

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

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OFFICE OF THE CLERK

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

DAWES COUNTY, NEBRASKA,

Defendant.

CIVIL ACTION NO.

CIV-07-376-JFB-TDT

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and between the Equal Employment Opportunity Commission ("EEOC") and Dawes County, Nebraska ("Dawes County"), in the United States District Court for the District of Nebraska, with regard to the EEOC's Complaint, filed in this Civil Action. The Complaint was based upon a Charge of Discrimination filed by Russell Hack, Charging Party, against the Defendant, Charge No. 32E-2007-00301.

The above referenced Complaint filed by EEOC alleges that the Defendant violated the Age Discrimination in Employment Act ("ADEA") by forcing Mr. Hack to retire from his employment on account of his age and implementing an impermissible age based policy as to stress tests for employees. The Defendant denies all of the allegations made in the complaint filed by EEOC.

The EEOC and Defendant agree to compromise and settle the differences embodied in the Complaint filed by EEOC and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree ("Consent Decree").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds

appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues raised in the EEOC Charge. This Decree further resolves all issues in the Complaint filed by the EEOC and in this civil action. The EEOC waives further claims and/or litigation on all issues raised in the above referenced charge and Complaint. The EEOC does not waive processing or litigating charges other than the above referenced charge.

2. Defendant shall conduct all employment practices in a manner which does not subject any employee to discrimination on the basis of age as prohibited by the ADEA. Defendant shall discontinue, if any, its policy of requiring any county employee to take a stress test based upon age.

3. Defendant shall post the Notice appended hereto as Attachment "A" on the employee bulletin boards located at Defendant's facilities in the State of Nebraska within ten (10) days after the entry of this Consent Decree. Defendant will report to the EEOC that it has complied with this requirement within 14 days after posting the notice. The notice shall remain posted during the term of this Consent Decree.

4. Defendant shall immediately implement and/or review and revise its policies regarding age discrimination as prohibited by the ADEA, and if not now existing, the implementation and notice of a complaint procedure for employees to notify Defendant of any complaints of age discrimination. Defendant shall establish/review/revise the policy within 90 days after the entry of this Consent Decree and agrees to distribute a copy of said policy to all employees within 30 days after implementation of the policy. Defendant shall report to the EEOC that it has complied with these requirements within 30 days after distributing the policy to its employees.

5. For each year that the Consent Decree is in effect, Defendant shall conduct an annual

training session for all managers and employees with policy making authority advising them of the requirements and prohibitions of the federal anti discrimination laws with a special emphasis on the ADEA. The training will inform the employees of the requirements of the ADEA. The training will also advise the employees of the consequences of violating the federal anti-discrimination laws. The training shall be at least two hours in duration. No less than 30 days after each such training session is conducted, Defendant shall give written notice to the EEOC as to the date and location of the training, the name of the person providing the training and the substance of the training.

6. During the effective period of this Decree, Defendant shall, every six (6) months, provide written notification to the EEOC's Regional Attorney in its St. Louis District Office of any internal complaint of age discrimination, made by any employee, including the name(s) of the employee(s), a description of the investigation of the complaint(s), the finding of the investigation and a description of action taken, or resolution of the complaint(s). In the event there are no complaints of age discrimination, made by any employees during any six (6) month reporting period, Defendant shall provide written notification to the EEOC's Regional Attorney in its St. Louis District Office that no such complaints have been made.

7. Defendant agrees there shall be no discrimination or retaliation of any kind against any person working for Defendant because of opposition to any practice declared unlawful under the Age Discrimination in Employment Act or because of the filing of a charge; giving testimony or assistance or participating in any manner in any investigation, proceeding or hearing under the ADEA.

8. Defendant agrees to pay to Russell Hack the full and final sum of \$50,000.00, computed as \$20,000.00 in lost wages and \$30,000.00 in additional damages, in compromise and

satisfaction of all claims, which were or could have been raised in this cause. Each party to this litigation shall be responsible for their own costs and attorney fees.

9. The payments referenced in paragraph 8, above, shall be made within twenty (20) days of the entry of this Decree. Defendant shall report to the EEOC within 30 days of entry of this Consent Decree regarding its compliance with this paragraph.

