

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

UNIVERSITY OF NEW MEXICO,

Defendant.

CONSENT DECREE

This action was brought by the United States against the University of New Mexico ("UNM") to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended ("Title VII"), following receipt by the United States from the Equal Employment Opportunity Commission ("EEOC") of three charges of discrimination filed by Mary Swisher (Charge No. 390A00832), Sandra Martinez (Charge No. 390A00820) and Jenifer Brito (Charge No. 390A10897). This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.

In its complaint, the United States alleges that UNM, through its Health Sciences Center, discriminated against Mary Swisher and Sandra Martinez, female Mental Health Technicians employed by UNM Health Sciences Center's Childrens' Psychiatric Hospital, because of their sex and pregnancy, in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), among other ways, by:

- (a) denying Ms. Swisher and Ms. Martinez modified-duty positions during their pregnancies, while permitting similarly-situated, non-pregnant employees to obtain modified-duty positions; and
- (b) failing or refusing to take appropriate action to remedy the effects of its discriminatory treatment of Ms. Swisher and Ms. Martinez.

The United States also alleges in its complaint that UNM, through its Health Sciences Center, discriminated against Jenifer Brito, a female formerly employed by UNM Health Sciences Center's Childrens' Psychiatric Hospital as a Mental Health Technician, because of her sex and pregnancy, in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a), among other ways, by:

- (a) denying Ms. Brito a modified-duty position during her pregnancy, while permitting similarly-situated, non-pregnant employees to obtain modified-duty positions;
- (b) terminating Ms. Brito's employment after she notified her supervisors that she was pregnant; and

(c) failing or refusing to take appropriate action to remedy the effects of its discriminatory treatment of Ms. Brito.

UNM denies that it, through its Health Sciences Center, has discriminated against Mary Swisher, Sandra Martinez and Jenifer Brito in violation of Title VII. Nevertheless, the United States and UNM, desiring that this action be settled by an appropriate Consent Decree ("Decree"), and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The parties also hereby waive, for purposes of entry of this Decree only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between them with regard to the issues raised in the United States' complaint in this case.

This Decree, being entered into with the consent of the United States and UNM, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by UNM or a finding of any wrongdoing or violation of any applicable federal law or regulation.

In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following:

I. DEFINITION AND PARTIES

1. The parties to this Decree are the United States, by the United States Department of Justice ("United States"), and the University of New Mexico, on behalf of its Health Sciences Center ("UNM").
2. "Day" or "Days", as used herein, refers to calendar and not business days.
3. "Date of entry" of the Decree refers to the date on which the Court orders entry of the Decree.
4. The Equal Employment Opportunity Commission is referred to hereinafter as the "EEOC."
5. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, is referred to hereinafter as "Title VII."

II. PURPOSES OF THIS DECREE

6. The purposes of this Decree are to ensure that:
 - (a) employees of UNM's Health Sciences Center are not subjected to sex and pregnancy discrimination in violation of Title VII;
 - (b) all requests for accommodation by pregnant employees of the Health Sciences Center are appropriately considered and granted or denied by UNM on the same basis as requests for accommodation made by non-pregnant employees;
 - (c) UNM adopts and maintains clear, meaningful and well-publicized policies and procedures for the Health Sciences Center that prohibit discrimination on the basis of sex and pregnancy;
 - (d) UNM provides adequate training to all Health Sciences Center employees who are

authorized to receive and investigate complaints of sex and pregnancy discrimination and all supervisors and other persons responsible for considering and granting requests for accommodation of pregnant employees, including workplace accommodation for pregnant employees; and

- (e) UNM offers to Ms. Swisher, Ms. Martinez and Ms. Brito appropriate individual relief.

III. GENERAL INJUNCTIVE RELIEF

7. UNM, its employees, supervisors, agents and all individuals in active concert or participation with it, are enjoined from:

- (a) engaging in any act or practice that unlawfully discriminates against any employee of UNM's Health Sciences Center on the basis of sex or pregnancy; and

- (b) retaliating against, or in any way adversely affecting the terms and conditions of employment of, any person because that person has engaged in practices protected under 42 U.S.C. § 2000e-3(a), including, but not limited to, cooperating with the United States' investigation of EEOC charge nos. 390A00820, 390A00832 or 390A10897, or the litigation of this case.

