

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,) Case No.: 3:11-cv-03071 MWB
)
v.)
)
QUALITY EGG, LLC,) **CONSENT DECREE**
)
Defendant.)

INTRODUCTION

Plaintiff Equal Employment Opportunity Commission (hereinafter the “Commission” or “EEOC”) has filed a Complaint captioned *EEOC v. Quality Egg, LLC*, Civil No. 3:11-cv-03071 MWB, alleging that Defendant Quality Egg, LLC (“Quality Egg” or “Defendant”), discriminated against Charging Party Diane Smith and Class Member Emily Stevens (n/k/a Emily Hartwig) by subjecting them to unlawful employment practices on the basis of sex, female, including a sexually hostile working environment, in violation of Section 706(f)(1) and (3) and Title VII of the Civil Rights Act of 1964, as amended (“Title VII”).

Defendant filed an answer to the EEOC’s complaint denying the allegations and asserting affirmative defenses including that it acted reasonably to prevent or correct any sexually harassing behavior and that individuals who claim to have been adversely

affected were unreasonable in their failure to take advantage of preventative or corrective opportunities Defendant provided.

In agreeing to the terms of this Consent Decree, the EEOC and Defendant, acting by and through their counsel, engaged in arms' length negotiations. The parties have obtained sufficient information to assess reliably the relative merits of their 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 given approval as set forth herein:

I. JURISDICTION, FINDINGS, AND DEFINITIONS

A. Jurisdiction

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. The 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.

B. Findings

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:

1. The purposes and requirements of Title VII of the Civil Rights Act of 1964 will be carried out by the implementation of this Consent Decree.
2. The terms of this Consent Decree constitute a fair and equitable settlement of all issues raised in the EEOC's Complaint.
3. This Consent Decree is intended to and does resolve claims of the EEOC pursuant to Title VII that are contained in its Complaint. (ECF Document No. 2).
4. Between February and April 2009, the EEOC alleged that Defendant's manager Alejandro "Alex" Amaya subjected a class of female employees, including Diane Smith and Emily Hartwig, to sexual harassment. The Defendant denied the allegations and asserted affirmative defenses.
5. Diane Smith is a former Quality Egg employee who timely filed a charge of discrimination with the EEOC alleging that this conduct violated Title VII of the Civil Rights Act of 1964.
6. The EEOC investigated Ms. Smith's charge of discrimination and found reasonable cause to believe that Defendant subjected Ms. Smith and a class of similarly situated individuals to sexual harassment (which consists only of Emily Hartwig) in violation of Title VII. The Defendant denied the charge of discrimination and disputed the reasonable cause finding.

C. Definitions

1. "Quality Egg" or "Defendant" as used and unless otherwise limited herein, means Defendant Quality Egg, LLC's operations and facilities nationwide.

2. "EEOC" or "Commission," as used herein, means the United States Equal Employment Opportunity Commission.
3. The term "employer" as used herein shall mean an employer as defined and interpreted under Title VII of the Civil Rights Act of 1964.
4. "Effective Date" as used herein shall mean the date upon which the District Court grants final approval of this Consent Decree.

II. SCOPE AND DURATION OF THE CONSENT DECREE

- A. The provisions and agreements contained herein are effective immediately upon the Effective Date of this Decree. This Consent Decree shall remain in effect for a period of two (2) years from the Effective Date. This Consent Decree can only be extended for good cause shown.
- B. The terms of this Consent Decree shall be binding upon the present and future directors, officers, managers and agents of Defendant and upon any entity that acquires Quality Egg through the transfer of its membership units. Defendant shall provide a copy of this Decree to any organization or person who proposes to acquire the membership units of the Defendant or to merge with Defendant prior to the effectiveness of any such 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.
- C. Nothing in this Decree shall be construed to limit or reduce Defendant's obligation to comply fully with Title VII or any other federal employment statute.

D. This Decree in no way affects the EEOC's right to bring, process, investigate or litigate other charges that may currently be pending before it or may later arise against Defendant.

E. Defendant has represented that, as of the Effective Date of this Decree, it is no longer an "employer" within the meaning of Section 701(b) of Title VII of the Civil Rights Act of 1964, 28 U.S.C. 2000e-(b). As a condition of this settlement, EEOC agrees that **Section VI (B-D)** herein only operates to the extent Defendant is an "employer." This Decree is entered into based on the representation of Quality Egg, LLC that, as of June 10, 2011, it has ceased to be an employer. If at any time during the term of this Decree Defendant resumes its status as an "employer," the injunctive relief in **Section VI(D)** shall apply. All other portions of this Consent Decree (except as specifically stated therein) will apply on the Effective Date of the Decree.

