

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

**THE SILVERCREST CENTER FOR
NURSING AND REHABILITATION, a/k/a/
SILVERCREST EXTENDED CARE
FACILITY,**

Defendant.
-----X

CIVIL ACTION NUMBER

12-CV-4808 (NG) (RLM)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN - 7 2013 ★

BROOKLYN OFFICE

CONSENT DECREE

Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or "Commission") and defendant The Silvercrest Center for Nursing and Rehabilitation ("Defendant" or "Silvercrest") hereby stipulate and agree to entry of this Consent Decree (the "Consent Decree") to resolve the EEOC's Complaint ("Complaint") filed against Defendant on September 26, 2012, in Case No. 12-CV-4808 (the "Action") under the Americans with Disabilities Act (ADA) and Title I of the Civil Rights Act of 1991. The Complaint claims that Defendant violated these laws by allegedly failing to consider a request for leave by Carolyn Belcon ("Belcon"), the Charging Party, because it was not filled out on a specific Silvercrest form and by subsequently terminating Belcon's employment after she did not respond to Silvercrest's request for the form by a specified date. Silvercrest denies these allegations in their entirety.

The EEOC and Silvercrest (hereinafter "the Parties") desire to resolve this matter without further litigation and adjudication in order to avoid the expensive and protracted costs incident to litigation.

The Parties hereby stipulate and consent to the entry of this Consent Decree as final and binding between the Parties signatory hereto and their agents, officers, employees, successors, and assigns.

This Consent Decree fully and completely resolves all issues, claims and allegations raised in this Action.

The Parties agree that this Consent Decree may be entered without Findings of Fact and Conclusions of Law having been made and entered by the Court. No waiver, modification or amendment of any provision of this Consent Decree will be effective unless made in writing, approved by the Parties, and approved or ordered by the Court.

In consideration of the mutual promises of each party to this Consent Decree, the sufficiency of which is hereby acknowledged, it is agreed and **IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

1. This Consent Decree fully and completely resolves all of the issues, claims and allegations raised in EEOC Charge Number 520-2011-02459 and by the EEOC in its Complaint in this Action. This Consent Decree in no way affects the EEOC's right to process or litigate other charges that may be in existence or may later arise against Defendant in accordance with standard EEOC procedures.

2. This Court has jurisdiction over the subject matter of this Action and of the Parties.

3. No Party will contest the jurisdiction of the federal court to enforce this Consent Decree and its terms. Nothing in this Consent Decree shall be construed to preclude any party in this Action from bringing suit to enforce this Consent Decree, in accordance with the procedures

set forth herein, in the event that any party fails to perform the promises and representations it makes herein.

4. Prior to executing an agreement to sell, assign, consolidate or merge with Silvercrest, Silvercrest will provide the entity entering into such agreement with notice of this lawsuit and a copy of this Consent Decree.

5. Silvercrest will consider an employee's written request for a medical leave of absence as a potential ADA reasonable accommodation for a disability regardless of whether or not the employee submits the request by filling out a specific Silvercrest form, as long as the request is otherwise legally sufficient under the ADA. Nothing in this Consent Decree prevents Silvercrest from requiring employees to comply with its workplace policies, rules and procedures, such as the completion and submission of forms or other employment-related paperwork, including but not limited to those associated with time off benefits, leave of absence benefits or other employee fringe benefits. During the term of this Consent Decree, Silvercrest will maintain the policy attached hereto as Exhibit A (Procedure for Employee with Disability to Request Leave of Absence as Reasonable Accommodation). The policy confirms Silvercrest will consider an employee's written request for a medical leave of absence regardless of whether or not the employee submits the request by filling out a specific Silvercrest form, as long as the request is otherwise legally sufficient under the ADA. Silvercrest's submission of the policy to the EEOC pursuant to this Consent Decree is not a representation by the EEOC that Silvercrest has been or is compliant with federal anti-discrimination laws.

6. Silvercrest and its officers, managers, successors, agents, and assigns are enjoined from not considering a request for medical leave of absence by a Silvercrest employee as a potential ADA reasonable accommodation, when the request is otherwise legally sufficient under

the ADA, on the basis that the employee did not submit the request on a specific Silvercrest form.

7. Silvercrest is enjoined from retaliating against Belcon or any other individual known to have participated or assisted in any way in the investigation or litigation of this matter, or against Belcon for asserting her rights under the ADA relative to this matter.

8. Within two (2) months of the entry of this Consent Decree, Silvercrest will provide a one (1) hour training session regarding discrimination, with an emphasis on disability discrimination and reasonable accommodation, for all human resources staff. Within fourteen (14) months of the entry of this Consent Decree, Silvercrest will provide a second such one-hour training session to those individuals. Within ten (10) business days of the completion of each training session, Silvercrest will forward to the EEOC a copy of the attendance sheet for that training session along with a summary of the topics covered.

