

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

 UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ARIZONA DEPARTMENT OF)
 CORRECTIONS,)
)
 Defendant.)
)

CV-12-127-TUC-DCB

CONSENT DECREE

I. INTRODUCTION

This action was brought by the United States against the Arizona Department of Corrections (“ADC”) to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended (“Title VII”), following receipt by the United States from the Equal Employment Opportunity Commission (“EEOC”) of a charge of discrimination filed by Susan Peterson against ADC. This Court has jurisdiction of the action under 42 U.S.C. §2000e-5(f) and 28 U.S.C. §1345.

In its complaint, the United States alleges ADC subjected Ms. Peterson to discrimination on the basis of her sex, in violation of Section 703(a) of Title VII, among other ways, by:

- (a) creating and/or maintaining a hostile work environment based on sex that adversely affected the terms, conditions, and privileges of Ms. Peterson’s employment; and
- (b) failing or refusing to take appropriate action to remedy the effects of the

discriminatory treatment.

ADC denies it has discriminated against Ms. Peterson in violation of Title VII.

Nevertheless, the United States and ADC, desiring that this action be settled by an appropriate Consent Decree (“Decree”), and to avoid the burden and risks of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. This Decree, being entered into with the consent of the United States and ADC, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by ADC or a finding of wrongdoing or violation of any applicable federal law or regulation.

In resolution of this action, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:

II. EQUITABLE RELIEF

1. ADC, by and through its officials, agents, employees, and all persons in active concert or participation with ADC in the performance of employment or personnel functions, shall not engage in any act or practice that discriminates against any employee or applicant on the basis of sex in violation of Title VII.
2. ADC shall not retaliate against or in any way adversely affect the terms and conditions of employment of any person, including Ms. Peterson, because that person has opposed any practice he or she believes in good faith violates Title VII; filed a charge with the EEOC or any other state or local agency charged with enforcement of anti-discrimination laws pertaining to employment; or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII, this case, or this Decree.
3. Within thirty (30) calendar days from the date of entry of this Decree, ADC shall

designate a person (the “EEO Officer”) who shall have responsibility to receive reports of complaints from supervisory employees and to ensure that the provisions of this Decree requiring ADC to revise its sexual harassment policies and to conduct sexual harassment training are fully implemented and complied with. The EEO Officer shall be an employee who reports directly to ADC’s Division Director of Support Services. All employees of ADC shall also be notified in writing that, in addition to other people who are authorized to receive sexual harassment complaints, they may submit complaints of sexual harassment, either orally or in writing, directly to the EEO Officer.

4. Within sixty (60) days from the date of entry of this Decree, ADC shall submit to the United States proposed modifications to its policies regarding sexual harassment for the United States to review and approve. These modifications shall include:

(a) a description of the manner in which an employee of ADC may make a complaint of sexual harassment;

(b) a clear statement that a complaint of sexual harassment may be written or oral and may be made to any supervisor;

(c) a statement that an employee who files a sexual harassment complaint (“complaining party”) is not required to confront the alleged sexual harasser;

(d) a statement that all complaints of sexual harassment will be promptly and objectively investigated by an investigator from outside the complaining party’s and alleged sexual harasser’s assigned work areas;

(e) a statement that ADC will provide the results of its investigation into a complaint of sexual harassment to the complaining party in writing as soon as possible, but in no event later

than ninety (90) workdays after the filing of the complaint unless a written explanation is provided to the complaining party as to the reason(s) that the investigation could not be completed within ninety (90) workdays;

(f) a statement requiring any supervisory employee who receives an oral or written complaint of harassment from an employee to report the complaint to ADC's EEO Officer within five (5) business days of receiving such a complaint, and that supervisory employees who fail to meet this requirement are subject to discipline;

(g) a statement requiring any supervisory employee who has not received an oral or written complaint of harassment from an employee but nonetheless has actual knowledge of what he or she believes may contribute to a sexually hostile work environment to report his or her knowledge to ADC's EEO Officer within five (5) business days of obtaining such knowledge, and that supervisory employees who fail to meet this requirement are subject to discipline;

