

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SEP 30 1999

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
OUTBACK STEAKHOUSE OF FLORIDA, INC.,)
)
Defendant.)
_____)

CIVIL ACTION NO.

99-2218-CIV-T-26F

COMPLAINT

JURY TRIAL DEMAND

INJUNCTIVE RELIEF SOUGHT

NATURE OF THE ACTION

This is an action under the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief due to Dena Zechella and any other similarly situated individuals as a result of such unlawful practices.

As stated with greater particularity in paragraphs nine through fourteen below, the United States Equal Employment Opportunity Commission ("EEOC" or the "Commission") alleges that Defendant, Outback Steakhouse of Florida, Inc., paid female employee Dena Zechella at wage rates which were less than rates paid to a male employee performing the same or substantially equal work or otherwise discriminated against her because of her sex. The Commission further alleges that Defendant transferred and subsequently discharged Ms. Zechella because of her sex, female. In addition, the Commission alleges that Defendant used and/or attempted to use an illegal release. For example, Defendant attempted to have Ms. Zechella sign a release, through coercion, containing

provisions which violate Title VII of the Civil Rights Act of 1964, as amended, and subsequently retaliated against her by denying her employment benefits on the sole basis of her refusal to sign such an unlawful release.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as Section 6(d) of the FLSA, 29 U.S.C. § 206(d), and pursuant to Sections 706(f)(1) and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and -6 ("Title VII"). This action is also authorized and instituted pursuant to Section 102 of Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Middle District of Florida, Tampa Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of the Equal Pay Act and Title VII, and is expressly authorized to bring this action by Sections 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705; and by Sections 706(f)(1) and (3) and 707 of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and -6.

4. At all relevant times, Defendant, Outback Steakhouse of Florida, Inc. ("Employer"), has continuously been a Florida Corporation, doing business in the State of Florida and the City of Tampa, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

6. At all relevant times, Defendant Employer has acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. At all relevant times, Defendant Employer has continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§ 203(b), (i) and (j), has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§ 203(r) and (s), in that said enterprise has continuously been engaged in the food service business.

STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Dena Zechella filed a charge with the Commission alleging violations of the Equal Pay Act and Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. Since at least November 12, 1996, Defendant Employer has engaged in unlawful employment practices at its Tampa, Florida location, in violation of Section 703(a) and Section 704(a) of Title VII, 42 U.S.C. § 2000e-2(a) and -3(a).

- a. Defendant employer unlawfully discriminated against Dena Zechella with respect to compensation by paying her at wage rates lower than a similarly situated male that was employed by the Defendant.
- b. Defendant employer unlawfully subjected Dena Zechella to an unfavorable transfer and subsequently discharged her because of her sex, female.
- c. Defendant used and/or attempted to use an illegal release in violation of Title VII. At least on one occasion, Defendant immediately denied Dena Zechella employment benefits on the basis of her refusal to sign a release containing provisions which violate Title VII.

10. The effect of the practices complained of in paragraph nine above has been to deprive Dena Zechella and any other similarly situated individuals of equal employment opportunities and otherwise adversely affect their status as employees, because of sex and/or the refusal to sign an unlawful release.

11. The unlawful employment practices complained of in paragraph nine above were intentional.

12. The unlawful employment practices complained of in paragraph nine above were and continue to be done with malice or with reckless indifference to the federally protected rights of Dena Zechella.

13. Since at least November 12, 1996, Defendant Employer has violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying wages to a female employee at its Tampa, Florida location at rates less than the rates paid to a male employee in the

same establishment for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

14. As a result of the acts complained of above, Defendant Employer unlawfully has withheld and is continuing to withhold the payment of wages due to Dena Zechella.

15. The unlawful practices complained of in paragraphs thirteen and fourteen above were and are willful.

PRAYER FOR RELIEF

Wherefore, the Commission requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in unequal payment of wages based on sex, unfavorable transfer and discharge on the basis of sex, employing a release containing provisions in violation of Title VII and retaliating against any employee for refusal to such an illegal release and any other employment practice which discriminates on the basis of sex.

B. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating within any of its establishments between employees on the basis of sex, by paying wages to employees of one sex at rates less than the rates at which it pays wages to employees of the opposite sex for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

C. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for females, and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendant Employer to make whole Dena Zechella, and any other similarly situated individuals, by providing appropriate back pay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, pay increases, front pay and rightful place reinstatement.

E. Order Defendant Employer to make whole Dena Zechella, and any other similarly situated individuals, by providing compensation for past and future pecuniary losses resulting from the unlawful practices described in paragraphs nine, thirteen and fourteen above, including but not limited to, past and future out-of-pocket losses suffered, such as, job search expenses and fringe benefits like medical expenses, in amounts to be determined at trial.

F. Order Defendant Employer to make whole Dena Zechella, and any other similarly situated individuals, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices described in paragraphs nine, thirteen and fourteen above, including but not limited to, emotional pain, suffering, inconvenience, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

G. Order Defendant Employer to pay Dena Zechella, and any other similarly situated individuals, punitive damages for its malicious and/or reckless conduct described in paragraphs nine, thirteen and fourteen above, in an amount to be determined at trial.

H. Grant a judgment requiring Defendant Employer to pay appropriate back wages in amounts to be determined at trial, and an equal sum as liquidated damages or prejudgment interest in lieu thereof, to Dena Zechella whose wages are being unlawfully withheld as a result of the acts complained of above.

I. Grant such further relief as this Court deems necessary and proper in the public interest.

J. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

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