

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 06-21668-CIV-JORDAN

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

APPLEGATE USA, INC. d/b/a UNITED SHEET  
METAL,

Defendant.

CLOSED  
CIVIL  
CASE

CONSENT DECREE

I. THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission ("EEOC") filed this action alleging Defendant, Applegate USA, Inc., d/b/a United Sheet Metal violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, Section 703(a)(1), 42 U.S.C. §2000e-2(a). Specifically, EEOC alleged that Defendant violated Title VII when it fired Jessica Chavez, formerly known as Jessica Hernandez,<sup>1</sup> on or about April 29, 2005 because she was pregnant.

2. Defendant denies that it engaged in pregnancy discrimination or committed any of the violations alleged by the EEOC but is resolving this matter to avoid the time and expense of continued litigation. Specifically, Defendant filed an Answer to EEOC's Complaint, denying the allegations. This Consent Decree is not an adjudication or finding on whether discrimination

---

<sup>1</sup> After Jessica Hernandez' employment was terminated by Defendant, Ms. Hernandez married and changed her last name to Chavez.

occurred and shall not operate as an admission by Defendant that it, or anyone on its behalf, discriminated against Jessica Chavez. For purposes of this Consent Decree, the term "Defendant" means Applegate USA, Inc. d/b/a United Sheet Metal and/or any other business name under which Applegate USA, Inc. operates and its officers, agents, successors and assigns.

3. In the interest of resolving this matter and avoiding time and future costs of continuing the litigation and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree ("Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaints filed by EEOC in this action arising from the Charge of Discrimination filed by Jessica Hernandez. The parties agree that this Decree does not resolve future or pending Charges of Discrimination (if any) other than the Charge referred to in this paragraph.

## **II. FINDINGS**

Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

- a. This Court has jurisdiction of the subject matter of this action and of the parties.
- b. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of the EEOC to bring an enforcement suit upon alleged breach of any term(s) of this Decree.
- c. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the Defendant, the EEOC, the Complainant and the public interest are adequately protected by this Decree.

d. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of Jessica Chavez, EEOC and the public.

e. The terms of this Decree are and shall be binding upon Jessica Chavez, the EEOC, and the Defendant and its present and future representatives, agents, directors, and officers.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

**III. GENERAL INJUNCTIVE PROVISIONS**

4. Defendant acknowledges its responsibility under Title VII to prohibit discrimination because of sex and pregnancy. Accordingly, Defendant and the officers, agents (including management personnel), successors, and assigns are hereby enjoined from discriminating on the basis of sex and pregnancy.

5. Defendant, its officers, agents, employees, successors, assigns, and all persons acting in concert with it are hereby enjoined from engaging in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

**IV. ADOPTION AND DISTRIBUTION OF ANTI-DISCRIMINATION POLICY**

6. Within thirty (30) calendar days of entry of this Consent Decree, Defendant shall issue an anti-discrimination policy ("Policy") and shall provide the Policy to EEOC. This and any other submissions, reports, certifications, notices, or other materials that are required to be submitted to EEOC shall be mailed to: Applegate Settlement, c/o Maria Kate Boehringer, Senior

Trial Attorney, United States Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, Miami, Florida 33131.

7. Defendant's Policy shall clearly define prohibited conduct and specifically prohibit harassing, demoting, firing, or taking any adverse action against an employee because that employee is pregnant or because of condition related to pregnancy, such as pregnancy related health care, medical appointments, and/or pregnancy related absences. The Policy shall provide that complaints of discrimination, inquiries about making such complaints, or inquiries about Defendant's Policy, may be made to any supervisory person in the chain of command or directly to human resources personnel. The Policy shall state that no employee will be penalized in any manner for making such complaint, seeking information about making such a complaint, seeking information about Defendant's Policy, and/or participating in any investigation or follow-up contact concerning such a complaint.

8. Within sixty (60) calendar days of entry of this Consent Decree, the Policy shall be distributed to all of Defendant's employees and management staff in all locations (including all job sites, whether temporary or permanent) where employees of Defendant work and all job sites where temporary employees are assigned to work for Defendant and shall be included in any relevant policy or employee manuals kept by Defendant's business. The Policy shall also be kept and maintained in a conspicuous and accessible place for all employees at all of Defendant's facilities and printed in a font that is easily legible (at least 12 point font).

9. A copy of the Policy shall be distributed to each new regular full-time, part-time, or temporary employee on the day the employee is hired and, for temporary workers who are assigned to work for Defendant through a staffing or temporary agency, on the day that the worker first performs work for Defendant. The manager responsible for distributing the Policy to

each new employee shall review the Policy with the employee. Defendant shall maintain records demonstrating that each new employee reviewed the Policy and said new employee shall place his or her signature on a copy of the policy, along with the date of the signature.