IV. IMPLEMENTATION OF POLICIES AND PROCEDURES

8. Within sixty (60) days from the date of entry of this Decree, UNM shall implement policies and procedures for its Health Sciences Center that prohibit discrimination on the basis of sex and pregnancy and that require pregnant employees to be treated in the same manner as all other similarly-situated, non-pregnant employees for purposes of workplace accommodation, paid or unpaid leave, and receipt of benefits. These policies and procedures shall, at a minimum, include the following information:

- (a) a description of the manner in which an employee may make a request for accommodation because of pregnancy;

- (b) a description of the manner in which an employee may make a written or verbal complaint of discrimination based on sex and pregnancy;

- (c) that all requests for accommodation will be reviewed promptly and considered on the same basis as requests for accommodation made by similarly-situated, non-pregnant employees;

- (d) that all complaints of discrimination based on sex and pregnancy will be promptly and objectively investigated;

- (e) contact information for the person or persons authorized to receive complaints of discrimination based on sex and pregnancy, and contact information for the person or persons authorized to receive requests for accommodation of pregnant employees; and

- (f) that UNM will make good faith efforts to provide a response to a request for accommodation or the results of an investigation into a complaint of discrimination on the basis of sex and pregnancy to the requesting or complaining party, in writing, no later than thirty (30) days from the date the request or complaint is received.

9. Within thirty (30) days from the date of entry of this Decree, UNM shall designate a person who

shall have responsibility for ensuring that the policies and procedures set forth in Paragraph 8, above, are fully implemented and complied with.

10. Within ten (10) days from the date upon which UNM implements the policies and procedures set forth in Paragraph 8, above, UNM shall distribute copies of such policies and procedures to all of its Health Sciences Center's current employees.

11. Within ten (10) days from the date upon which UNM implements the policies and procedures set forth in Paragraph 8, above, UNM shall publicize the policies and procedures by, *inter alia*, posting those policies and procedures at locations in all buildings and facilities of its Health Sciences Center used for posting equal employment opportunity information, by email to all employees, and on any UNM internet or intranet website used for posting notices or policy changes for or concerning its Health Sciences Center.

12. UNM shall ensure that each new Health Sciences Center employee receives a copy of the policies and procedures implemented pursuant to Paragraph 8, above, at the time of the new employee's hire. Each new Health Sciences Center employee shall sign an acknowledgment that she or he has read and understood such policies; and the signed acknowledgment shall be placed in each new employee's personnel file.

V. TRAINING

13. Within three hundred and sixty-five (365) days from the date of entry of this Decree, UNM shall provide live mandatory training regarding Title VII's prohibition against sex and pregnancy discrimination, including the accommodation of pregnant employees, to all employees of its Health Sciences Center who are authorized to receive and investigate complaints of sex and pregnancy discrimination and all supervisors and other persons responsible for considering and granting requests for accommodation of pregnant employees. Priority for live training will be given to human resources professionals and first-line supervisors in UNM's University Hospital system. As soon as practicable, UNM shall provide on-line training to all individuals required to receive training, pursuant to this paragraph.

14. Within thirty (30) days prior to the date of the training, UNM shall inform the United States of the identity of the individual or business entity that it designates to conduct the training required by Paragraph 13, above, and UNM shall provide a description of the qualifications of such individual or business entity.

15. Within thirty (30) days following the completion of the training required by Paragraph 13, above, UNM shall provide to the United States copies of all training materials used, as well as written verification that the training has been completed and that all employees required by Paragraph 13, above, to attend such training in fact did so.

VI. SPECIFIC RELIEF FOR MARY SWISHER

16. Without admitting the allegations of the United States as set forth in its complaint, and in settlement of the claims of the United States for relief on behalf of Mary Swisher, UNM shall provide Ms. Swisher with a total monetary award of FORTY-EIGHT THOUSAND THREE HUNDRED AND FIFTY TWO DOLLARS (\$48,352.00) in accordance with and subject to the following:

- (a) UNM shall offer Ms. Swisher a monetary award in the amount of EIGHT THOUSAND

THREE HUNDRED FIFTY TWO DOLLARS (\$8,352.00), which includes SIX THOUSAND EIGHT HUNDRED SEVENTY DOLLARS (\$6,870.00) in back pay and ONE THOUSAND FOUR HUNDRED EIGHTY TWO DOLLARS (\$1,482.00) in accumulated interest on the back pay. The back pay portion of this monetary amount shall be subject to withholding for income tax and FICA. In addition to the sums specified above, UNM shall pay the appropriate employer's contribution to the Social Security fund due on the back pay portion of the monetary award.

(b) UNM shall offer Ms. Swisher a separate monetary award in the amount of FORTY THOUSAND DOLLARS (\$40,000.00). This amount shall be considered compensatory damages to fully compensate Ms. Swisher for injuries caused by UNM's allegedly discriminatory conduct against her, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. No withholdings shall be made by UNM from the compensatory damages award, although UNM shall issue an Internal Revenue Service ("IRS") 1099-Misc Form to Ms. Swisher and report this award to the IRS and any other applicable taxing authority.

(c) No later than ten (10) days from the date of entry of this Decree, UNM shall notify Ms. Swisher of the terms of this Decree by mailing to her, by certified mail, return receipt requested, a notice letter in the form set forth in Appendix A hereto, a copy of this Decree, and a copy of a release in the form set forth in Appendix B hereto.

