

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

03 MAR 24 PM 12:00

MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
and DENA ZECHELLA,)
)
Intervener,)
v.)
)
OUTBACK STEAKHOUSE, INC.)
)
)
Defendant.)

CIVIL ACTION NO.
8:99-cv-2218-T-26MSS

11:00 AM
MAR 24 2001
11:00 AM

POSTJUDGMENT CONSENT DECREE

On September 29, 1999, the United States Equal Employment Opportunity Commission brought this action against Outback Steakhouse, Inc. ("Outback"), filed under the Equal Pay Act of 1963 (EPA) and Title VII of the Civil Rights Act of 1964 (Title VII). This Court granted Dena Zechella's Motion to Intervene on December 28, 1999. On September 18, 2001, the jury returned a verdict finding liability on the EPA claim, the Title VII terms and conditions claim, and the Title VII retaliation claim. Outback appealed the judgment entered on the verdict. This Consent Decree is being entered by mutual consent of the parties for the purpose of settlement of all claims brought or which could have been brought under this lawsuit. It is understood and agreed that this Consent Decree shall not be construed as an admission by Defendant of any violation of Title VII or the EPA.

In consideration of their mutual promises, the EEOC and the Defendant agree as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties.
2. Venue is proper.

SCANNED

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3. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of the EEOC to seek the Court's enforcement of the Decree upon Defendant's noncompliance with any of the terms of this Decree.
4. This Decree shall apply only to the headquarters location of Outback Steakhouse, Inc. and Outback Steakhouse of Florida, Inc., in Tampa, Florida. This Decree shall not be construed to extend to any Outback location other than Outback Steakhouse, Inc. and Outback Steakhouse of Florida, Inc., headquarters in Tampa, Florida.
5. The terms of this Consent Decree shall be binding upon any successors, assigns or trustees of the parties.
6. Defendant, its officers, managers, employees, agents and partners, are enjoined for the duration of the Consent Decree from engaging in any unlawful employment practices based on sex.
7. Defendant, its officers, managers, employees, agents and partners, are enjoined for the duration of the Consent Decree from unlawfully discriminating against any individual who opposes any of Defendant's practices which the employee believes to be a violation of the EPA or Title VII; or who files a charge of discrimination with the EEOC alleging violation(s) of such statute; who cooperates with the EEOC in the investigation and/or prosecution of any charge of discrimination; or who cooperated in the investigation or prosecution of this case.

I. Distribution of Equal Employment Opportunity (EEO) Policies

Within 45 days after entry of the Consent Decree and no later than April 1, 2003, Defendant shall hand deliver to all personnel at its Headquarters location: (1) the discrimination policy attached as Exhibit A; (2) an 8 x 12 excerpt of the portion of its "Equal Employment Opportunity is the Law"

poster addressing EEOC's laws, attached as Exhibit B; and (3) a cover letter from Chris Sullivan, CEO, attached as Exhibit C. Exhibits A, B, and C shall be hand-delivered to Headquarters personnel no later than June 30 annually for the duration of this Consent Decree.

II. Training on Anti-Discrimination Laws

Every two years, Defendant's officers, department heads, and the person in charge of Employee Relations, shall attend a four hour training seminar conducted by a law firm specializing in labor and employment law, which will include both (1) explanations of Title VII and the Equal Pay Act and their respective prohibitions of discrimination based on sex in compensation or any other term or condition of employment and (2) explanations of the prohibitions against retaliation for opposing discrimination or participating in investigations of discrimination. Defendant agrees to provide the EEOC with at least two weeks notice before it conducts its training sessions. Within thirty days after the start date of any new officer, department head, or person in charge of Employee Relations, Defendant will provide the agreed upon training in a videotaped format, with a knowledgeable trainer available to answer questions. The Defendant will provide its next live training no later than June 30, 2004. Defendant will bear all costs incident to the trainings.

III. Posting

Defendant agrees within 45 days from the date of execution of this Consent Decree, but no later than April 1, 2003, to post a laminated copy of the notice, attached hereto as Exhibit A, on bulletin boards in Outback's headquarters location, where other employee information is commonly displayed. Defendant shall also post its "Equal Employment Opportunity is the Law" poster, attached hereto as Exhibit B, in Outback's headquarters location, where other employee information is commonly displayed. The postings shall be at least 14 x 17 inches, with 15 point font lettering.

IV. Waivers or Releases Will Not Be Sought Which Foreclose Applicants or Employees From Pursuing Claims of Employment Discrimination

Defendant agrees to refrain from using any release or waiver agreement that requires an individual to waive his or her protected right to file a charge of discrimination or to participate in an investigation with the EEOC, the Florida Commission on Human Relations, or any other local, state, or federal agency which enforces laws prohibiting discrimination in employment. However, the Defendant may seek waivers which settle an individual's personal right to monetary or injunctive recovery.