III. DECREE ENFORCEMENT

A. If the EEOC has reason to believe that Defendant has breached this Decree, the EEOC may bring a motion to enforce the Decree.

B. The EEOC will give Defendant ten (10) business days notice of any alleged non-compliance 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. The dispute resolution proceedings in this Section do not apply to those cases where the EEOC has determined the need to seek immediate injunctive or other extraordinary relief.

IV. MONETARY RELIEF

A. Charging Party Diane Smith and Class Member Emily Hartwig will recover monetary awards pursuant to this Consent Decree. As a condition precedent to receiving a monetary award under this Decree, Ms. Smith and Ms. Hartwig must sign a release of claims in the forms agreed to. The release form agreed to by Ms. Smith was separately negotiated by her counsel; the EEOC is not a party to such release and did not participate in the negotiation of the terms contained therein.

B. Defendant agrees to pay a total of eighty-five thousand dollars (\$85,000.00) in full resolution of this lawsuit to be distributed to Charging Party Diane Smith and Class Member Emily Hartwig in the following amounts:

Diane Smith	\$60,000.00
Emily Hartwig	\$25,000.00

C. Payments under this section shall be made by Defendant within 45 days of the Court's acceptance of this Consent Decree or within 30 days of the receipt of the executed releases, in the forms agreed to between the parties, whichever is later, and shall be made directly to Charging Party Diane Smith, or her attorney, and Emily Hartwig. In the event Defendant fails to make payments within the time period set forth in this paragraph, this entire agreement shall become null and void. Payments under this Decree are made pursuant to Plaintiff's claim for compensatory damages in amounts reflecting the emotional distress experienced by the recipients. Defendant shall provide the recipients with any and all appropriate tax documentation within the time period required by law.

D. Within three (3) business days of the payment of monetary relief under this Decree, Defendant shall provide a copy of each check and related correspondence to the EEOC.

V. **GENERAL INJUNCTIVE RELIEF**

A. **Non-Discrimination**

1. Quality Egg, LLC, its officers, agents, management (including any and all employees with supervisory authority) and any entity that acquires Quality Egg through the transfer of its membership units, and all those in active concert or participation with them, or any of them, will not:

(a) discriminate against persons on the basis of sex in the hiring, discipline, discharge, termination, or terms and conditions of employment by creating or participating in the creation of a sexually hostile working environment;

(b) engage in or be a party to any action, policy or practice that is intended or is known to them to have the effect of harassing or intimidating any employee on the basis of sex; and

(c) create, facilitate, or permit the existence of a sexually hostile work environment.

2. Quality Egg, LLC, its officers, agents, management (including any and all employees with supervisory authority), and any entity that acquires Quality Egg through the transfer of its membership units, and all those in active concert or participation with them, or any of them, will not engage in, implement or permit

any action, policy or practice with the purpose or effect of retaliating against any current or former employee or applicant of Defendant because he or she has in the past, or during the term of this decree:

- (a) opposed any practice made unlawful under Title VII;
- (b) filed a charge of discrimination alleging such practice with a federal or state law enforcement agency;
- (c) testified or participated in any manner in any investigation (including without limitation, any internal investigation undertaken by Defendant) or proceeding in connection with this case and/or relating to any claim of a Title VII violation;
- (d) was identified as a possible witness, claimant or potential victim of sexual harassment and/or retaliation in this action or the EEOC's administrative investigation preceding this action;
- (e) asserted any rights under this Decree; or
- (f) sought and/or received any relief in accordance with this Decree.

VI. SPECIFIC INJUNCTIVE RELIEF REMEDIES

A. Charging Party and Class Member Specific Relief

1. Defendant will:

- a) In response to any request for an employment reference or inquiry related to Charging Party Diane Smith and Class Member Emily Hartwig, only provide information verifying that she was employed by the Defendant and the time period(s) of such employment; and,

b) To the extent they return to work for Defendant, ensure that Charging Party Diane Smith and Class Member Emily Hartwig are not subject to harassment and/or retaliation.

B. Posting

1. If the Defendant resumes its status as an Employer during the term of this Consent Decree, within ten (10) business days of resuming such status, Defendant 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 at its facilities nationwide.
2. If the Defendant resumes its status as an Employer during the term of this Consent Decree, within ten (10) business days of resuming such status, Defendant will post, and cause to remain posted for the term of this Decree, Exhibit A in a location where employee notices are typically posted.

C. Training

1. If the Defendant resumes its status as an Employer during the term of this Consent Decree, the Defendant will provide annual training on the laws prohibiting employment discrimination for personnel employed in its facilities. Such training will include, at a minimum, the following topics: the subjects of equal employment opportunity rights and responsibilities, harassment, retaliation, and Defendant's policies and procedures for identifying, reporting and investigating complaints of harassment and retaliation.

