

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
CITY OF PHILADELPHIA, PENNSYLVANIA,)
)
)
Defendant.)
)
)

CIVIL ACTION NO. 17-514

CONSENT DECREE

I. Background

1. This Consent Decree resolves a civil action brought by Plaintiff United States against Defendant, City of Philadelphia (“City”), to enforce the provisions of Title I of the Americans with Disabilities Act of 1990, as amended, (“ADA”), 42 U.S.C. §§ 12111-17, and its implementing regulation, 29 C.F.R. Part 1630. The United States alleges that the City discriminated against David Moore on the basis of disability, in violation of 42 U.S.C. §§ 12112(a) and (b)(5).
2. In its Complaint, the United States alleges that the City discriminated against David Moore by failing to provide him with a reassignment as a reasonable accommodation when he could no longer perform his job because of a heart condition; and by subsequently terminating him as an employee.
3. This matter was initiated by a charge filed by Mr. Moore (Charge No. 530-2012-02470) with the United States Equal Employment Opportunity Commission (“EEOC”). The EEOC investigated the charge and found reasonable cause to believe that the allegations of discrimination on the basis of disability were true. After the EEOC’s attempts at conciliation failed, the EEOC referred the charge to the United States Department of Justice (“the Department”).
4. The United States and the City (collectively, “the parties”) agree that it is in the parties’ best interests, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms. Accordingly, the parties agree to the entry of this Consent Decree without trial or further adjudication of any issues of

fact or law raised in the United States' Complaint.

Accordingly, the parties hereby agree and the Court APPROVES, ENTERS AND ORDERS the following:

II. Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331, 1343(a), and 1345. The parties agree that venue is appropriate pursuant to 42 U.S.C. §§ 2000e-5(f) and 28 U.S.C. §1391.
6. The United States has authority to bring this civil action to enforce Title I of the ADA. 42 U.S.C. §§ 12117(a).
7. The City of Philadelphia, Pennsylvania, is a person within the meaning of 42 U.S.C. §§ 12111(7) and 2000e(a), an employer within the meaning of 42 U.S.C. §§ 12111(5) and 2000e(b), and a covered entity within the meaning of 42 U.S.C. § 12111(2).

III. General Injunctive Relief

8. The City, by and through its officials, agents, employees, and all persons in active concert or participation with the City in the performance of employment or personnel functions, will not discriminate against any employee or applicant for employment on the basis of disability, actual or perceived, in violation of Title I of the ADA.
9. The City will not retaliate against any individual because such individual has opposed any act or practice made unlawful by Title I of the ADA or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title I of the ADA. Likewise, the City will not retaliate against or coerce any individual who tries to exercise his or her rights under this Decree or engages in protected activity under Title I of the ADA.

IV. Policies and Procedures

10. Within seventy-five (75) days from the effective date of this Decree, the Street's Department will revise its policies and procedures ("Policies") to explicitly and prominently state that employees who can no longer perform the essential functions of their position due to a disability will be reassigned to a vacant position if they are qualified for it. The Policies will comply with Title I of the ADA and be consistent with the EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (<http://www.eeoc.gov/policy/docs/accommodation.html>) and Fact Sheet, Employer-Provided Leave and the Americans with Disabilities Act (https://www.eeoc.gov/eeoc/publications/ada-leave.cfm#_ednref8), related to

reassignment to a vacant position as a reasonable accommodation, including but not limited to the following provisions:

- (a) An employer must reassign an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position.
 - (b) If there is no vacant equivalent position, the employer must reassign the employee to a vacant lower-level position for which the individual is qualified.
 - (c) Assuming there is more than one vacancy for which the employee is qualified, the employer must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc. If it is unclear which position comes closest, the employer should consult with the employee about his/her preference before determining the position to which the employee will be reassigned.
11. Within sixty (60) days from the effective date of this Decree, the Street's Department will send copies of its proposed Policies to the United States for review and approval.
 12. The United States will notify the Street's Department in writing whether it approves or disapproves of the Street's Department's proposed Policies. If the United States disapproves of the Street's Department proposed Policies, the United States may offer alternative language or other changes to the Policies. Failure of the United States to provide alternative language or changes to the proposed Policies as set forth in this paragraph does not relieve the Street's Department from the responsibility to draft and implement employment policies and procedures that comply with the ADA and this Decree.
 13. Within ten (10) days from the date that the United States approves the Street's Department's Policies set forth in Paragraph 10, the Street's Department will implement the Policies.

