

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: *12-61249-CIV-Williams*

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWN OF DAVIE, FLORIDA,

Defendant.

CONSENT DECREE

This action was brought by the United States against the Town of Davie, Florida ("Davie"), to enforce the provisions of § 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-6.

In its Complaint, the United States alleges that Davie has engaged in conduct constituting a pattern or practice of intentional discrimination, based on sex, against women employed by Davie. Specifically, the United States alleges that since 2008, the Davie Fire Rescue Department ("Fire Department") has operated under a policy or practice of denying any pregnant firefighter light duty until the start of her second trimester regardless of her medical or physical needs while routinely granting other non-pregnant firefighters' requests for light duty for non-work related injuries. Further, since 2008, the Fire Department has also required any pregnant firefighter to leave active firefighting duty upon the start of her second trimester regardless of her ability to fulfill the essential functions of her position.

Davie categorically denies these allegations, and maintains that it has not discriminated against pregnant firefighters.

The Parties, desiring that this action be settled by appropriate consent decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and to the Court's subject matter jurisdiction. Subject to the Court's approval of this Consent Decree ("Decree"), the Parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between themselves as to the pattern or practice violations alleged in the United States' Complaint filed in this case.

This Decree, being entered with the consent of the parties, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by Davie of a finding of any wrongdoing or violation of any applicable federal or state law or regulation. Nor shall it be construed as a resolution, conclusion or bar of any individual claims brought or pending by or on behalf of any individual Davie employees under § 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5.

As used in this Decree, the term "date of entry of this Decree" is defined as the date on which the Court grants final approval to and enters this Decree as a final order of the Court.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

A. **FINDINGS OF THE COURT**

Having examined the provisions of this Decree, the Court finds the following:

- (a) The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- (b) The terms and provisions of this Decree are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Decree.

- (c) This Decree conforms with the Federal Rules of Civil Procedure and Title VII of the Civil Rights Act of 1964 ("Title VII"), and is not in derogation of the rights and privileges of any person. The entry of the Decree will further the objectives of Title VII and will be in the best interest of the Parties.

B. GENERAL INJUNCTIVE RELIEF

Davie, by and through its officials, agents, employees and all persons in active concert or participation with Davie in the performance of employment or personnel functions, are enjoined from:

- (a) subjecting any employee who is pregnant or may become pregnant to a policy or practice that discriminates on the basis of sex (including pregnancy) by requiring mandatory light duty without evaluating the employee's ability to perform the essential functions of her job;
- (b) subjecting any employee who is pregnant or may become pregnant to a policy or practice that discriminates on the basis of sex (including pregnancy) by treating that employee differently than any non-pregnant employee suffering a non-work related injury with regards to the application, availability or opportunity to perform light duty work assignments;
- (c) engaging in any act or practice that has the purpose or effect of unlawfully discriminating against any employee or potential employee in Davie because of that individual's sex or pregnancy;
- (d) retaliating against or adversely affecting the terms or conditions of employment of any person because that person has opposed policies or practices that allegedly violate any provision of Title VII, has filed a charge with the Equal Employment

Opportunity Commission (“EEOC”) or any corresponding state agency, or because of that person’s participation in or cooperation with the initiation, investigation, litigation or administration of this case or this Decree; and

- (e) enforcing or becoming a party to, any contractual agreement that operates to discriminate on the basis of sex (including pregnancy).

C. **IMPLEMENTATION OF POLICIES AND PROCEDURES**

1. Within one hundred and twenty (120) calendar days from the date of entry of this Decree, Davie shall review and, to the extent necessary, adopt or amend its written policies and procedures that prohibit discrimination on the basis of sex (including pregnancy) to ensure the following provisions are included therein:

