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FILED
CLERK, U.S. DISTRICT COURT
28 JUN 02 PM 3:45
DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

_____)
)
Equal Employment Opportunity)
Commission)
 Plaintiff,)
 vs.)
Newonics, Inc.)
 Defendant.)
_____)

COMPLAINT AND JURY TRIAL
DEMAND

2 02 C V - 0632 C

NATURE OF THE ACTION

This is an action under the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to restrain the unlawful payment of wages to employees of one sex at rates less than the rates paid to employees of the opposite sex, and to provide appropriate relief due to Deborah Wayland as a result of such unlawful practices. The Commission alleges that Newonics, Inc. paid Deborah Wayland at wage rates which are less than the rates paid to its male employees performing substantially equal work, as an Assembly Lead, and otherwise discriminated against her because of her sex, female and retaliated against her when she complained about unequal wages.

JURISDICTION AND VENUE

1. 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 Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as Section 6(d) of the FLSA, 29 U.S.C. § 206(d), and pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII") 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 District of Utah.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission ("Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of the Equal Pay Act and Title VII, and is expressly authorized to bring this action by Sections 16(c) and 17 of the FLSA, 29 U.S.C. "§§ 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705; and by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1)and (3).
4. At all relevant times, Defendant, a Utah corporation, has continuously been doing business in the State of Utah and Salt Lake City, and has continuously had at least 15 employees.
5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).
6. At all relevant times, Defendant Employer has acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. At all relevant times, Defendant Employer has continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§ 203(b), (i) and (j) has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§ 203(r) and (s), in that said enterprise has continuously been an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.

STATEMENT OF CLAIMS

Count One- Employment Discrimination on the Basis of Sex, Female **42 U.S.C. § 2000e-2(a)**

8. More than thirty days prior to the institution of this lawsuit Deborah Wayland filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.
9. Since at least November 1, 1999, Defendant has engaged in unlawful employment practices at its West Valley City location, in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a) by discriminating against Deborah Wayland because of her sex, female.
10. The effect of the practices complained of in paragraph 9 above has been to deprive Deborah Wayland of equal employment opportunities and otherwise adversely affect her status as an employee, because of her sex, female.
11. The unlawful employment practices complained of in paragraph 9 were intentional.
12. The unlawful employment practices complained of in paragraph 9 above were done with malice or with reckless indifference to the federally protected rights of Deborah Wayland.

Count Two - Equal Pay Act Violation **29 U.S.C. § 206(d)(1) and 215(a)(2)**

13. Since at least November 1, 1999, Defendant Employer has violated Sections

6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2) and 215(a)(3), by paying wages to its female Assembly Lead, Deborah Wayland, in its West Valley City facility, at rates less than the rates paid to male employees in the same establishment for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

14. As a result of the acts complained of in paragraph 13, Defendant Employer unlawfully has withheld and is continuing to withhold the payment of wages due to Deborah Wayland.

15. The unlawful practices complained of in paragraph 13 above were willful.

Count Three - Retaliation

16. In March, 2000, Defendant violated Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3) by discharging Deborah Wayland because she complained about the unlawful acts complained of above.

17. Since at least March, 2000, Defendant has engaged in unlawful retaliatory practices by terminating her for opposing practices which she reasonably believed were unlawful in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

18. The effect of the practices complained of in paragraphs 16 and 17 above has been to deprive Deborah Wayland of equal employment opportunities and otherwise adversely affect her status as an employee, because of her opposition to unlawful discrimination.

19. The unlawful employment practices complained of in paragraphs 16 and 17 were intentional.

20. The unlawful employment practices complained of in paragraphs 16 and 17 above were done with malice or with reckless indifference to the federally protected rights of Deborah Wayland.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

- A. Grant a permanent injunction enjoining the Defendant , its officers, successors, assigns and all persons in active concert or participation with it, from engaging in unequal payment of wages and in any other employment practice which discriminates on the basis of sex.
- B. Grant a permanent injunction enjoining the Defendant its officers, successors, assigns and all persons in active concert or participation with it, from discriminating within any of its establishments between employees on the basis of sex, by paying wages to employees of one sex at rates less than the rates at which it pays wages to employees of the opposite sex for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.
- C. Order Defendant Employer to institute and carry out policies, practices and programs which provide equal employment opportunities for women and those who participate in proceedings under the EPA or Title VII or who oppose practices made unlawful by the EPA or Title VII and which serve to eradicate the effects of its past and present unlawful employment practices.
- D. Order Defendant Employer to make whole Deborah Wayland by providing appropriate back pay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement or front pay.
- E. Grant a judgment requiring Defendant Employer to pay appropriate back wages in amounts to be determined at trial, and an equal sum as liquidated damages or prejudgment interest in lieu thereof, to Deborah Wayland whose wages are being unlawfully withheld as a result of the acts complained of above.
- F. Order Defendants to post and keep posted the notices required by Section 105 of

the ADA, 42 U.S.C. § 12115, which incorporates by reference Section 711(a) of Title VII, 42 U.S.C. § 2000e-10(a).

- G. Order Defendants to make whole Deborah Wayland by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.
- H. Order Defendants to pay Deborah Wayland punitive damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.
- I. Grant such further relief as the Court deems necessary and proper in the public interest.
- J. Award the Commission its costs.

JURY TRIAL DEMAND

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

RESPECTFULLY SUBMITTED this 27th day of June, 2002.

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