(d) UNM shall send a copy of the notice letter referred to in Paragraph 16(c), above, to the United States at the same time it sends the notice letter to Ms. Swisher.

(e) To receive the relief provided to her under this Decree, Ms. Swisher must execute the release form provided with the notice letter and return it to UNM within thirty (30) days from the date she receives the notice letter referred to in Paragraph 16(c), above, unless she can show good cause, to be determined by the United States, within a reasonable time for her failure to do so.

(f) UNM shall provide the United States with a copy of Ms. Swisher's executed release form within ten (10) days from the date of its receipt. Within fifteen (15) days from the date of its receipt of Ms. Swisher's executed release form, UNM shall mail to Ms. Swisher a check made payable to Mary Swisher in the amount of FORTY EIGHT THOUSAND THREE HUNDRED FIFTY TWO DOLLARS (\$48,352.00).

VII. SPECIFIC RELIEF FOR SANDRA MARTINEZ

17. Without admitting the allegations of the United States as set forth in its complaint, and in settlement of the claims of the United States for relief on behalf of Sandra Martinez, UNM shall provide Ms. Martinez with a total monetary award of FIFTY THOUSAND THREE HUNDRED EIGHTY THREE DOLLARS (\$50,383.00) in accordance with and subject to the following:

(a) UNM shall offer Ms. Martinez a monetary award in the amount of TEN THOUSAND THREE HUNDRED EIGHTY THREE DOLLARS (\$10,383.00), which includes EIGHT THOUSAND THREE HUNDRED EIGHTY ONE DOLLARS (\$8,381.00) in back pay and TWO THOUSAND TWO DOLLARS (\$2,002.00) in accumulated interest on the back pay. The back pay portion of this monetary amount shall be subject to withholding for income tax and FICA. In addition to the sums specified above, UNM shall pay the appropriate employer's contribution to the Social Security fund due on the back pay portion of the monetary award.

(b) UNM shall offer Ms. Martinez a separate monetary award in the amount of FORTY

THOUSAND DOLLARS (\$40,000.00). This amount shall be considered compensatory damages, to fully compensate Ms. Martinez for injuries caused by UNM's allegedly discriminatory conduct against her, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. No withholdings shall be made by UNM from the compensatory damages award, although UNM shall issue an Internal Revenue Service ("IRS") 1099-Misc Form to Ms. Martinez and report this award to the IRS and any other applicable taxing authority.

(c) No later than ten (10) days from the date of entry of this Decree, UNM shall notify Ms. Martinez of the terms of this Decree by mailing to her, by certified mail, return receipt requested, a notice letter in the form set forth in Appendix A hereto, a copy of this Decree, and a copy of a release in the form set forth in Appendix B hereto.

(d) UNM shall send a copy of the notice letter referred to in Paragraph 17(c), above, to the United States at the same time it sends the notice letter to Ms. Martinez.

(e) To receive the relief provided to her under this Decree, Ms. Martinez must execute the release form provided with the notice letter and return it to UNM within thirty (30) days from the date she receives the notice letter referred to in Paragraph 17(c), above, unless she can show good cause, to be determined by the United States, within a reasonable time for her failure to do so.

(f) UNM shall provide the United States with a copy of Ms. Martinez's executed release form within ten (10) days from the date of its receipt. Within fifteen (15) days from the date of its receipt of Ms. Martinez's executed release form, UNM shall mail to Ms. Martinez a check made payable to Sandra Martinez in the amount of FIFTY THOUSAND THREE HUNDRED EIGHTY THREE DOLLARS (\$50,383.00).

VIII. SPECIFIC RELIEF FOR JENIFER BRITO

18. Without admitting the allegations of the United States as set forth in its complaint, and in settlement of the claims of the United States for relief on behalf of Jenifer Brito, UNM shall provide Ms. Brito with a total monetary award of THIRTY SIX THOUSAND SIX HUNDRED FORTY SEVEN DOLLARS (\$36,647.00) in accordance with and subject to the following:

(a) UNM shall offer Ms. Brito a monetary award in the amount of ONE THOUSAND SIX HUNDRED FORTY SEVEN DOLLARS (\$1,647.00), which includes ONE THOUSAND FOUR HUNDRED SEVENTEEN DOLLARS (\$1,417.00) in back pay and TWO HUNDRED THIRTY DOLLARS (\$230.00) in accumulated interest on the back pay. The back pay portion of this monetary amount shall be subject to withholding for income tax and FICA. In addition to the sums specified above, UNM shall pay the appropriate employer's contribution to the Social Security fund due on the back pay portion of the monetary award.