V. Training

14. Within one hundred and eighty (180) days of the entry of this Decree, and annually for the term of this Decree, the Street's Department will provide mandatory training on all aspects of Title I of the ADA ("ADA Training") to all current supervisors, administrators, officers, and employees who participate in making personnel decisions related to ADA issues. The training will be conducted live (but may be attended remotely by videoconference), last for at least two (2) hours, and will include, at minimum, a discussion of: (a) the nondiscrimination requirements of Title I of the ADA; (b) the Street's Department's procedures for determining whether an

applicant or employee with a disability should be granted a reasonable accommodation; and (c) the availability of reassignment as a reasonable accommodation.

15. The Street's Department will select a qualified individual or group of individuals to conduct the ADA Training. At least thirty (30) days before the date that the Street's Department intends to conduct the ADA Training, the Street's Department will submit to the United States for review and approval: (a) the name(s) and curriculum vitae of the instructor(s) that the Street's Department has selected for ADA Training; (b) copies of the proposed training curriculum; and (c) a list of all persons, by name and job title, who will be required to attend the ADA Training.
16. The United States will notify the Street's Department in writing whether it approves or disapproves of the Street's Department's proposed instructor(s) and training curriculum. The United States may make changes to the proposed training curriculum.
17. Within thirty (30) days from the date that the United States approves the ADA Training curriculum and instructor(s), the Street's Department will conduct the ADA Training. The Street's Department must maintain attendance logs with the date of the ADA Trainings and the names and job titles of all employees who attend the training.
18. Within forty (40) days of the start of their position, and annually for the term of this Decree, the Street's Department will provide ADA Training to newly hired or promoted supervisors, administrators, officers, and employees who participate in making personnel decisions. The Street's Department must maintain attendance logs with the date of the trainings and the names and job titles of all employees who attend the training.

VI. Record Keeping and Reporting

19. Within twenty (20) days from the effective date of this Decree, the Street's Department will keep records on all reasonable accommodation requests made by applicants for employment and employees. At minimum, these records will include the applicant's or employee's: (a) full name; (b) job title or job title applied for; (c) type of reasonable accommodation request; (d) reason for the request; (e) nature of work limitations; and (f) the Street's Department's response to the reasonable accommodation request. For all applicants or employees granted reasonable accommodations, the Street's Department will also keep records of the individual's reasonable accommodation, location of the assignment (if reassigned), and duration of the reasonable accommodation.
20. Six (6) months after the entry of this Decree, and every six (6) months thereafter during the term of this Decree, the Street's Department must provide a written report

(“Report”) to the Department regarding its efforts to comply with this Decree. The Report will include, for the preceding six-month period:

- (a) A detailed explanation of the Street’s Department’s efforts to comply with the requirements of the Decree, including the ADA Training requirements for the six-month reporting period. To the extent the Street’s Department experienced any difficulties in its efforts to comply with the Decree during the six-month reporting period, those difficulties should be detailed along with a proposed plan to address any such difficulties;
 - (b) Copies of the attendance logs maintained for the ADA Trainings; and
 - (c) Notification regarding any lawsuit, written complaint, charge, or grievance alleging that the Street’s Department has violated Title I of the ADA. Such notice will include, at a minimum: i) a description of the nature of the allegations; ii) the name of all persons involved, including the individual making the allegations; and iii) all documentation possessed by the Street’s Department relevant to the request or allegations, including the Street’s Department’s response.
21. All information provided pursuant to the above reporting requirements under this Decree should be provided to the Department via overnight courier service to: Rebecca B. Bond, Chief, DJ No. 205-62-11, Attn: Nabina Sinha, Trial Attorney, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, N.W., Fourth Floor, Washington, D.C. 20005, or via electronic mail to nabina.sinha@usdoj.gov. All confidential information provided to the Department shall be maintained in a confidential manner, and shall be used only for purposes of implementing this Decree, unless otherwise authorized by law.