(h) a statement that within twenty (20) days of the EEO Officer's receipt of a complaint of harassment ADC shall inform the complaining party of such receipt and that the complaint will be promptly investigated;

(i) a statement that an employee who opposes conduct he or she believes in good faith violates Title VII, which includes but is not limited to lodging a complaint with ADC and/or filing an EEOC charge, and/or participates in any manner in an investigation or proceeding or hearing under Title VII, shall not be subjected to retaliation; and

(j) a statement that complaints of sexual harassment will be kept confidential to the greatest extent possible.

5. For purposes of this Decree, “supervisory employee” or “supervisor” is defined to include: (a) any employee who possesses the authority to direct the work activities of at least one other employee and (b) any employee who has the authority to hire, fire, promote, transfer, or discipline another employee.

6. Within thirty (30) calendar days from the date upon which the United States notifies ADC that it has approved ADC’s proposed policies regarding sexual harassment (the “Revised Policies”), ADC shall disseminate the Revised Policies among all of its employees by making them available for the employees to read in all buildings and facilities used for providing equal employment opportunity information, by emailing them to all employees with ADC email addresses, and publishing them on any internet or intranet website used by ADC for posting notices or policy changes for or concerning ADC.

7. ADC shall ensure that each new employee receives a copy of the Revised Policies within fourteen (14) days of the new employee’s hire. Each new employee shall acknowledge in writing or electronically that she or he has read and understands the Revised Policies, and such acknowledgments shall be retained in the employee’s personnel file or electronically.

8. Within ninety (90) calendar days from the date upon which the United States approves the Revised Policies, ADC shall provide, at its own cost, mandatory training on the law of equal employment opportunity and prohibited harassment and retaliation to all employees at the Arizona State Prison Complex in Tucson (“ASPC-Tucson”), and shall provide such training on an annual basis thereafter. The training shall, at a minimum, include an explanation of the Revised Policies. The training shall also inform supervisors that they could face formal discipline if (a) they do not submit all employee complaints of sexual harassment to the EEO

Officer or (b) they have actual knowledge that an employee has experienced sexual harassment but fail to report such knowledge to the EEO Officer. ADC will select, with the concurrence of the United States, a qualified individual or group of individuals to conduct the training outlined in this paragraph. The United States' concurrence will not be unreasonably withheld. All training materials must be provided to the United States for its review and approval at least thirty (30) days before the mandatory training. All persons who undergo the training shall sign an acknowledgement of attendance at the training. ADC will retain all signed or electronically noted acknowledgments for the duration of this Decree.

9. Within one hundred eighty (180) calendar days from the date upon which the United States approves the Revised Policies, ADC shall provide, at its own cost, mandatory training on the investigation of sexual harassment complaints to all employees who conduct such investigations, and shall provide such training on an annual basis thereafter. The training shall, at a minimum, explain that anyone who interviews a witness during an investigation must inform the witness that, in accordance with ADC policy and federal law, ADC will not tolerate any retaliation or reprisals against the witness for participating in the investigation and/or honestly answering questions during the investigation. ADC will select, with the concurrence of the United States, a qualified individual or group of individuals to conduct the training outlined in this paragraph. The United States' concurrence will not be unreasonably withheld. All training materials must be provided to the United States for its review and approval at least thirty (30) days before the mandatory training. All persons who undergo the training shall sign an acknowledgement of attendance at the training. ADC will retain all signed or electronically noted acknowledgments for the duration of this Decree.

10. ADC shall retain during the term of this Decree all documents, in paper or electronic form (including e-mail), that come into its possession relating to complaints (formal and informal) made by employees concerning sexual harassment or relating to the training mandated under this Decree.