9. Within two (2) months of the entry of this Consent Decree, Silvercrest will provide a thirty (30) minute training session regarding discrimination, with an emphasis on disability discrimination and reasonable accommodation, for all other staff. Within ten (10) business days of the completion of the training session, Silvercrest will forward to the EEOC a copy of the attendance sheet for that training session along with a summary of the topics covered.

10. Within thirty (30) business days after the entry of this Consent Decree and once annually thereafter during the term of this Consent Decree, Silvercrest will distribute the policy attached as Exhibit A to all supervisors, managers, human resources staff, and employees. Silvercrest may elect to distribute the policy by notifying employees in writing of the location where policies can be accessed electronically. The distribution of Silvercrest's policy pursuant to

this Consent Decree is not a representation by the EEOC that Silvercrest has been or is compliant with federal anti-discrimination laws.

11. Within fifteen (15) business days of the entry of this Consent Decree, Silvercrest will post the Notice of Lawsuit and Settlement attached as Exhibit B in a conspicuous manner in the employee break room.

12. To the extent not already posted, within fifteen (15) business days of the entry of this Consent Decree, Silvercrest will post an EEOC poster that meets the requirements of 29 C.F.R. §1601.30 in a conspicuous manner in the employee break room.

13. Within thirty-five (35) business days of the entry of this Consent Decree, Silvercrest will provide an affidavit to the EEOC that the requirements of Paragraphs 10 through 12 have been met and describing the location of the Notice and poster.

14. This Consent Decree resolves all issues, allegations and claims raised in EEOC Charge No. 520-2011-02459 and by the EEOC in its Complaint in this Action. Silvercrest will issue payments to Belcon for the total sum of \$25,000. Within fourteen (14) business days of the Court's entry of this Consent Decree, Silvercrest will issue and mail by certified mail to Belcon, at an address supplied by the EEOC, a check made payable to Belcon in the amount of ten-thousand dollars (\$10,000) for alleged back pay. Silvercrest will make applicable withholdings for wages for federal, state and local income taxes and for employee social security taxes pursuant to the Federal Insurance Contribution Act and issue a W-2 for the amount. Silvercrest will pay its employer share of any costs, taxes, or Social Security required by law to be paid by Silvercrest. Within ten (10) business days of the Court's entry of this Consent Decree, Silvercrest will issue and mail by certified mail to Belcon, at an address supplied by the EEOC, a check made payable to Belcon in the amount of fifteen-thousand dollars (\$15,000) for alleged

compensatory damages. Silvercrest will issue a Form 1099 to Belcon for this amount and Belcon will be responsible for the payment of any taxes due on this amount. Simultaneous with delivery to Belcon, Silvercrest's counsel will also send a copy of the checks to the EEOC.

15. Silvercrest will send by electronic mail and regular mail any documents, reports, forms, or other information required to be forwarded to the EEOC, to "Consent Decree Monitor" at decreeonitor.nydo@eoc.gov or to the attention of:

Consent Decree Monitor
Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, New York, 10004

16. Each Party will bear its own attorney fees and costs incurred in this action.

17. This Consent Decree will remain in effect for two (2) years from the date of entry ("Term"). During the Term, this case may be administratively closed but will not be dismissed. The Court retains jurisdiction to enforce the Consent Decree. The Consent Decree will expire by its own terms at the end of that period, without further action required by the Parties or the Court, unless the duration of this Consent Decree has been extended by order of the Court.

18. This Consent Decree may be signed in counterparts. A facsimile or .pdf signature shall have the same force and effect of an original signature or copy thereof.

19. The Parties agree to entry of this Consent Decree and judgment subject to final approval by the Court.

FOR EEOC:

Elizabeth Grossman
Elizabeth Grossman (MBR)

12/26/2013
Date

Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004
212-336-3696

FOR DEFENDANT:

NIXON PEABODY LLP

By: Tara Eyer Daub
Tara Eyer Daub (TE 7943)

12/26/13
Date

50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 832-7500
Attorneys for Defendant
The Silvercrest Center For Nursing and Rehabilitation

ENTERED:

s/Nina Gershon
The Honorable Nina Gershon
United States District Judge

1-6-14
Date

Exhibit A

Exhibit A

EXHIBIT A

POLICY/PROCEDURE – HUMAN RESOURCES

DEPARTMENT(S): ALL

TITLE: PROCEDURE FOR EMPLOYEE WITH DISABILITY TO REQUEST LEAVE OF ABSENCE AS REASONABLE ACCOMMODATION

1.0 Policy

1.1 The policy of Silvercrest Center for Nursing and Rehabilitation is to fully comply with the Americans with Disabilities Act, and state and local laws concerning the employment of qualified individuals with disabilities. Silvercrest will provide reasonable accommodation to qualified employees with disabilities, unless to do so would cause undue hardship.