VII. Specific Remedial Relief

22. Within sixty (60) days of the entry of this Consent Decree, the City will pay Mr. Moore a total of \$90,000, which includes:
- (a) \$42,500.00, as back pay. This monetary amount will be subject to any applicable federal, state, and local taxes, in addition to other payroll tax withholding deductions, and the City will issue an IRS Form W-2 to Mr. Moore for this amount. The City will separately pay the employer’s share of all federal, state, and local taxes due on the monetary award, *i.e.*, the employer’s payments will not be deducted from the monetary award to Mr. Moore.
 - (b) \$2,500.00, as accumulated interest on the back pay. This amount will not be subject to withholding deductions, and the City will issue an IRS Form 1099-INT to Mr. Moore for this amount.

- (c) \$45,000.00 as compensatory damages. This amount is not subject to wage withholding deductions, and the City shall issue an IRS Form 1099 to Mr. Moore for this amount.
- 23. Within thirty (30) days of the effective date of this Consent Decree, the City will offer to reinstate Mr. Moore as an employee with all rights and privileges associated with employment with the City, including but not limited to:
 - (a) Retroactive seniority;
 - (b) Restoration of leave to reflect no lost time during Mr. Moore's unpaid leave status in calendar year 2011;
 - (c) Adjustment of Mr. Moore's retirement date, with all associated rights and benefits, including matching retirement contributions, to reflect no lost time during his unpaid leave and separation from employment between June 1, 2012 to the present.
- 24. Within forty-five (45) days of the entry of this Consent Decree, the City will send Mr. Moore a copy of this Consent Decree, along with a letter and Release of Claims Form (attached as Exhibits 1 and 2). In order to accept the relief offered by the City, Mr. Moore must execute and return the Release of Claims Form (Exhibit 2) to the City within sixty (60) days of his receipt of the City's letter (Exhibit 1).
- 25. The City will send the United States a copy of Exhibits 1 and 2 when it sends them to Mr. Moore.
- 26. If Mr. Moore accepts the City's remedial relief offer outlined in Paragraph (22) above, the City will pay the monetary sum of \$90,000.00 within sixty (60) days of receipt of his signed Release of Claims Form and Election Form. Acceptance of the monetary relief is independent of, and not contingent upon, Mr. Moore's response to the City's offer of reinstatement.

VIII. Implementation and Enforcement

- 27. If any term of this Consent Decree is determined by any court to be unenforceable, the other terms of this Consent Decree will nonetheless remain in full force and effect.
- 28. The United States may review the City's compliance with this Consent Decree at any time. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by the City, whether willful or otherwise, to perform in a timely manner any act required by this Consent Decree or otherwise to

act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

29. Failure by the United States to enforce any provision of this Consent Decree will not be construed as a waiver of the United States' right to enforce any provision of this Decree.
30. The time frame for completion of any act required by this Decree may be modified with the mutual written consent of the Parties, except that the termination date may only be extended by Order of the Court.
31. This Consent Decree is binding upon the City, its departments, agents, and employees.
32. A signatory to this document in a representative capacity for the City represents that he or she is authorized to bind the City to this Consent Decree.
33. This Consent Decree constitutes the entire ordered agreement between the United States and the City on the matters raised herein and no other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this Consent Decree, including its attachments, is enforceable.
34. This Consent Decree is not intended to remedy any other potential violations of the ADA or any other law by the City that is not specifically addressed in this Consent Decree.
35. This Consent Decree does not affect the City's continuing responsibility to comply with all aspects of the ADA.
36. A copy of this Consent Decree or any information contained herein may be made available to any person, and the City will provide a copy of this Consent Decree to any person upon request.
37. The parties agree that, as of the date of entry of this Consent Decree, litigation is not "reasonably foreseeable" concerning the matters alleged in the complaint and described in this Consent Decree. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to these matters, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Decree.

