

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

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SO. DIST. OF GA.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
HESTER FOODS, INC., d/b/a)
KENTUCKY FRIED CHICKEN)
)
Defendant.)
_____)

CIVIL NO. 3:17-CV-00034-DHB-BKE

CONSENT DECREE

The Equal Employment Opportunity Commission (the "Commission") instituted this action pursuant to Section 107(a) of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12117(a) (hereinafter, the "ADA"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission's Complaint alleged that Defendant Hester Foods, Inc., d/b/a Kentucky Fried Chicken ("Defendant"), discriminated against Cynthia Dunson ("Dunson") by making unlawful medical inquiries, and subsequently terminating her employment because of her disability. Defendant denies each such allegation.

The Commission and the Defendant thereby stipulate to jurisdiction of the Court over the parties and agree that the subject matter of this action is properly before the Court.

The parties have advised this Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation. Such desire to resolve the action shall not be deemed as an admission on the part of Defendant.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the

purpose and provisions of ADA will be promoted and effectuated by the entry of the Consent Decree; and (3) this Consent Decree resolves all matters in controversy between the parties as provided in paragraphs 1 through 17 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant shall not discriminate against any person on the basis of disability or any other protected category within the meaning of ADA.

2. Defendant shall not retaliate against any person because of opposition to any practice made unlawful under the ADA or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing under that statute.

3. Defendant shall pay Cynthia Dunson the sum of Thirty Thousand Dollars (\$30,000) in settlement of the claims raised in this action. Defendant shall make payment by issuing a check payable to Cynthia Dunson. Payment shall be made within thirty (30) days after the Court approves this Consent Decree, and Defendant shall mail the check to Cynthia Dunson at an address provided by the Commission. Within ten (10) days after the check has been sent, Defendant shall send to the Commission, a copy of the check and proof of its delivery to Cynthia Dunson. Neither the Commission nor Defendant make any representation, or assume any responsibility for any tax liability, assessments, interest, penalties and/or costs that Cynthia Dunson may or may not incur on such payments under local, state and/or federal law.

4. Within ten (10) days of the entry of this Consent Decree by the Court, Defendant shall eliminate from the employment records of Cynthia Dunson all documents, entries, or references of any kind relating to the facts and circumstances which led to the filing of EEOC Charge Number 410-2016-00765 and the related events that occurred thereafter, including this

litigation. Within ten (10) days of the entry of this Consent Decree by the Court, Defendant shall change all references in its personnel records for Cynthia Dunson from “terminated” to “voluntarily resigned.” Within fifteen (15) days of the entry of this Consent Decree by the Court, Defendant shall report compliance with this provision to the Commission.

5. Defendant shall provide Cynthia Dunson with a letter of reference using the form attached hereto as Exhibit A. Within ten (10) days of the entry of this Consent Decree by the Court, the original, signed letter of reference shall be provided to Cynthia Dunson at an address provided by the Commission. Cynthia Dunson is free to disseminate the letter to potential employers. Defendant agrees that if it receives any inquiry about Cynthia Dunson from a potential employer, it will provide only the information set forth in the letter of reference in response.

6. Within ninety (90) days of the entry of this Consent Decree by the Court, Defendant shall adopt, implement, and distribute a formal, written anti-discrimination policy, pursuant to federal equal employment opportunity laws, which shall include but not be limited to the following: the requirements of federal equal employment opportunity laws; procedures for reporting discrimination; and a procedure for the prompt investigation of employee complaints of discrimination. Defendant shall distribute to each current employee a copy of the policy within the aforementioned 90-day time period. Within one hundred (100) days of the entry of this Consent Decree, Defendant shall report compliance to the Commission. During the term of this Consent Decree, Defendant shall distribute the policy to all new employees and review it with them at the time of hire.

7. During the term of this Consent Decree, Defendant shall post a copy of the policy described in paragraph 6, *supra*, in all of their restaurant facilities in Dublin, Georgia, in a place

where it is visible to employees. If the policy becomes defaced or unreadable, Defendant shall replace it by posting another copy of the policy. Within 100 days after the Consent Decree is entered, Defendant will post the policy and notify the Commission that it has been posted.

8. During the term of this Consent Decree, Defendant shall provide an annual training program to all of its managers, supervisors and employees in Dublin, Georgia. Each training program shall include an explanation of the requirements of the ADA and its prohibition against retaliation in the workplace. Each training program shall also include an explanation of Defendant's policy referenced in paragraph 6 above, and an explanation of the rights and responsibilities of employees and managers under the policy.

The first training program shall be completed within one hundred twenty (120) days after entry of this Consent Decree by the Court. Each subsequent training program shall be conducted at approximately one-year intervals. Within ten (10) days after completion of each training program, Defendant shall certify to the Commission the specific training which was undertaken and shall provide the Commission with a roster of all employees in attendance.

9. Beginning within thirty (30) days after the entry of this Consent Decree by the Court, and continuing for one year, Defendant shall conspicuously post the attached Employee Notice, marked Exhibit B, hereby made a part of this Consent Decree, in a place where it is visible to employees at its Dublin, Georgia, restaurant facilities. If the Notice becomes defaced or unreadable, Defendant shall replace it by posting another copy of the Notice. Within forty-five (45) days after entry of this Consent Decree, Defendant shall notify the Commission that the Notice has been posted pursuant to this provision.