#### Y. TRAINING

10. During each of the three (3) years covered by this Decree, Defendant shall provide training to all Defendant's employees and to all persons who perform work for Defendant (even if that work is performed on a temporary basis or is performed through a staffing and or temporary agency, but not if that person is an independent contractor or an employee or agent of one of Defendant's independent contractors), including all management personnel, on equal employment opportunity laws (including pregnancy and sex discrimination) and the new Policy. Defendant shall provide specific training to all Applegate USA, Inc. employees, including all management personnel, on all equal employment opportunity laws (including pregnancy discrimination) and the Policy referenced in paragraph 6. This training shall be conducted separately from other job-related training and/or business-wide meetings and the training session/s shall be dedicated solely to all equal employment opportunity laws and Defendant's Policy referenced in paragraph 6. Defendant shall provide specific training to all employees, supervisors, and managers concerning the strict prohibition against penalizing any employee in any manner whatsoever for making a complaint of discrimination, for making inquiries about making such a complaint, and/or for participating in any investigation of such a complaint. The training shall be conducted by a person and/or persons agreed upon by Defendant and EEOC. The first training shall take place within sixty (60) calendar days of entry of this Decree. The remainder of the training sessions shall take place annually and no later than July 1<sup>st</sup> of each year throughout the duration of the Decree.

11. Within ten (10) calendar days of the completion of training, Defendant shall notify EEOC of the dates the training was conducted, the name and job title of the person(s) who conducted the training, and the name and job title of each person who received the training.

12. Defendant shall provide to EEOC any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

#### **VI. POSTING OF NOTICE**

13. Within ten (10) business days after entry of this Decree, Defendant shall post an eleven (11) inches by fourteen (14) inches laminated copy of the Notice attached as Exhibit A to this Decree at all of its facilities (including all offices, temporary job sites, project job sites, or other places where persons perform work for Defendant) in a conspicuous location easily accessible to and commonly frequented by persons who perform work for Defendant. The Notice shall remain posted for three (3) years from the date of entry of this Decree. Defendant shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Defendant shall certify to EEOC in writing within fifteen (15) business days after entry of the Decree that the Notice has been properly posted. Defendant shall permit a representative of EEOC to enter Defendant's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

#### **VII. RECORD KEEPING AND REPORTING**

14. Defendant shall furnish to EEOC the following written reports twice annually for a period of three (3) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. Each such report shall contain:

a. A description of each complaint of discrimination, including the names of the complaining parties and witnesses and the resolution of such complaint, occurring within the six

(6) month period preceding the report. Information identifying Defendant's employees produced pursuant to this Decree will only be used to facilitate compliance with this Decree.

b. A description of any and all action Defendant took in response to each complaint, conclusions reached, and actions taken as a result of the complaint.

c. A certification by Defendant that the Notice required to be posted in Paragraph 13, above, remained posted during the entire six (6) month period preceding the report.

15. Defendant shall provide EEOC with copies of all documents and records referred to in paragraph 14. In addition, Defendant shall provide the last known home address, home telephone number, and mobile telephone number for all persons in its employ during the term of the Decree whom EEOC requests and identifies for purposes of verifying compliance with this Decree within fifteen (15) calendar days of its receipt of EEOC's written request. Moreover, Defendant shall permit employees whom EEOC requests to interview for the purposes of verifying compliance with this Decree to speak confidentially with EEOC. In the event that EEOC is unable to contact an employee for purposes of verifying compliance with this Decree, it shall notify Defendant and Defendant shall, within fifteen (15) business days, provide EEOC with the employee's scheduled hours of work over the next fourteen (14) day period so that EEOC can conduct these interviews at these employees' breaks, at the end of the day, or at some other time convenient to the employee and EEOC. Defendant agrees that it will not discourage employees from participating in these interviews.

16. Nothing contained in this Decree shall be construed to limit any obligation Defendant may otherwise have to maintain records under Title VII or any other law or regulation.

**VIII. MONETARY RELIEF**

17. Defendant shall pay a lump sum in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars to resolve this litigation.

a. Jessica Chavez

i. Ninety Thousand and 00/100 (\$90,000.00) Dollars shall be paid to Jessica Chavez and shall be representative of compensatory damages. Defendant shall issue an I.R.S. Form 1099 to Jessica Chavez for this amount.

ii. Ten Thousand and 00/100 (\$10,000.00) Dollars shall be paid to Jessica Chavez and shall be representative of back pay/lost wages. Defendant shall issue an I.R.S. Form W-2 to Jessica Chavez for this amount and shall be responsible for the payment of the employer's share of any federal, state and local income taxes, and social security withholdings.

