

2003 WL 24009005  
United States District Court,  
W.D. Missouri, Southern Division.

Cynthia HUFFMAN, Willa Burke, Virginia King, and Equal Employment Opportunity Commission, Plaintiffs,  
v.  
NEW PRIME, INC. d/b/a Prime, Inc.; Abel Lormand, and Samuel Turner, Defendants.

No. 01-3144-CV-S-ODS-ECF. | Dec. 23, 2003.

## Opinion

### *INJUNCTIVE RELIEF ORDER*

SMITH, J.

\*1 Pending are

- (1) Plaintiff EEOC's Motion for Injunctive Relief (Doc. # 498),
- (2) Plaintiff Cynthia Huffman's Request for Injunctive Relief (Doc. # 543), and
- (3) Plaintiff EEOC's Motion for Hearing on EEOC's Motion for Permanent Injunction and Plaintiffs' Motion for a New Trial (Doc. # 555).

For the following reasons,

- (1) Plaintiff EEOC's Motion for Injunctive Relief is GRANTED IN PART and DENIED IN PART,
- (2) Plaintiff Huffman's Request for Injunctive Relief is DENIED, and
- (3) Plaintiff EEOC's Motion for Hearings is DENIED AS MOOT.

### **I. BACKGROUND**

The above-captioned matter was tried to a jury commencing on September 8, 2003, and concluding on September 19, 2003. The jury returned a verdict in favor of Plaintiffs Cynthia Huffman ("Huffman") and the Equal Employment Opportunity Commission ("EEOC") against New Prime, Inc. ("Prime") on the claim of sexual harassment, awarding \$5,000 in actual damages and \$80,000 in punitive damages. The jury returned verdicts in favor of Prime with regard to all the claims asserted by Plaintiff Virginia King ("King") and Plaintiff Willa Burke ("Burke") and Huffman's claim of constructive discharge.

On October 3, 2003, the EEOC filed its Motion for Permanent Injunction. The EEOC requested the following injunctive relief:

- (1) That Prime provide certain affirmative relief for Cynthia Huffman;
- (2) That Prime refuse to hire Abel Lormand or any entity or person with whom he is associated as an employee or in any other capacity;
- (3) That Prime post notices informing employees of their right to be free of sexual harassment;
- (4) That Prime provide comprehensive full-day sexual harassment training by an outside contractor to all current and

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future employees, including, but not limited to, truck drivers; and

(5) That Prime report complaints of sexual harassment to the EEOC within thirty (30) days of receipt of such complaint for a period of five (5) years.

On November 10, 2003, Huffman filed her Request for Injunctive Relief. Huffman asked for the following injunctive relief:

(1) That Prime have an annual evaluation, training and review of its policies, enforcement and training with regard to all forms of discrimination in the work place for all members of Prime's management;

(2) That a committee be selected by the Plaintiff and her counsel for the purposes of determining Prime's compliance with this Order;

(3) That another training program regarding discrimination be instituted for all other employees of Prime;

(4) That Prime publish monthly report called "Working Conditions at Prime" that highlights any and all complaints about the working conditions at Prime;

(5) That Prime publish an annual report regarding the working conditions of Prime;

(6) That Prime prominently display the judgment from this case along with a summary of the case in a public location as determined by Plaintiff and her counsel; and

(7) That Prime establish one week every year as "Women's Rights Awareness Week" and hold programs related thereto.

\*2 The Court will first address the EEOC's requests, followed by a discussion Huffman's requests.

## II. STANDARD

When a plaintiff prevails under Title VII, "the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate...." 42 U.S.C. § 2000e-5(g)(1). "Title VII has vested broad equitable powers in the federal courts to fashion a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Gilbert v. City of Little Rock*, 799 F.2d 1210, 1215 (8th Cir.1986). Injunctive relief should not be granted unless the record establishes a real threat of a future violation of law. *Webb v. Mo. Pacific R.R. Co.*, 98 F.3d 1067-70 (8th Cir.1996) (citing *United States v. Ore. St. Med. Soc'y*, 343 U.S. 326, 333 (1952)).

## III. DISCUSSION

Considerable evidence was presented at trial indicating a real threat of future violation of the law. First, Prime failed to effectively communicate its sexual harassment policy to *all* of its employees and its driver-trainers in particular. Second, Prime conducted little or no training for its truck drivers regarding the company's policy against sexual harassment. For these reasons, the Court concludes that injunctive relief must be granted.

### ***A. The EEOC's Motion for Injunctive Relief***

"The EEOC represents the public interest when litigating claims, and, through injunctive relief, seeks to protect not only the rights of the individual claimant, but those of similarly situated employees by deterring the employer from future discrimination." *EEOC v. Massey Yardley Chrysler Plymouth*, 117 F.3d 1244, 1253 (11th Cir.1997).

### ***(1) Affirmative Relief for Cynthia Huffman***

Specifically, the EEOC requests that Prime be required to provide Huffman with a neutral reference letter and purge her

employment records of all mention of this lawsuit or the EEOC charge. The EEOC argues that if this relief is granted, Huffman will be placed in the position she would have been had she not been sexually harassed. The Court agrees and orders Prime to expunge Huffman's employment records of all references to Huffman's Charge of Discrimination or the above-captioned matter. Prime is also ordered to provide Huffman with a neutral letter of recommendation.