- (a) Any employee who is pregnant or may become pregnant shall have equal access to a light duty assignment as that enjoyed by any employee suffering from a non-work related injury, in the event Davie continues to provide said assignment for non-work related injuries;
- (b) Davie will not subject any employee who is pregnant or may become pregnant to a policy or practice that discriminates on the basis of sex and pregnancy by requiring mandatory light duty or the mandatory use of sick or leave time, including leave without pay, without considering information and documentation related to the individual’s ability to perform the essential duties of her job;
- (c) A description of the manner in which an employee or potential employee of Davie may make a discretionary complaint of discrimination based on sex (including pregnancy), including the name and contact information for the Equal Employment Opportunity (“EEO”) Officer;

- (d) The identification, by job title and telephone contact information, of all individuals who are authorized to accept complaints of discrimination on the basis of sex (including pregnancy) against Davie;
- (e) A statement that all complaints of discrimination based on sex (including pregnancy) will be promptly and objectively investigated;
- (f) A description of the procedures which will be used to investigate complaints of discrimination based on sex (including pregnancy), and identification of the person or persons by position title in Davie, who will conduct the investigation and make conclusions about the results of the investigation; and
- (g) A statement that Davie will provide the results of an investigation of a complaint of discrimination on the basis of sex (including pregnancy) to the complaining party in writing no later than thirty (30) calendar days from the date the complaint is received, or, for a complaint alleging harassment, as soon as possible to comply with its obligations under Title VII to investigate such complaints promptly (but in no event later than forty-five (45) calendar days).

Davie shall present to the United States for its review a draft of the proposed new or revised policies at least thirty (30) calendar days prior to their initial anticipated adoption. In the event the United States proposes modifications to the policies submitted by Davie, the United States agrees to advise of said modifications in writing within thirty (30) calendar days of receiving said policies from Davie and allow a reasonable opportunity, but not less than sixty (60) days, for Davie to incorporate said modifications and adopt the proposed new or revised policies.

2. Within forty-five (45) calendar days from the date upon which Davie implements the written policies and procedures set forth in Paragraph C 1, above, Davie shall take the following steps:

- (a) Davie shall distribute copies of such policies and procedures to all of its employees, supervisors and agents and shall provide a copy to the United States. Each individual (other than the United States) who receives a copy shall sign an acknowledgment that it has been received and read. The signed acknowledgment by each employee shall be placed in the employee's personnel file, and the signed acknowledgment by each supervisor also shall be maintained by the EEO Officer. Electronic means of distribution of, access to, and acknowledgment of Davie's policies and procedures shall be a sufficient means of complying with this provision.
- (b) Davie shall publicize such policies and procedures by, *inter alia*, posting them in all buildings and facilities used for posting EEO information, by email to all employees, and on any internet or intranet website used for posting notices or policy changes for or concerning Davie, if available.
- (c) Davie shall ensure that each new employee or supervisor receives a copy of the written policies and procedures implemented pursuant to Paragraph C 1, above, at the time of the new employee's hire or at the time of the supervisor's election or appointment. Each new Davie employee or supervisor shall sign an acknowledgment that she or he has read and understands such policies. The signed acknowledgment by a new employee shall be placed in the employee's personnel file, and the signed acknowledgment by a new supervisor also shall be

maintained by the EEO Officer. Electronic acknowledgments shall be acceptable to comply with this provision.

3. Within ninety (90) calendar days from the date upon which Davie implements the written policies and procedures set forth in Paragraph C 1, above, Davie shall provide training with respect to Title VII's prohibitions against employment discrimination based on sex (including pregnancy) and Davie's policies and procedures relating to the prohibition of sex (including pregnancy) discrimination to all supervisory personnel in the Davie Fire Department who are involved in the hiring and selection procedure, evaluation of job performance, or discipline of Davie employees. Davie shall also provide separate training on this material to all non-supervisory employees in the Davie Fire Department. Each training session shall be held live and include, at a minimum, a detailed explanation of the prohibitions against sex (including pregnancy) discrimination contained in Title VII and Davie's policies and procedures. A description of each of the proposed training programs, including copies of all proposed training materials, shall be submitted to counsel for the United States for review and approval at least thirty (30) calendar days before the date upon which Davie proposes conducting either training session.

