timothy E. Collins in resolution of this matter within ten (10) days after the Effective Date hereof, and to provide notice of its payment to Collins to the EEOC.

B. Collins' execution of the release attached as **Exhibit B** will be a condition precedent of his receipt of relief under this Decree.

C. Defendant will provide Collins with appropriate income tax documentation. For purposes of this settlement, Defendant will provide Collins a W-2 income tax form reflecting the payment of fifteen thousand dollars and no cents (\$15,000.00) for Collins' back pay losses. Defendant will make all appropriate withholdings and employer tax contributions applicable to the back pay amount. Defendant or its insurer will provide Collins with a 1099 tax form reflecting the payment of thirty-five thousand dollars and no cents (\$35,000.00) for Collins' compensatory damages. Defendant will provide the EEOC with a copy of the checks and any related correspondence provided to Collins.

SECTION XI.

The terms of this Consent Decree shall be binding upon the present and future directors, officers, managers, agents, successors and assigns of Baldwin Supply Co.

Defendant and any successors of it shall provide a copy of this Decree to any organization or person who proposes to acquire or merge with it, or any successor, prior to the effectiveness of any such asset sale, acquisition or merger. This paragraph shall not be deemed to limit any remedies available in the event of any finding by the Court regarding violation of this Decree.

SECTION XII.

The EEOC will give Baldwin Supply Co. ten (10) business days notice (to Ron Herem via email) of any alleged noncompliance with the terms of the Decree before initiating enforcement actions under this Decree. If Defendant has not remedied the alleged non-compliance or has not satisfied the EEOC that it has complied with the Decree at the end of that period, the EEOC may apply to the Court for appropriate relief.

SECTION XIII.

The EEOC may review Baldwin Supply Co.'s compliance with the aforementioned provisions of this Decree during the term of this Decree upon written notice to Defendant's attorney of record at least five (5) business days in advance of any inspection of Defendant's documents or premises. Upon such notice, Defendant will allow representatives of the EEOC to review its compliance with this Decree by inspecting and photocopying relevant, non-privileged documents and records, interviewing employees and management officials on its premises, and inspecting its premises. Defendant's attorneys may be present.

SECTION XIV.

Each party shall bear that party's own costs and attorney's fees.

By the Court:

IT IS SO ORDERED.

Dated: April 2, 2015

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge

The parties jointly request that the Court approve and enter this Consent Decree.

This 17 day of March, 2015.

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[Baldwin Supply Co. Letterhead]

EXHIBIT A

NOTICE TO EMPLOYEES

This Notice is posted pursuant to a Consent Decree resolving a lawsuit with the United States Equal Employment Opportunity Commission ("EEOC"). The EEOC brought suit against Baldwin Supply Co., alleging that it discriminated against a former employee by terminating his employment because of his disability in violation of the Americans with Disabilities Act (ADA). Baldwin Supply filed an Answer to the lawsuit and denied all of the EEOC's allegations.

The Consent Decree resolving this lawsuit provides a monetary settlement of \$50,000 to former employee Timothy E. Collins and requires training for Baldwin Supply Co. personnel on Federal laws prohibiting disability discrimination, and mandates regular reporting to the EEOC. The Consent Decree also requires that Baldwin Supply Co. to comply with Federal law that prohibits retaliation.

Baldwin Supply Co. will not retaliate against any person who opposes a practice made unlawful under the ADA, who filed a charge of discrimination under the ADA, or who participated in proceedings or asserted rights under the ADA or under the Consent Decree.

If you have a question about the Consent Decree, you should contact the Minneapolis office of the EEOC at 612-335-4040. You can find out more about the EEOC and the laws that it enforces by going to <http://www.eeoc.gov>.

Scott Anderson
Hibbing Branch Manager
Baldwin Supply Co.

EXHIBIT B
RELEASE AND WAIVER

In consideration for \$ _____ paid by Baldwin Supply Co. in connection with the resolution of *EEOC v. Baldwin Supply Co.*, Civil No. 0:14-cv-02138, I waive the right to recover for any claims of discrimination under the Americans with Disabilities Act (ADA) that were the subject of this EEOC lawsuit.