***(2) Prohibit Rehiring of Abel Lormand***

The EEOC requests that the Court prohibit Prime from rehiring Abel Lormand or any entity or person with whom he is associated as an employee or in any other capacity. Since the incident involving Huffman, Lormand retired from Prime and truck driving as a result of physical disabilities. It is highly unlikely that he will again be employed as a driver for Prime or anyone else. Accordingly, the Court does not believe that this is an appropriate remedy in this case, and the EEOC has failed to present any authority otherwise. This request is denied.

***(3) Posting of Sexual Harassment Policy***

\*3 Third, the EEOC requests that the Court require Prime to post a notice informing employees of their right to be free of sexual harassment.<sup>1</sup> The Court agrees that this is an appropriate remedy. Therefore, Prime is directed to post notices describing the federal laws prohibiting sexual harassment. These notices shall be prominently displayed and posted in conspicuous places, including training rooms, meeting rooms, lounges and company bulletin boards. These notices shall be posted within thirty (30) days of the date of this Order.

***(4) Sexual Harassment Training***

Fourth, the EEOC requests that the Court require Prime to provide comprehensive full-day sexual harassment training by an outside contractor to all current and future employees, including, but not limited to, truck drivers. The Court finds that the relief requested by Plaintiff is broader than necessary based on the evidence presented at trial. The evidence established that Prime has been training the employees located at its headquarters in Springfield, but it has not been effectively training its trainer-drivers. In this respect, the Court grants Plaintiff's request, and orders Prime to revamp its orientation program for *all* new employees to include two hours of training on sexual harassment. The two hours of sexual harassment training may be provided by an outside contractor or a qualified trainer employed by Prime. In addition, Prime is ordered to also give two hours of sexual harassment training to *all* employees who have received less than two hours of sexual harassment in the last twelve months. This training shall occur within twelve months of this Order.

This two-hour sexual harassment training shall remain in place for three years. After the first year, Prime shall certify to the EEOC that all of its new and current employees have received sexual harassment training within the preceding twelve months. At the end of the second and third years, Prime shall certify to the EEOC that all of its new employees have received sexual harassment training within the preceding twelve months.

The word "employees" includes salaried drivers, if any, and drivers who have entered into owner/operator or independent contractor agreements with Prime.

***(5) Reporting of Sexual Harassment Complaints***

Finally, the EEOC requests that this Court require Prime to report all complaints of sexual harassment to the EEOC within thirty (30) days of receipt of such complaint for a period of five (5) years. The Eighth Circuit has previously considered this type of injunctive relief and, in a similar case, denied the request. *EEOC v. HBE Corp.*, 135 F.3d 543 (8th Cir.1998). In *HBE Corp.*, the Eighth Circuit denied the plaintiffs' request because the plaintiffs' immediate harm was remedied by the expungement of their employment records and a letter of recommendation. *Id.* at 558. The Eighth Circuit also concluded that such a procedure "would only address speculative future harm," and, therefore, was broader than necessary. *Id.* at 559.

\*4 Here, Huffman's immediate harm will be remedied by Prime's neutral recommendation letter and the expungement of all references to the lawsuit and Charge of Discrimination. The relief sought by the EEOC would address only speculative future harm and, therefore, is broader than necessary. This request is denied.

***B. Huffman's Request for Injunctive Relief***

Huffman also requests several types of injunctive relief. However, Huffman is no longer employed at Prime and did not seek reinstatement in the above-captioned matter. A court cannot grant injunctive relief to a prevailing plaintiff in a Title VII case if the Plaintiff did not seek reinstatement or did not show a way in which she would benefit personally from the relief requested. *Carmichael v. Birmingham Saw Works*, 738 F.2d 1126, 1136 (11th Cir.1984); *see also Backus v. Baptist Med. Ctr.*, 671 F.2d 1100, 1102-03 (8th Cir.1982). "Although injunctive relief may benefit non-parties as well as parties to a Title VII action, the class benefitted by the injunction must include the plaintiff. Otherwise, the injunctive relief is unnecessary to the 'just disposition of the action.'" *Id.* (citations omitted). Because Huffman did not seek reinstatement and has not shown this Court how she would personally benefit from the injunctive relief sought, Huffman's request must be denied.

**IV. CONCLUSION**

For the foregoing reasons,

- (1) Plaintiff EEOC's Motion for Injunctive Relief is GRANTED with respect to the EEOC's requests for affirmative relief for Huffman, the posting of notices and sexual harassment training, but otherwise DENIED;
- (2) Plaintiff Cynthia Huffman's Request for Injunctive Relief is DENIED; and
- (3) Plaintiff EEOC's Motion for Hearing on EEOC's Motion for Permanent Injunction and Plaintiffs' Motion for a New Trial is DENIED AS MOOT.

IT IS SO ORDERED.

**Parallel Citations**

85 Empl. Prac. Dec. P 41,769

**Footnotes**

<sup>1</sup> In Plaintiff EEOC's Reply to Prime's Suggestions in Opposition to Plaintiff EEOC's Motion for Injunctive Relief, the EEOC refers to posting a notice of this case's judgment. However, this type of relief was not requested in the EEOC's initial motion and will not be considered by the Court.