D. RECORD KEEPING AND REPORTING

1. Davie shall retain during the life of this Decree all records necessary to document the implementation of this Decree. Davie shall furnish all records and documents relevant to its compliance with the implementation of this Decree to counsel for the United States within thirty (30) calendar days of any written request, or such greater time as provided by the United States, but not less than thirty (30) calendar days.

2. Davie shall provide written notice to counsel for the United States of any notification by a firefighter of that firefighter's pregnancy within fifteen (15) calendar days of Davie's receipt of that information. The United States shall have the right to inspect and copy all documents related to such matter upon reasonable notice to Davie without further order of this Court, which reasonable notice shall not be less than thirty (30) calendar days after notification by a firefighter of that firefighter's pregnancy. If practicable, Davie may elect to produce the aforementioned documents by electronic means.

3. Davie shall retain all records that come into its possession relating to complaints or charges of employment discrimination based on sex (including pregnancy) as it relates to the provisions of this Decree that may be filed against Davie or any employee, agent or representative of Davie and pertaining to an employee or applicant for employment with Davie: (a) through any informal channels of complaint; (b) through Davie's internal grievance procedure; (c) with the EEOC; or (d) through or with any other federal, state or local agency authorized to receive such complaints. Davie shall provide copies of documents reflecting such complaints or charges to counsel for the United States within fifteen (15) calendar days of its receipt of such complaints or charges. In addition, the United States shall have the right to inspect and copy all documents related to such complaints or charges upon reasonable notice to Davie without further order of this Court, which reasonable notice shall not be less than thirty (30) calendar days. Davie may elect to produce the aforementioned documents by electronic means.

E. DISPUTE RESOLUTION

The Parties shall attempt to resolve informally any dispute that may occur under this Decree. The Parties shall engage in good faith efforts to resolve the issue before seeking action

by the Court. If the Parties are unable to expeditiously resolve the issue, either Party may move the Court for resolution, provided that written notice is first provided to the other Party at least ten (10) calendar days in advance of taking such action.

F. JURISDICTION OF THE COURT

1. During the life of this Decree, the Court shall retain jurisdiction over this Decree for the purposes of enforcing its provisions, resolving any disputes that may arise between the parties under it and entering such orders as may be appropriate.

2. This Decree shall terminate two (2) years from the date of its entry without further order of the Court.

G. COSTS

The parties shall bear their own costs in this action, including attorney's fees.

H. SCOPE OF THE DECREE

1. This Decree sets forth the entire agreement between the United States and Davie, and supersedes all other negotiations, representations or agreements, either written or oral, between the United States and Davie.

2. If any provision of this Decree is found unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

I. COMMUNICATIONS

The Parties agree that all requests from either Party to the other shall be made in writing. Moreover, all responses to written requests shall be made within fifteen (15) calendar days, or such greater time as provided by the requesting Party. Notice shall be sent to the following addresses:

To United States: U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4613
Washington, DC 20530
Attn: Jeffrey G. Morrison, Esq.,- jeffrey.morrison@usdoj.gov

To Davie: Town of Davie
6591 Orange Drive
Davie, Florida 33314
Attn: Renee Daugherty- Reene_Daugherty@davie-fl.gov
Risk Manager

With Copy to: Lydecker | Diaz
1221 Brickell Avenue, 19th Floor
Miami, Florida 33131
Attn: Onier Llopiz, Esq.- ol@lydeckerdiaz.com
Stephanie Pidermann, Esq.- sp@lydeckerdiaz.com

DONE AND ORDERED this 11th day of September, 2012.


UNITED STATES DISTRICT JUDGE

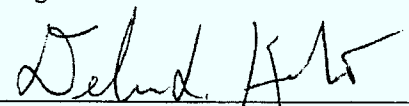
Agreed and Consented To:


On behalf of Plaintiff
The United States of America:


On behalf of Defendant
The Town of Davie, Florida:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

BY:


DELORA L. KENNEBREW
(GA Bar No. 414320)
Chief


ONIER LLOPIZ (FBN 579475)
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