

Supervalu / Jewel Food Held in Contempt for Breaching Consent Decree Settling Earlier EEOC Disability Discrimination Suit

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U.S. Equal Employment Opportunity Commission

Federal Court Also Rules That Agency Is Entitled To Discovery and Evidentiary Hearings

A federal judge has held Supervalu, Inc., which owns the Jewel-Osco chain of stores, in contempt for failing to comply with conditions settling the U.S. Equal Employment Opportunity Commission's (EEOC) disability discrimination lawsuit against the company, the federal agency announced today. The judge faulted Supervalu for failing to send written job offers to employees on a disability leave of absence who can be returned to work, as required under a consent decree entered by the court in 2011. The court also ruled that the EEOC is entitled to discovery and further proceedings to determine whether the company violated the consent decree by failing to provide reasonable accommodations to employees who wanted to return to work from a disability leave of absence.

The EEOC filed suit against Supervalu under the Americans with Disabilities Act (ADA) in September 2009. See *EEOC v. Supervalu, Inc., et al.*, No. 09-cv-5637 (N.D. Ill.). The agency charged that Supervalu terminated employees upon expiration of a disability leave of absence unless the employee could return to work without any physical limitations or restrictions. According to EEOC, Supervalu's inflexible leave policy violated the ADA's requirement that employers provide reasonable accommodations to qualified individuals with disabilities.

In January 2011, Judge Ronald A. Guzmán entered a three-year consent decree resolving the EEOC's litigation against Supervalu. The decree provided \$3.2 million in monetary relief to 110 employees who were terminated after exhausting a disability leave of absence. The court also enjoined Supervalu from failing to provide reasonable accommodations to persons seeking to return to work from a disability leave of absence. Supervalu was also required to create a medical accommodations administration team to facilitate a cooperative process with employees on a disability leave, including a requirement that Supervalu send written return-to-work offers when an employee on leave can be accommodated.

In March 2012, the EEOC moved for civil contempt sanctions based on Supervalu's failure to send those written return-to-work offers and to provide reasonable accommodations to three employees seeking to return to work from a disability leave. The agency asked the court to order Supervalu to send a corrective communication to employees who should have received a written return-to-work

offer. The EEOC also requested a limited discovery period and evidentiary hearings to determine whether Supervalu's failure to accommodate three employees violated the decree's injunction.

Judge Guzmán ruled yesterday that Supervalu's "failure to send written return-to-work letters to all of those it identified were capable of returning to work constitutes a violation of the Decree that is more than harmless error." As a remedy, the court ordered Supervalu to send a written return-to-work offer to all employees the company determined could be returned to work between January 2011 and April 2012, including employees who allegedly declined a verbal return-to-work offer.

With regard to the EEOC's allegation that Supervalu failed to accommodate three employees in violation of the decree, the court ruled that the EEOC may enforce the injunction against discrimination without satisfying the statutory prerequisites that apply when the Commission files a new lawsuit: "The language [of the decree] is unambiguous; therefore, the Court finds that the alleged violations complained of are within the scope of the Decree and the [EEOC] properly seeks relief pursuant to the Decree."

"When the EEOC resolves a case involving allegations of systemic discrimination, we expect the employer to meet its commitments under the resulting consent decree and work cooperatively with our agency to resolve any disputes," said John Hendrickson, the EEOC's regional attorney in Chicago. "This ruling confirms that the EEOC can and will act to enforce the court's orders, embodied in a decree, when we find violations and the employer is unwilling to provide appropriate remedies."

Gregory Gochanour, EEOC supervisory trial attorney, added, "In contrast to other companies which have worked cooperatively with EEOC to meet their commitments under consent decrees, Supervalu has repeatedly decided to resist the EEOC during the decree-monitoring process and now faces possible contempt sanctions for violating the injunction at the heart of this decree. We hope we won't have to invoke the court's contempt power to enforce other decrees, but will act when we find ongoing violations."

Ethan Cohen, Deborah Hamilton, Gordon Waldron, and Grayson Walker, all trial attorneys in the Chicago District Office, also represented the EEOC in this consent decree enforcement action.

The EEOC's Chicago District Office is responsible for processing charges of discrimination, administrative enforcement, and the conduct of agency litigation in Illinois, Wisconsin, Minnesota, Iowa, North Dakota and South Dakota, with Area Offices in Milwaukee and Minneapolis.

The EEOC is responsible for enforcing federal laws against employment discrimination. Further information is available at www.eeoc.gov.

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