11. During the term of the Decree, ADC shall report to the United States (a) any internal complaint of employment discrimination based on sex (including sexual harassment) made by any employee or applicant for employment at ASPC-Tucson within twenty (20) days of the submission of the internal complaint, and (b) any complaint made by any employee or applicant for employment at any ADC facility to an external agency, such as the EEOC or any other state or local agency charged with enforcement of anti-discrimination laws pertaining to employment, within twenty (20) days of ADC's receipt of the complaint filed with an external agency.

12. The United States may review compliance with this Decree at any time. As part of that review, ADC shall provide copies of any documents relevant to its compliance with this Decree upon the request of the United States.

III. INDIVIDUAL RELIEF

13. Without admitting the allegations in the United States' Complaint, and in settlement of the claims of the United States for relief on behalf of Ms. Peterson, who, by her signature to the release attached as Appendix A, accepts the relief to be given her pursuant to this Decree, ADC shall pay Ms. Peterson, within ten (10) business days of the date of this Decree, a total monetary award of \$182,500.00 by sending through U.S. mail or overnight courier service a certified or bank check in that amount made payable to "Susan Peterson" to her attorney:

Timothy M. Medcoff
Farhang & Medcoff
4801 E. Broadway, Suite 311
Tucson, Arizona 85711

14. ADC shall issue Ms. Peterson the appropriate tax forms within the time required by law.

IV. DISPUTE RESOLUTION

15. The parties to this Decree shall attempt to resolve informally any disputes that may occur under this Decree. If the United States and ADC are unable to reach agreement after informally seeking to resolve a dispute, the issue may be submitted by either party to the Court for resolution upon at least thirty (30) days written notice to the other party.

V. CONTACTS FOR THE PARTIES

16. All documents required to be delivered under this Decree to the United States shall be sent to the following address if sent by U.S. mail:

Allan Townsend
Senior Trial Attorney
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
PHB, Fourth Floor
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Documents sent by overnight delivery service should be sent to the following address:

Allan Townsend
Senior Trial Attorney
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
601 D Street, N.W., Room 4037

Washington, D.C. 20579

17. All documents required to be delivered under this Decree to ADC shall be sent to the following address:

Michael Goodwin
Assistant Attorney General
Employment Law Section
Office of the Arizona Attorney General
1275 West Washington
Phoenix, Arizona 85007

VI. JURISDICTION OF THE COURT

18. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the Decree. At the end of two years (2) years from the date of entry of this Decree, this Decree shall be dissolved and this action dismissed without further order of the Court.

VII. GENERAL PROVISIONS

19. The parties shall bear their own costs, expenses, and attorney's fees in this action, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Decree and require resolution by this Court.

20. The Joint Motion to Approve Consent Decree (Doc. 2) is GRANTED.

It is so ORDERED, this 8 day of March, 2012.


UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

For Plaintiff United States of America:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

By:

/s/ Delora L. Kennebrew
DELORA L. KENNEBREW (GA Bar No. 414320)
Chief

/s/ Karen Woodard
KAREN WOODARD (MD Bar / No Number Issued)
Deputy Chief

/s/ Allan Townsend
/s/ Louis Whitsett
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For Defendant Arizona Department of Corrections:

By:

/s/ Michael Goodwin
MICHAEL GOODWIN (AZ Bar No. 014446)
Assistant Attorney General
Office of the Arizona Attorney General
1275 West Washington

Phoenix, Arizona 85007
Telephone: (602) 542-7674
Facsimile: (602) 542-7644
Michael.Goodwin@azag.gov

APPENDIX A

RELEASE

I, Susan Peterson, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Consent Decree entered in United States v. Arizona Department of Corrections, release and discharge Arizona Department of Corrections ("ADC") and its current, former, and future officials, employees and agents from all legal and equitable claims arising out of the complaint filed in that case and EEOC Charge No. 540-2009-01347 occurring prior to the date of this Release.


I understand that the relief to be given to me does not constitute an admission by ADC of the validity of any claim raised by me, or on my behalf.

This Release and the separate Settlement Agreement between ADC and Peterson constitute the entire agreement between ADC and myself in connection with this case, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action was provided to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF,
AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 23 day of Feb., 2012.



Signature