2. If the Defendant resumes its status as an Employer during the term of this Consent Decree, Defendant will retain an outside trainer who has demonstrable expertise in EEO training to conduct such training. An agenda for each training will be provided to the EEOC at least 30 days before the training. The EEOC will have the opportunity to comment and make changes to the agenda until one week before the training. Each training session shall last no less than two hours and be mandatory for covered personnel.

3. If training is required, the training must be provided to Covered personnel which would include all human resources employees, managers and any other individual whose job duties include receiving and investigating complaints of harassment or unwelcome conduct from people who work in Defendant's facilities.

D. Recordkeeping and Reporting

1. If the Defendant resumes its status as an Employer during the term of this Consent Decree, Defendant will, for the duration of the Decree, record all complaints of unfair treatment, unwelcome or offensive conduct, sexual harassment, retaliation and any other type of discrimination made by any applicant to or employee of Defendant. Such records shall include, at a minimum, the following information:

- (a) the identity of the complaining employee(s) or applicant(s),
- (b) the nature of the allegations,
- (c) the complaining employee's position,

- (d)** the location(s) of the incident,
- (e)** the date of the complaint,
- (f)** the employer's response time,
- (g)** whether an investigation was conducted,
- (h)** a written record of all investigatory steps taken during the investigation,
- (i)** the position and name of the alleged perpetrator(s),
- (j)** the results of the investigation including a description of any determination made and witnesses interviewed,
- (k)** the corrective or disciplinary action taken as a result of the investigation,
- (l)** whether the alleged perpetrator had been previously accused of wrongdoing and/or disciplined for similar conduct,
- (m)** a certification that the results of the investigation were communicated to the complaining party,
- (n)** whether and how any managers, supervisors or other supervisory employees are being held accountable, and
- (o)** the identity of the person(s) who investigated or resolved each complaint.

These records shall be compiled into a quarterly report.

2. If any reports are created pursuant to paragraph VI.D.1., the Defendant will, within 30 days of the end of each calendar quarter, provide the undersigned EEOC counsel a copy of the reports prepared in the preceding quarter.

3. If the Defendant resumes its status as an Employer during the term of this Consent Decree, Defendant will maintain the following records for the term of the Decree:

a) All documents generated in connection with any complaint, investigation, or resolution of a complaint of unfair treatment, unwelcome or offensive conduct, sexual harassment, retaliation and any other type of discrimination;

b) All forms acknowledging employees' receipt of information about Defendant's sexual harassment policies and procedures for complaining about sexual harassment;

c) All documents generated in connection with the counseling, discipline or termination of employees suspected of or determined to have engaged in behavior that violates Defendant's policies against sexual harassment and retaliation;

d) Defendant shall make the aforementioned records available to a representative of the EEOC within ten (10) business days following a written request by the EEOC at any time during the term of this Decree. Within ten (10) business days following such notice, Defendant shall allow representatives of the EEOC to review its compliance with this Decree by

inspecting and photocopying relevant documents and records, interviewing employees and management officials on its premises, and inspecting its premises.

VII. COSTS OF ADMINISTRATION AND IMPLEMENTATION OF CONSENT DECREE

Defendant will bear all costs associated with its administration and implementation of its obligations under this Consent Decree.

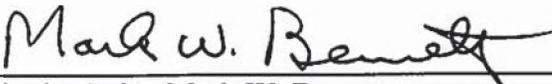
VIII. COSTS AND ATTORNEYS FEES

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

IX. MISCELLANEOUS PROVISIONS

Unless otherwise stated, all notices, reports and correspondence required under this Decree will be delivered to the attention of Nicholas J. Pladson, Trial Attorney, U.S. Equal Employment Opportunity Commission, Minneapolis Area Office, 330 Second Avenue South, Suite 720, Minneapolis, MN 55401.

Date: 6/5/2012



District Judge Mark W. Bennett
United States District Court

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Dated: June 1, 2012

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Dated: June 1, 2012

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Dated: June 1, 2012

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EXHIBIT A

NOTICE TO EMPLOYEES

This Notice is posted pursuant to a Consent Decree resolving a lawsuit brought by the Equal Employment Opportunity Commission (EEOC) against Quality Egg, LLC alleging a violation of Title VII of the Civil Rights Act of 1964.

The Consent Decree resolving the lawsuit provided for the payment of monetary damages to two complaining parties, requires sexual harassment training for management and human resources personnel and requires increased reporting to the EEOC of any complaints of harassment or discrimination.

During the term of the Consent Decree Quality Egg will comply with all federal laws that prohibit employers from creating or allowing harassment or discrimination in the workplace based on any protected characteristic.