(b) UNM shall offer Ms. Brito a separate monetary award in the amount of THIRTY FIVE THOUSAND DOLLARS (\$35,000.00). This amount shall be considered compensatory damages to fully compensate Ms. Brito for injuries caused by UNM's allegedly discriminatory conduct against her, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. No withholdings shall be made by UNM from the compensatory damages award, although UNM shall issue an Internal Revenue Service ("IRS") 1099-Misc Form to Ms. Brito and report this award to the IRS and any other applicable taxing authority.

(c) No later than ten (10) days from the date of entry of this Decree, UNM shall notify Ms. Brito of

the terms of this Decree by mailing to her, by certified mail, return receipt requested, a notice letter in the form set forth in Appendix A hereto, a copy of this Decree, and a copy of a release in the form set forth in Appendix B hereto.

(d) UNM shall send a copy of the notice letter referred to in Paragraph 18(c), above, to the United States at the same time it sends the notice letter to Ms. Brito.

(e) To receive the relief provided to her under this Decree, Ms. Brito must execute the release form provided with the notice letter and return it to UNM within thirty (30) days from the date she receives the notice letter referred to in Paragraph 18(c), above, unless she can show good cause, to be determined by the United States, within a reasonable time for her failure to do so.

(f) UNM shall provide the United States with a copy of Ms. Brito's executed release form within ten (10) days from the date of its receipt. Within fifteen (15) days from the date of its receipt of Ms. Brito's executed release form, UNM shall mail to Ms. Brito a check made payable to Jenifer Brito in the amount of THIRTY SIX THOUSAND SIX HUNDRED FORTY SEVEN DOLLARS (\$36,647.00).

IX. RECORD RETENTION AND COMPLIANCE MONITORING

19. UNM shall retain the following records during the term of this Consent Decree or for the period of time required by applicable federal record retention requirements, whichever is longer:

(a) the provisions and effective date of all policies and procedures implemented pursuant to Paragraph 8, above;

(b) all posted notices and posters displayed at its Health Sciences Center's work areas, and on an internet or intranet website intended to convey information regarding the prohibition of discrimination on the basis of sex and pregnancy in the workplace, as set forth in Paragraph 11, above;

(c) copies of its policies and procedures prohibiting discrimination on the basis of sex and pregnancy that are made available to new Health Sciences Center employees, as set forth in Paragraph 12, above;

(d) all documents that come into its possession relating to written or verbal complaints of retaliation, sex and pregnancy discrimination from any employee of the Health Sciences Center against the Health Sciences Center, its component organizations or any of its employees, including documents relating to UNM's investigation and resolution of any such complaints; and

(e) all documents that come into UNM's possession relating to requests for accommodation made by any employee of its Health Sciences Center, including documents relating to UNM's processing and disposition of any such requests.

20. The United States may review compliance with this Decree at any time and shall have the right to inspect and copy any documents that are relevant and necessary to monitor UNM's compliance with this Decree, upon thirty (30) days written notice to UNM, without further order of this Court.

X. DISPUTE RESOLUTION

21. The parties shall attempt to resolve informally any dispute that may arise under this Decree. If the parties are unable to resolve the dispute expeditiously, either party may move the Court for a resolution

of the issue.

XI. JURISDICTION OF THE COURT

22. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the Decree.

23. At the end of two (2) years from the date of entry of this Decree, this Decree shall be dissolved and this action shall be dismissed without further order of the Court.

XII. GENERAL PROVISIONS

24. The parties shall bear their own costs in this action, including attorney's fees, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise under this Decree and require resolution by the Court.

25. All documents required to be delivered under this Decree to the United States shall be sent by overnight mail to the attention of:

Chief
Employment Litigation Section
U.S. Department of Justice
Civil Rights Division
601 D Street, N.W., Room 4040
PHB, Fourth Floor
Washington, D.C. 20004

26. All documents required to be delivered under this Decree to UNM shall be sent to the attention of:

Elizabeth Staley, Esq.
Associate University Counsel
HSC Office of General Counsel
MSC 09 5300
1 University of New Mexico
Albuquerque, New Mexico 87131-5001

IT is so **ORDERED**, this ____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

For plaintiff United States of America:

R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division

By:

DAVID J. PALMER

Chief

Employment Litigation Section

JOHN M. GADZICHOWSKI

Deputy Chief

KATHLEEN T. TOOMEY

ANAT EHRLICH

Attorneys

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section

950 Pennsylvania Avenue, N.W.

PHB, Fourth Floor

Washington, D.C. 20530

Telephone: (202) 616-9504

For defendant University of New Mexico:

By:

R. PHILLIP EATON

Vice President, Health Sciences Center

University of New Mexico

ELIZABETH STALEY

Associate University Counsel

Office of University Counsel

MSC 09 5300

1 University of New Mexico

Albuquerque, New Mexico 87131-5001

(505) 272-8668