18. Payments shall issue within thirty (30) calendar days from the Court's execution of this Decree, by Certified Mail (Return Receipt) to Jessica Chavez at 8118 Virgo Street, Jacksonville, FL 32216. Copies of the payments and I.R.S. Form 1099 shall be forwarded to the attention of Maria Kate Boehringer, Senior Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

19. If Defendant fails to tender the payment described in paragraph 17, above, then Defendants shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.



**IX. DISPUTE RESOLUTION**

20. In the event that EEOC believes that Defendant has failed to comply with any provision(s) of the Decree, EEOC shall have the right to seek Court intervention. Additionally, no party shall contest the Court's jurisdiction to hear a dispute arising from the Decree nor challenge EEOC's ability to bring an action to enforce the terms of the Decree in this Court.

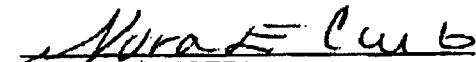
**X. DURATION OF THE DECREE AND RETENTION OF JURISDICTION**

21. All provisions of this Decree shall be in effect for a period of three (3) years immediately following entry of the Decree.

22. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

**AGREED TO:**


**FOR THE PLAINTIFF, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

By:   
NORA E. CURTIN  
Regional Attorney

Date: JUNE 14, 2007

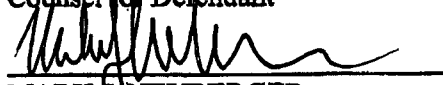


MARIA KATE BOEHRINGER  
Senior Trial Attorney  
Florida Bar No. 0041157  
U.S. Equal Employment Opportunity Commission  
Miami District Office  
2 South Biscayne Boulevard, Suite 2700  
Miami, Florida 33131  
Telephone: (305) 808-1789  
Facsimile: (305) 808-1835  
E-mail: [maria.boehringer@eeoc.gov](mailto:maria.boehringer@eeoc.gov)  
Counsel for Plaintiff EEOC

By:   
BRUCE A. INOSENCO, JR.  
Florida Bar No. 16639  
Admitted Pro Hac Vice

Date: JUNE 25, 2007

Law Office of Bruce A. Inosencio, Jr., PLLC  
740 W. Michigan Avenue  
Jackson, MI 49204-4033  
Telephone: (517) 796-1444  
Facsimile: (517) 796-1050  
E-mail: [bruce@inosencio.com](mailto:bruce@inosencio.com)  
Counsel for Defendant



MARK NEUBERGER  
Florida Bar No. 0982024  
Buchanan Ingersoll & Rooney, PC  
Bank of America Tower – Suite 3400  
100 Southeast Second Street  
Miami, FL 33131  
Telephone: (305) 347-4080  
Facsimile: (305) 347-4089  
E-mail: [mark.neuberger@bipc.com](mailto:mark.neuberger@bipc.com)  
Counsel for Defendant

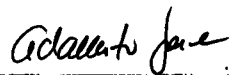
Date: JUNE 25, 2007

**AGREED TO:  
FOR THE DEFENDANT,  
APPLEGATE USA, INC. d/b/a UNITED SHEET METAL.**

By:   
For Defendant APPLGATE USA, INC.  
d/b/a UNITED SHEET METAL

Date: 6-22-07

ENTERED:

  
\_\_\_\_\_  
THE HONORABLE ADALBERTO JORDAN  
UNITED STATES DISTRICT COURT JUDGE

DATE: 7-6-07

**EXHIBIT A**

**NOTICE TO ALL APPLGATE USA, INC. EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the U.S. District Court in EEOC v. Applegate USA, Inc., Civil Action No. 06-21668-CIV-JORDAN. Applegate USA, Inc. has adopted a policy that prohibits discrimination against employees based on sex and pregnancy in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, and/or sex, including pregnancy. Applegate USA, Inc. will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, pregnancy discrimination.

Applegate USA, Inc. will assure its employees that it supports Title VII and will not take any action against an individual based on sex and/or pregnancy. Appropriate corrective action, up to and including termination, based upon the circumstances involved, shall be taken against any employee (including management personnel) found to have violated Applegate USA, Inc.'s policy prohibiting discrimination.

EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex (including pregnancy) and age. If you believe you have been discriminated against, you may contact EEOC at (305) 808-1740. EEOC charges no fees and has employees who speak languages other than English.

This Notice must remain posted for three (3) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: Applegate Settlement, c/o Maria Kate Boehringer, Senior Trial Attorney, EEOC, One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, Miami, Florida 33131.

Date:

  
Richard Applegate  
APPLGATE USA, INC.