10. During the term of this Consent Decree, Defendant shall provide the Commission with reports at one year intervals, with the first being due six (6) months after approval by the

Court of this Consent Decree. This report will advise as to whether any individual's employment status has been changed in any respect (for example, including but not limited to, termination, firing, demotion, promotion, or to part-time from full-time status) due to Defendant learning of an individual's disability or medical impairment and/or their use of a prescription medication since the prior report. For each individual, whose employment status has changed as described here, the Defendant will provide a detailed statement explaining the reason for the change.

In the event, there is no activity to report pursuant to this paragraph, Defendant shall send the Commission a "negative" report indicating no activity.

11. The Commission may review compliance with this Consent Decree. As part of such review, the Commission may, after seventy-two-hours of notice to Defendant, inspect Defendant's Dublin, Georgia facilities, interview employees and examine and copy documents.

12. If at any time during the term of this Consent Decree, the Commission believes that Defendant is in violation of the Consent Decree, the Commission shall give notice of the alleged violation to Defendant. Defendant shall have fifteen (15) days in which to investigate and respond to the allegations. Thereafter, the parties shall then have a period of fifteen (15) days or such additional period as may be agreed upon by them, in which to engage in negotiation regarding such allegations before the Commission exercises any remedy provided by law.

13. The term of this Consent Decree shall be for two years from its entry by the Court.

14. All notices to Defendant by the Commission pursuant to this Consent Decree shall be sent by electronic mail to: **Minton Hester at hesterfoodsinc@bellsouth.net**. If at any time during the term of this Consent Decree Defendant's designated point of contact changes, Defendant shall notify the Commission and provide contact information for a new designated

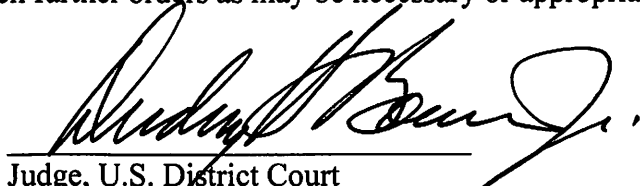
point of contact within fifteen (15) days of the change.

15. All reports or other documents sent to the Commission by Defendant pursuant to this Consent Decree shall be sent by electronic mail to: (1) EEOC-ATDO-decree-monitoring@eeoc.gov; or (2) if by regular mail to – Antonette Sewell, Regional Attorney, Equal Employment Opportunity Commission, Atlanta District Office, 100 Alabama Street, SW, Suite 4R30, Atlanta, Georgia 30303.

16. Each party shall bear its own costs and attorney’s fees.

17. This Court shall retain jurisdiction of this cause for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.


Date



Judge, U.S. District Court
Southern District of Georgia

[on Company letterhead]

To Whom It May Concern:

Hester Foods, Inc., operates two Kentucky Fried Chicken franchise restaurants in Dublin, Georgia. Cynthia Dunson was hired as a crew member in March 2015. Ms. Dunson was promoted to the position of Shift Leader shortly after hiring and remained employed with Hester Foods until July 2015. As a crew member and shift leader, Ms. Dunson was responsible for customer service and food preparation.

Sincerely,

Minton Hester, Owner



EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**)
)
)
Plaintiff,)
)
v.)
)
HESTER FOODS, INC., d/h/a)
KENTUCKY FRIED CHICKEN)
)
Defendant.)
_____)

CIVIL NO. 3:17-CV-00034-DHB-BKE

NOTICE

1. This Notice to all employees of Hester Foods, Inc. d/b/a Kentucky Fried Chicken is posted pursuant to an agreement with the U.S. Equal Employment Opportunity Commission as part of a Consent Decree.

2. Federal law requires that employers not discriminate against any employee or applicant for employment because of the individual's race, color, religion, sex, national origin, age (40 or older) or disability. Federal law also prohibits retaliation against employees because they have opposed unlawful employment discrimination, or because they gave testimony, provided assistance in, or participated in an employment discrimination investigation, proceeding, or hearing, or otherwise asserted their rights under the laws enforced by the EEOC.

3. Hester Foods, Inc. d/b/a Kentucky Fried Chicken will comply with such federal laws in all respects. Hester Foods, Inc. d/b/a Kentucky Fried Chicken will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law, or given testimony, assistance, or participation in any investigation, proceeding, or hearing conducted by the U.S. Equal Employment Opportunity Commission.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact their local U. S. Equal Employment Opportunity Commission field office for the purpose of filing a charge of employment discrimination. To locate the nearest field office, contact:

Equal Employment Opportunity Commission
131 M. Street, NE
Washington, DC 20507
TEL: 1-800-669-4000
TTY: 1-800-669-6820

This Notice will remain posted for at least one (1) year by agreement with the U.S. Equal Employment Opportunity Commission. DO NOT REMOVE THIS NOTICE UNTIL: _____, 2018.