1.2 Please refer to Silvercrest's Policy on Accommodations for Applicants and Employees with Disabilities, for additional information, policies and procedures. Please also refer to Silvercrest's Family and Medical Leave Policy.

2.0 Procedure for Employee to Request a Leave of Absence as a Reasonable Accommodation

2.1 A qualified employee with a disability who is unable to perform the essential function of his or her position may request a reasonable accommodation that would enable the employee to perform the essential functions of his or her position, in accordance with Silvercrest's policies.

2.2 An employee who requires a leave of absence from work due to a disability should contact Human Resources. If the need for leave is foreseeable, the employee must provide notice and request the leave at least 30 days in advance of the date the leave of absence would commence. If the employee is unable to foresee the need for leave 30 days in advance, then the employee must contact Human Resources to request the leave as soon as practicable and must comply with applicable call-in procedures (unless the employee's disability renders the employee incapable of immediately doing so). In making the request, the employee must provide sufficient information for Human Resources to evaluate the leave request and the anticipated timing and duration of the leave.

2.3 Human Resources will provide the employee with a copy of: (a) the Request for Leave of Absence Form; (b) a Certification Form to be completed by the employee's health care provider providing documentation about the disability, the employee's functional limitations, and anticipated duration of leave if medically necessary, and (c) a claim form for applying for short-term disability insurance benefits. The completed forms must be submitted to Human Resources within fifteen (15) days.

2.4 If the information provided by the employee's health care professional is insufficient, Human Resources may ask for further information. The failure to provide appropriate medical

documentation or to cooperate in Silvercrest's efforts to obtain such documentation can result in a denial of the requested accommodation.

2.5 If an employee submits a written request for leave, but fails to timely return the Request for Leave of Absence Form to Human Resources, Human Resources will process the employee's request for leave to the extent that it has sufficient information to do so. Silvercrest will consider an employee's written request for a medical leave of absence as a potential reasonable accommodation for a disability and will not deny the request for leave on the basis that the employee's completed Request for Leave of Absence Form was not timely received. However, Silvercrest may require the employee to complete and submit any acknowledgments and other documentation required for record-keeping purposes and employees are expected to fully comply with all rules and procedures.

2.6 Silvercrest will process the employee's request for leave in accordance with Silvercrest's policies and procedures. Human Resources will notify the employee if the leave of absence request has been granted. In the event the leave request is denied, Silvercrest will provide notice in accordance with Silvercrest's policies and procedures.

Exhibit B

Exhibit B



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office**

33 Whitehall Street
11th Floor
New York, NY 10004
Phone (800) 669-4000

**NOTICE OF LAWSUIT AND SETTLEMENT
TO SILVERCREST EMPLOYEES**

This notice is posted under a Consent Decree entered by the Federal Court in a lawsuit filed by the Equal Employment Opportunity Commission against Silvercrest. The lawsuit is *EEOC v. The Silvercrest Center for Nursing and Rehabilitation*, Civil Case No. 12-CV-4808 (E.D.N.Y.).

In the lawsuit, EEOC alleged that Silvercrest discriminated against an employee with a disability in violation of the Americans with Disabilities Act ("ADA"). The EEOC and Silvercrest agreed to settle the case, pursuant to a Consent Decree, prior to the Court rendering any decision with respect to the merits of the EEOC's lawsuit.

Pursuant to the settlement and Consent Decree, Silvercrest will consider a written request for a medical leave of absence as a potential accommodation, regardless of whether or not an employee fills out a specific Silvercrest form. The Consent Decree also provides for distribution of Silvercrest's policy and training of managers and employees.

The EEOC enforces federal laws against discrimination in employment, including discrimination on the basis of disability, race, color, national origin, sex, religion, age, or genetic information. If you believe you have been discriminated against, you may contact the EEOC at 33 Whitehall Street, 11th Floor, New York, NY, 10004, or call EEOC toll-free at (800) 669-4000. The EEOC charges no fees and has employees who speak languages other than English. More information about the EEOC can be found at www.eeoc.gov.

THIS IS AN OFFICIAL NOTICE. DO NOT REMOVE OR CHANGE IT.

This Notice must remain posted for two (2) years from the date of the Consent Decree, 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: Consent Decree Monitor, EEOC, 33 Whitehall Street, New York, NY, 10004.