

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	Civ. Action No. 04-0076-cv-w-GAF
v.)	
)	JURY TRIAL DEMAND
WAL-MART STORES, INC.,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Steve E. Bradley, Jr., a job applicant who was adversely affected by such practices. The Commission alleges that Wal-Mart Stores, Inc. failed to hire Steve E. Bradley, Jr. because of his disability, cerebral palsy, which substantially limits his ability to walk and stand and requires him to use crutches or a wheelchair.

JURISDICTION AND VENUE

1. The 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 Section 107(a) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Missouri, Western Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (“the Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5 (f)(1).

4. At all relevant times, Defendant Wal-Mart Stores, Inc. has continuously been a Delaware Corporation doing business in the State of Missouri and has continuously had at least fifteen (15) employees.

5. At all relevant times, Wal-Mart Stores, Inc. has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e (g) and (h).

6. At all relevant times, Wal-Mart Stores, Inc. has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Steve E. Bradley, Jr. filed a charge with the Commission alleging violations of Title I of the ADA by Wal-Mart Stores, Inc. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. On or about April 2001, Wal-Mart Stores, Inc. engaged in unlawful employment practices at its Richmond, Missouri store in violation of Section 102(a) and (b) of Title I of the ADA, 42 U.S.C. § 12112(a) and (b). Specifically, Wal-Mart Stores, Inc. refused to hire Steve E. Bradley, Jr. for any position because of his disability, cerebral palsy, which substantially limits his ability to walk and stand and requires him to use crutches or a wheelchair.

9. The effect of the practices complained of in paragraph 8 above by Wal-Mart Stores, Inc. has been to deprive Steve E. Bradley, Jr. of equal employment opportunities and otherwise adversely affect his status as a job applicant because of his disability.

10. The unlawful employment practices complained of in paragraph 8 above by Wal-Mart Stores, Inc. were intentional.

11. The unlawful employment practices complained of in paragraph 8 above by Wal-Mart Stores, Inc. were done with malice or with reckless indifference to the federally protected rights of Steve E. Bradley, Jr.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Wal-Mart Stores, Inc., its officers, successors, assigns, and all persons in active concert or participation with it, from refusing to hire qualified individuals with disabilities because of their disabilities or engaging in any other employment practice which discriminates on the basis of disability;

B. Order Wal-Mart Stores, Inc. to institute and carry out policies, practices, and programs that provide equal employment opportunities for qualified individuals with disabilities, and that eradicate the effects of its past and present unlawful employment practices;

C. Order Wal-Mart Stores, Inc. to make Steve E. Bradley, Jr. whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to the rightful-place hiring of Steve E. Bradley, Jr.;

D. Order Wal-Mart Stores, Inc. to make whole Steve E. Bradley, Jr. by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 8 and 9 above, including job search expenses, in amounts to be determined at trial;

E. Order Wal-Mart Stores, Inc. to make whole Steve E. Bradley, Jr. by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described in paragraphs 8 and 9 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial;

F. Order Wal-Mart Stores, Inc. to pay Steve E. Bradley, Jr. punitive damages for its malicious and reckless conduct, as described in paragraphs 8 and 9 above, in amounts to be determined at trial;

G. Grant such further relief as the Court deems necessary and proper in the public interest;

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

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

Respectfully submitted,

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