

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

EQUAL EMPLOYMENT OPPORTUNITY))	
COMMISSION,))	
Plaintiff,))	CIV
v.))	
UNIFLEX SOUTHWEST, L.L.C., and))	COMPLAINT
UNIFLEX, INC., d/b/a CYCLE PLASTICS))	JURY TRIAL DEMANDED
Defendants.))	
_____))	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the bases of sex and retaliation, and to provide appropriate relief to Joann Gutierrez and a class of female employees who were adversely affected by such practices while employed by Defendants Uniflex Southwest, L.L.C., and Uniflex, Inc., d/b/a Cycle Plastics (collectively, “Defendants” or “Employer”). The Commission alleges that Joann Gutierrez was demoted from her position of Adjuster to Senior Operator due to her sex and that Ms. Gutierrez was issued an employee warning notice in retaliation for having filed a charge of discrimination with the Commission. The Commission also alleges that Defendants failed to hire or promote women to the Adjuster position and discriminated against women in the terms, conditions, and privileges of their employment, including but not limited to, being denied access to training for the Adjuster position. Finally, the Commission alleges that Defendants failed to make and preserve employment records as required by Section 709(c) of Title VII.

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 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 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 New Mexico.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action 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 Uniflex Southwest, L.L.C., has continuously been a Delaware corporation doing business in the State of New Mexico and the City of Albuquerque, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Uniflex, Inc. has continuously been a Delaware corporation doing business in the State of New Mexico and the City of Albuquerque, and has continuously had at least 15 employees.

6. Defendants Uniflex Southwest, L.L.C., and Uniflex, Inc., are a single, integrated enterprise doing business in Albuquerque, New Mexico under the trade name Cycle Plastics.

7. At all relevant times, Uniflex Southwest, L.L.C., and Uniflex, Inc., have continuously been

and are now an employer or employers engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h).

STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Joann Gutierrez filed a charge with the Commission alleging violations of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. Since at least March 2002, Defendants have engaged in unlawful employment practices at the Albuquerque, New Mexico, Cycle Plastics facility in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a) by demoting Joann Gutierrez from the Adjuster position to the Senior Operator position because of her sex, female.

10. Since at least May 2001, Defendants have engaged in unlawful employment practices at the Albuquerque, New Mexico, Cycle Plastics facility in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a). These practices include:

- a) failing to hire or promote women to the Adjuster position because of their sex; and
- b) discriminating against women in the terms, conditions, and privileges of their employment, including, but not limited to, denying women access to training for the Adjuster positions because of their sex.

11. Since at least April 2002, Defendants have engaged in unlawful retaliatory employment practices at the Albuquerque, New Mexico, Cycle Plastics facility in violation of Section 704(a) of Title VII, 42 U.S.C. §§2000e-3(a). These retaliatory practices include issuing Joann Gutierrez an Employee Warning Notice because she opposed unlawful employment practices and filed a charge of discrimination

with the Commission.

12. The effect of the practices complained of in paragraphs 9 and 10, above has been to deprive Joann Gutierrez and a class of women of equal employment opportunities and otherwise adversely affect their status as an employee because of their sex, female.

13. The effect of the practices complained of in paragraph 11 above has been to deprive Joann Gutierrez of equal employment opportunities and otherwise adversely affect her status as an employee because of her opposition to unlawful employment practices.

14. Since at least March 2002, Defendants have failed, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed, including failing to keep employment applications as required by law.

15. The unlawful employment practices complained of in paragraphs 9, 10 and 11 above were intentional.

16. The unlawful employment practices complained of in paragraphs 9, 10 and 11 above were done with malice and/or reckless indifference to the federally protected rights of Joann Gutierrez and a class of women.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns and all persons in active concert or participation with them, from engaging in any employment practice that discriminate on the basis of sex.

B. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates or retaliates against any individual because of the individual's opposition to perceived unlawful employment practices and/or because the individual filed a charge, testified, assisted, or participated in an investigation or proceeding under Title VII.

C. Order Defendants to institute and carry out policies, practices and programs which provide equal employment opportunities for women and for those who oppose perceived unlawful employment practices and/or file charges, testify, assist or participate in an investigation or proceeding under Title VII, and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendants to make whole Joann Gutierrez and a class of adversely affected women, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

E. Order Defendants to make whole Joann Gutierrez and a class of adversely affected women, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 9,10 and 11 above, in amounts to be determined at trial.

F. Order Defendants to make whole Joann Gutierrez and a class of adversely affected women, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 9,10 and 11 above, including but not limited to, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life, and other nonpecuniary losses, in amounts to be determined at trial.

G. Order Defendants to pay Joann Gutierrez and a class of adversely affected women

punitive damages for its malicious and/or reckless conduct described in paragraphs 9, 10, and 11 above, in amounts to be determined at trial.

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

I. Award the Commission its costs in this action.

JURY TRIAL DEMANDED

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

DATED this 11th day of September 2003.

Respectfully submitted,

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