V. Monetary Relief For Dena Zechella

- A. This Court has previously entered judgment for \$346,369.43 plus attorney's fees. The parties have agreed to resolve all monetary claims in full satisfaction of the amount of the judgment by entry of a separate non-confidential settlement agreement between the Intervener and the Defendant, that identifies the amount to be paid.
- B. Concurrent with the mailing of the monetary relief to the claimant, Defendant agrees to copy the EEOC on the withholding statements, the checks and the certified return receipt or other proof of delivery.

VI. Monitoring and Reporting

- A. The Defendant shall submit written reports to the Commission every six (6) months, but no later than January 31 and June 30 annually, for the life of this Consent Decree. The final report shall be submitted to the Commission thirty days prior to the expiration of the Consent Decree. Each report shall contain:
 - 1. The names, addresses, phone numbers and employment status, including job title, of each individual in the headquarters office, who has reported to any officer,

department head or the person in charge of Employee Relations that s/he has been discriminated against based upon sex or retaliation. Defendant will also provide information on any investigation of complaints of discrimination based on sex or retaliation that have been initiated and the results of such investigation.

2. Defendant will certify in writing that its Discrimination and Harassment Policy (Exhibit A) and its "Equal Employment Opportunity is the Law" (Exhibit B) posters have remained posted for the entire preceding six month period. Defendant will also certify that all personnel at its headquarters location have received copies of the letter from the CEO, currently Chris Sullivan, or his successor and attachments thereof (Exhibits A, B, C) and had an opportunity to ask any questions regarding the policy.
 3. Defendant's General Counsel will certify that Defendant has complied with its agreement to refrain from using waiver or release agreements that purport to waive an individual's protected right to file a charge of discrimination or participate in an EEOC investigation. Each certification shall be accompanied by a blank copy of any standard release then in use by Defendant.
- B. Within 30 days after each annual training session, Defendant will provide the EEOC with a list that sets forth the date of the training, the names and job titles of the individuals in attendance at the training session, and copies of the training materials.
- C. Defendant's General Counsel shall act as Defendant's representative for the purpose of coordinating the submission of reports that are required herein. All reports will be mailed to the EEOC, 1 Biscayne Tower, Suite 2700, Miami, FL 33131, and shall be identified by reference number "Legal Unit, Case No. 8:99-cv-2218-T-26MSS."
- D. In order to monitor compliance with this Decree, the EEOC shall have the opportunity

to interview employees who have made complaints under VI.A.1. Said interviews, if conducted, will occur in a location outside of Defendant's premises.

VII. Duration and Enforcement of the Consent Decree

- A. The Commission shall have independent authority to seek judicial enforcement of each aspect, term or provision of this Decree. The Commission will take whatever measures it deems appropriate to effectuate the enforcement of the terms of this Decree.
- B. This Decree shall remain in effect until March 31, 2006.

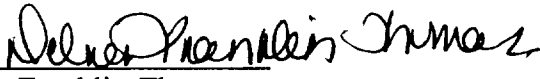
DONE AND ORDERED in Chambers at Tampa, Florida, this 25 day of March, 2003.



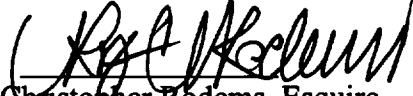
RICHARD A. LAZZARA
United States District Judge

Agreed:


FOR THE PLAINTIFF:
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

by: 
Delner Franklin-Thomas
Regional Attorney
EEOC Miami District Office
1 Biscayne Tower
2 S. Biscayne Blvd.
Miami, Florida 33131

FOR THE PLAINTIFF DENA ZECHELLA

by: 
Ryan Christopher Rodems, Esquire
Florida Bar No. 947652
BARKER, RODEMS & COOK, P.A.
300 West Platt Street, Suite 150
Tampa, Florida 33606

FOR THE DEFENDANT:

by: 
Kevin D. Johnson, Esq.
Thompson, Sizemore, & Gonzalez
109 North Brush St.
Tampa, FL 33601

OUTBACK STEAKHOUSE DISCRIMINATION AND HARASSMENT POLICY

Outback Steakhouse is about doing things right. Our goal has always been to have a fun, friendly atmosphere in which we all work together to provide high-quality food and service to customers.

For Outback to maintain its fun and friendly atmosphere, however, all Outbackers must respect the feelings of others. Outback wants all Outbackers to know that when it comes to discrimination and harassment, Outbackers are expected to follow one very basic commitment about doing things right.

THE COMMITMENT: Each Outbacker must be treated with dignity and respect.

Guidelines:

Outback does not discriminate on the basis of race, color, sex, age, religion, national origin, marital status, or disability and will not tolerate any discrimination or harassment by or against its employees.

This policy applies to all aspects of employment, including recruiting, hiring, training, working conditions, compensation, promotion, discipline and termination.