10. Defendant shall remove from all personnel files of Russell Hack all documents, entries and references relating to: the facts and circumstances which led to the filing of his charge of discrimination; the charge itself; and the complaint filed by the EEOC in federal court based upon his charge. Defendant will also provide Mr. Hack with a positive job reference to include dates of employment and rate of pay. Defendant shall report to the EEOC within 14 days of the entry of this Consent Decree regarding its compliance with this paragraph.

11. All reports to the EEOC required by this Decree shall be sent to Michelle M. Robertson, Senior Trial Attorney, EEOC, 215 Dean A. McGee, Suite 524, Oklahoma City, Oklahoma 73102.

12. If Defendant fails to tender payment or otherwise fail to timely comply with the terms of paragraphs above, Defendant shall, as applicable:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.

13. Neither the EEOC, Charging Party, nor Defendant shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of either party to the Consent Decree to bring an enforcement action upon

breach of any term of this Consent Decree by either such party. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that Defendant fails to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court. The EEOC also reserves the right to seek contempt sanctions for non-payment and non-compliance with this Court Order.

14. The term of this Decree shall be for two (2) years.

SO ORDERED, ADJUDGED AND DECREED this 8 day of MAY, 2009.



THE HONORABLE JUDGE JOSEPH F. BATAILLON
UNITED STATES DISTRICT COURT JUDGE

AGREED AS TO FORM AND SUBSTANCE:

**FOR THE PLAINTIFF EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION:**

BARBARA A. SEELY
Regional Attorney

S/Michelle M. Robertson
MICHELLE M. ROBERTSON, OBA #14084
Trial Attorney
**EQUAL EMPLOYMENT
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s/ Jennifer M. Tomka
Richard Boucher
Patricia J. Kivett
Jennifer M. Tomka
Boucher Law Firm
West Gate Bank Building, Suite A
5555 South 27th Street
Lincoln, Nebraska 68512-1647
jtomka@boucherlawfirm.com

ATTORNEYS FOR DEFENDANT

**NOTICE TO ALL EMPLOYEES POSTED
PURSUANT TO AGREEMENT WITH THE
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

This notice is being posted as part of an agreement between Dawes County, Nebraska and the U.S. Equal Employment Opportunity Commission ("EEOC").

Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age or disability with respect to hiring, firing, promotions, pay raises or other terms, conditions or privileges of employment. Discrimination on the basis of age is prohibited by the Age Discrimination in Employment Act. This federal law prohibits an employer from discriminating against any employee as to the terms and conditions of employment, including mandatory retirement, simply because the employee is 40 years of age or older. Employers are also required to take immediate remedial and corrective action to end such age discrimination upon an employee's complaint of such treatment. The law also prohibits an employer from retaliating against employees who oppose what they believe to be unlawful employment practices. This Notice is intended to inform employees of their rights under federal law and to prevent future acts of age discrimination.

The employee has the right, and is encouraged to exercise the right, to report allegations of discrimination, including age discrimination and retaliation in the workplace. An employee may do so by notifying _____ (Human Resources Contact/Name Phone Number) _____. Employees may also report allegations of discrimination to any supervisor or manager with Dawes County, Nebraska.

Any report of such an allegation will be thoroughly investigated, with appropriate disciplinary action taken against any person(s) found to have engaged in discriminatory conduct.

A person either alternatively, or in addition to reporting such an allegation to company officials, may contact the Equal Employment Opportunity Commission for the purposes of filing a charge of employment discrimination. The address and telephone number of the nearest office for the State of Nebraska is the St. Louis District Office, 1222 Spruce Street, Rm 8.100, St. Louis, Missouri, 63103 (314) 539-7800 or the local EEOC office in Oklahoma, 215 Dean A. McGee, Suite 524, Oklahoma City, OK 73102; (405) 231-4911. Information about your rights and how to file a charge is also available on the Internet at www.eeoc.gov.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE REMOVED OR DEFACED BY ANYONE. THIS NOTICE WILL BE POSTED FOR A PERIOD OF TWO YEARS.

Date

FOR:
Dawes County, Nebraska

THIS NOTICE SHALL REMAIN POSTED FOR UNTIL _____