38. For the term of this Consent Decree, the City will preserve all records related to this Consent Decree.
39. The effective date of this Consent Decree is the date the Court enters the Decree.
40. During the term of this Decree, this Court will retain jurisdiction over this action to enforce the terms of the Decree, including resolving any disputes, issuing any orders necessary to implement the relief provided for in this Decree, or extending the term of the Decree if the City fails to comply with the provisions herein.
41. Each party will assume its own costs and expenses, including attorneys' fees.
42. This Decree will terminate, and this action will be dismissed without further order of this Court, three (3) years from the effective date of this Decree.

SO ORDERED this _____ day of _____, 2017.

District Judge
Eastern District of Pennsylvania

AGREED AND CONSENTED TO:

Anne S. Raish, Acting Chief
Kevin J. Kijewski, Deputy Chief
Civil Rights Division

Christopher Newman

Christopher Newman
Deputy Commissioner
City of Philadelphia
Department of Streets
1401 JFK Blvd., Rm 780
Philadelphia, PA 19102
(215) 686-5465

1-31-17

Date

Nabina Sinha

Nabina Sinha, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 616-2730

1-30-17

Date

Exhibit 1

BY OVERNIGHT MAIL

Mr. David M. Moore
[INSERT ADDRESS]

Re: United States v. City of Philadelphia,
Civil Action No. [INSERT CASE NUMBER] (E.D. Penn.)
EEOC Charge # 530-2012-02470

Dear Mr. Moore:

The United States District Court for the Eastern District of Pennsylvania has entered a Consent Decree agreed to by the United States and the City of Philadelphia (“the City”) to resolve the charge you filed in this matter. A copy of the Consent Decree is enclosed.

Under the Consent Decree, the City is offering you a payment of \$90,000.00. In order to accept the City’s offer, you must sign and notarize the enclosed Release of Claims Form and return it to the City within sixty (60) days of your receipt of this letter. You may return the forms by mail to:

Melissa T. Knight
Legal Counsel for the
City of Philadelphia
Law Department
1515 Arch Street - 16th floor
Philadelphia, PA 19102

The remedial relief is offered to you on the following condition: if you accept it, you will be required to release the City from all claims you may have against it, arising out of EEOC Charge # 530-2012-02470 and United States v. City of Philadelphia, Civil Action No. [INSERT CASE NUMBER] filed in the U.S. District Court for the Eastern District of Pennsylvania. Within thirty (30) days of the City’s receipt of your executed Release of Claims Form, the City will send you a check in the amount of \$90,000.00.

If you have any questions concerning this letter or the Consent Decree, you may contact me at (202) 616-2730.

Sincerely,
Nabina Sinha

Enclosure: Copy of Executed Consent Decree; Release of Claims Form

Exhibit 2

RELEASE OF CLAIMS FORM

U.S. v. City of Philadelphia

Civil Action No. [INSERT CASE NUMBER] (E.D. Penn.)

EEOC Charge # 530-2012-02470

For and in consideration of the remedial relief made by the City of Philadelphia, ("the City") under the provisions of the Consent Decree entered by the United States District Court for the Eastern District of Pennsylvania in U.S. v. City of Philadelphia [INSERT CASE NUMBER], I, David Moore, hereby release and forever discharge the City, and its current, past, and future officials, employees, agents, successors, assigns, and administrators, of and from any legal and equitable claims, actions, causes of action, suits, controversies, damages, and demands whatsoever that I had, now have, or hereafter may have arising out of U.S. v. City of Philadelphia [Civil Action No] filed in the United States District Court for the Eastern District of Pennsylvania and EEOC Charge No. 530-2012-02470.

This Release constitutes the entire agreement between me and the City. This Release will be considered null and void in the event that the City fails to offer the relief provided for in Paragraphs (22)-(23) of the Consent Decree within thirty (30) days of receipt of this executed Release. I am also aware that I am encouraged to seek assistance from a tax advisor regarding any and all tax liabilities from the monetary portion of this settlement.

I have read this Release and understand the contents thereof and I execute this Release of my own free act and deed. I also acknowledge that a copy of the Consent Decree has been made available to me and that I can procure an attorney of my choice to review all terms and conditions with me. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on this _____ day of _____, 2017.

Signature: _____
David M. Moore