

## EEOC Litigation Settlements January 2006

- **EEOC v. Bally North America, Inc.**  
No. 05-00631 (D. Haw. Jan. 4, 2006)

The San Francisco District Office alleged in this Title VII case that Bally North America, which sells high-end shoes, accessories, and apparel nationwide, subjected charging party, the manager of its Honolulu store, to a hostile work environment and disparate discipline based on her race (Asian) and national origin (Taiwan Chinese). The complaint also alleged that defendant discharged charging party based on her race and national origin and in retaliation for engaging in protected activity. Defendant hired charging party as an assistant store manager at its Ala Moana Shopping Center in Honolulu and 6 months later, in May 2001, promoted her to general manager. In September 2001, a Korean assistant manager in charging party's store complained to charging party's supervisor (non-Asian) that charging party had made disparaging remarks about Koreans and had a difficult and harsh managerial style. Charging party's supervisor sided with the assistant manager and placed a copy of the subordinate's complaint in charging party's file. Through a private attorney, charging party unsuccessfully sought to have the allegations removed from her file. The relationship between charging party and her supervisor then deteriorated: charging party's supervisor made frequent derogatory comments about charging party's Chinese ethnicity and her managerial style. Within a 1-week period in early 2002 she placed 13 written reprimands in charging party's file (7 on 1 day and 6 on another), most of which concerned events that had occurred weeks earlier. Charging party sent two letters to defendant complaining about the harassment by her supervisor and was terminated in March 2002, 1 week after the second letter.

The parties resolved the case through a 2-year consent decree providing \$200,000 in monetary relief to charging party. Defendant must provide a workplace free of discrimination based on race or national origin, including harassment. The affirmative relief in the decree, which applies to both of defendant's stores in Hawaii, includes training on race, national origin, and disability discrimination (and for managers, retaliation) and semiannual reporting to the EEOC on internal discrimination complaints filed by employees.

- **EEOC v. Austrian Airlines**  
No. 05-cv-00294 (E.D.N.Y. Jan. 8, 2006)

In this ADEA lawsuit the New York District Office alleged that Austrian Airlines, an international airline based in Austria, discharged charging party from his position of director of sales at its Queens, New York office because of his age (51) and in retaliation for protesting age discrimination. In the fall of 2002, charging party's general manager (GM) told him that he wanted to get rid of older workers and named two employees (ages 62 and 69) whom he thought should be fired. In December 2002, just a few weeks after charging party advised the GM that under United States law it was illegal to fire employees based on age, the GM discharged him without prior warning and replaced him with a younger man (age 32). Defendant had rated charging party highly in its only written review of his performance (November 2001) and failed to follow its progressive discipline policy in firing him.

The consent decree resolving this case, which will remain in effect until September 1, 2008, provides that defendant will pay charging party \$500,000 in monetary relief (\$250,000 in backpay payable after receiving charging party's release and \$250,000 in liquidated damages payable in four installments over the first 18 months of the decree). Defendant will provide the EEOC with a letter of credit as security for the installment payments. In all offices within the United States at which sales and marketing employees are based, including Washington, D.C. and Chicago, Illinois, defendant is required to: (1) display an EEOC poster, (2) post a notice regarding nondiscrimination, (3) provide anti-discrimination training to all sales and marketing personnel, and (4) adopt the antidiscrimination policy and complaint procedure attached to the decree and distribute it to all sales and marketing employees. It is also required to train and distribute the notice and policy to all Outside Managers (managers employed outside of the U.S. who have authority to make decisions regarding the employment of sales and marketing employees within the U.S.).

- **EEOC v. City of Moss Point**

No. 1:05-CV-00427 (S.D. Miss. Jan. 10, 2006)

The Birmingham District Office alleged in this ADEA case that defendant, a small city in southern Mississippi, failed to hire charging party as its Human Resources Director based on his age (61). The job description listed a bachelor's degree with a major in personnel management, business, or a related field, and 6 years of HR-related work experience, including 3 years as a supervisor, as the minimum qualifications for the position. Charging party had a degree in business administration and 38 years of HR experience, 15 of them in management. Defendant interviewed charging party and rejected him. It selected a 20-year-old with a degree in English/Journalism and no HR-related work experience. The parties resolved the case through a 3-year consent decree providing charging party with \$92,500 in monetary relief. The decree enjoins defendant from making hiring decisions or otherwise discriminating on the basis of age and from engaging in employment practices that retaliate under the ADEA.

- **EEOC v. Pepsi-Cola General Bottlers, Inc.**

No. 03 C 6576 (N.D. Ill. Jan. 18, 2006)

The Chicago District Office alleged in this Title VII case that defendant, a soft drink distributor, subjected charging party, a female dispatcher at its South Side Chicago facility, to sexual harassment, and altered her terms and conditions of employment and discharged her in retaliation for her complaints about the harassment. Charging party was hired in September 1999 and was responsible for assisting sales managers in assigning route drivers. Several male route drivers and at least one male supervisor were responsible for creating the hostile environment by making vulgar sexual comments, unwelcome sexual advances, and touching charging party inappropriately. For a 1-month period, the wall in the men's bathroom contained graffiti depicting charging party engaged in sexual acts. Charging party complained to her supervisors about the conduct, but they failed to take corrective action and one of them told her she should not contact Human Resources about sexual harassment. After charging party complained to Human Resources about the bathroom graffiti, defendant reassigned some of her job duties, reduced her hours to part time, and then discharged her in August 2002. The parties resolved the case through a 2-year consent decree providing charging party with \$400,000 in monetary relief. Defendant is prohibited from discriminating based on sex, from engaging in sexual harassment, and from retaliating under Title VII.

- **EEOC v. Zenith Insurance Co.**

No. CV 05-7134 PA (Ex) (C.D. Cal. Jan. 24, 2006)

The Los Angeles District Office alleged in this Title VII case that defendant, a property insurer that conducts business throughout the U.S., failed to hire charging party and other black applicants into mailroom positions at its Woodland Hills, California office because of their race. Defendant advertised for a mailroom clerk in September 2001, listing 6 months of mailroom experience as the minimum requirement. Charging party, who had the requisite experience and a degree in graphic arts, applied and was rejected. Defendant readvertised the position in November 2001 and hired a white applicant with no mailroom experience. Although claiming no recollection of why charging party was rejected, defendant said that it might have been because he was overqualified. However, defendant hired a number of whites with AA or BA degrees for mailroom clerk positions. Defendant rejected a number of other qualified black applicants for mailroom positions, while hiring white candidates.

The parties resolved the case through a 3-year consent decree providing \$180,000 in compensatory damages to be distributed to charging party and other claimants at EEOC's discretion. The decree requires defendant to make good faith efforts to obtain a hiring rate of at least 18.3% African Americans in clerical positions at the Woodland Hills facility for each year of the decree. Defendant will report semiannually on its recruitment and hiring efforts, and annually on applicants and hires, by race, for the preceding 6-month period.

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