Working conditions become discriminatory when employees are subjected to harassment because of their race, color, sex, age, religion, national origin, marital status or disability. **OUTBACK WILL NOT TOLERATE HARASSMENT OF ITS EMPLOYEES.**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature will constitute sexual harassment when:

- Engaging in sexual conduct is an express or implied condition to an individual's success at work;
- Engaging in or refusing to engage in sexual conduct is the reason for any employment decision affecting an employee;
- When sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature have the purpose or effect of unreasonable inference with an individual's work performance. This includes circumstances where such misconduct creates an intimidating, hostile, or offensive working environment.

No member of the Outback team is above this policy. It applies to managers and employees with equal force. This policy governs the conduct of Outback employees regardless of where that conduct takes place.

This policy also applies to harassment by customers, vendors, contractors or other persons coming in to the workplace. Outback will take reasonable steps to protect its employees from harassment by these persons.

ANY EMPLOYEE WHO BELIEVES THAT HE OR SHE HAS BEEN HARASSED OR DISCRIMINATED AGAINST MUST CONTACT ANY ONE OF THE FOLLOWING PERSONS IMMEDIATELY:

PROPRIETOR

JOINT VENTURE PARTNER

SERVICE TECH

AVA FORNEY, EMPLOYEE RELATIONS

JOE KADOW, V.P. & GENERAL COUNSEL

See Aussie Info Poster

See Aussie Info Poster

(800) 806-1133 Ext. 1102

(800) 806-1133 Ext. 1176

Contact any of the above people with whom you would be most comfortable speaking.

Outback will swiftly and thoroughly investigate any complaints brought to its attention. Every reasonable effort will be made to maintain confidentiality during the investigation of a charge of harassment or discrimination.

If Outback determines that this policy has been violated, Outback will take remedial action that is effective and appropriate to the circumstances. Employees who have violated this policy will face discipline up to and including termination.

Outback will not tolerate any form of retaliation against any employee for making a good faith complaint of harassment or discrimination. Any employee who makes a complaint for malicious or improper reasons, however, will be subject to discipline. Let's all have fun, but treat each other with respect.

YOUR RIGHTS ARE PROTECTED!

Under the laws and regulations issued by the Federal Government, your rights as an employee are protected. This poster contains the information necessary to make you more fully aware of your rights. Know your rights.

READ IT!

If your company complies fully with the laws and regulations that protect you, our employees. If you have any questions about the information contained on this poster, please contact your immediate supervisor or the Personnel Department for clarification. Your rights are protected, and we think you have a right to know them.

JOB SAFETY & HEALTH PROTECTION

The Occupational Safety and Health Act of 1970 provides job safety and health protection for workers by providing safe and healthful working conditions throughout the Nation. Provisions of the Act include the following:

Equal Employment Opportunity is THE LAW

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under the following Federal authorities:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

VIETNAM ERA AND SPECIAL DISABLED VETERANS

38 U.S.C. 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans and qualified special disabled veterans.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or call (202) 219-9475 (DOL's toll-free TDD number for individuals with hearing impairments is (800) 326-2577), or an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Private Employment, State and Local Governments, Educational Institutions

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under the following Federal laws:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

DISABILITY

The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with accessible accommodations that do not impose undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions, or privileges of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act (see above), the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of these Federal laws.

If you believe that you have been discriminated against under any of the above laws, you immediately should contact:

The U.S. Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 or an EEOC field office by calling toll free (800) 669-4000. For individuals with hearing impairments, EEOC's toll free TDD number is (800) 800-3302.

A U.S. GOVERNMENT PRINTING OFFICE: 1994-0-288-716

EEOC-PE-

Your Rights Under the Fair Labor Standards Act

Federal Minimum Wage
\$4.75 per hour beginning October 1, 1996
\$5.15 per hour beginning September 1, 1997

Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer. Certain full-time students, student learners, apprentices and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

Tip Credit - Employers of "tipped employees" must pay a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tip combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

Overtime Pay
At least 1 1/2 times your regular rate of pay for all hours worked over 40 in a workweek.

Child Labor

An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youth and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:
• 3 hours on a school day or 18 hours in a school week

Exhibit C

TO: All Personnel
FROM: Chris Sullivan
CEO
DATE: April 1, 200_

I wanted to take this opportunity to remind you of the important policies on the attached materials. Employees, including managers, who violate these policies will face discipline up to and including termination. Please also be advised that Outback will not tolerate any form of retaliation against any employee for making a good faith complaint of harassment or discrimination.



Date Printed: 04/03/2003

Notice sent to:

✓
Michael J. Farrell, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2700
Miami, FL 33131

✓
Rachel H. Shonfield, Esq.
Equal Employment Opportunity Commission
Miami District Office
One Biscayne Tower
2 S. Biscayne Blvd., Suite 2700
Miami, FL 33131

✓
Kevin D. Johnson, Esq.
Thompson, Sizemore & Gonzalez, P.A.
501 E. Kennedy Blvd., Suite 1400
P.O. Box 639
Tampa, FL 33601

✓
Ryan Christopher Rodems, Esq.
Barker, Rodems & Cook, P.A.
300 W. Platt St., Suite 150
Tampa, FL 33606

cc