

United States Equal Employment Opportunity Commission
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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
Plaintiff,)	
)	Civil Action No.
v.)	02-cv-7483(JD)
)	
)	<u>AMENDED COMPLAINT</u>
HCR MANOR CARE HEALTH SERVICES)	JURY TRIAL DEMAND
AT YARDLEY,)	
Defendant.)	

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 (“Title VII”) to correct unlawful employment practices on the basis of race (Black) and to provide appropriate relief to a class of three black former employees of Defendant who were adversely affected by such practices. The Commission alleges that Defendant HCR Manor Care Health Services (“Defendant”) discriminated against Evette Ford, Djenen Augustin, and Kenyattia Gaither, because of their race (Black), by subjecting them to harsher disciplinary treatment under its progressive disciplinary procedures and by causing their termination, while similarly situated white employees who engaged in similar or identical conduct were not subjected to the same treatment. As a result of Defendant’s racially discriminatory treatment, Ms. Ford, Ms. Augustin, and Ms. Gaither suffered lost wages, emotional distress, and other damages.

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), as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) 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 Eastern District of Pennsylvania.

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 Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3), 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant HCR Manor Care Health Services, located in Yardley, Pennsylvania, has been doing business in the State of Pennsylvania, and has continuously had at least 15 employees.

5. At all relevant times, Defendant 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).

STATEMENT OF CLAIMS

6. More than thirty days prior to the initiation of this lawsuit, Evette Ford, Djenen Augustin, and Kenyattia Gaither, each filed separate charges with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least February, 2001, Defendant has engaged in unlawful employment practices at its Yardley, Pennsylvania location in violation of Section 703(a), as amended, 42 U.S.C. § 2000e-3(a). Specifically, the Commission alleges that Defendant discriminated against Ford, Augustin, and

Gaither, based on their race (Black), by subjecting them to more severe disciplinary actions and termination for violation of its policies because of their race, Black.

A. Evette Ford, who is Black, was initially hired by Defendant Employer on April 23, 1998. She was last employed by Defendant Employer as a Certified Nursing Assistant (CNA) from September 11, 2000 until February 14, 2001. Her hourly rate of pay was \$9.36. Ford was qualified for her position as CNA and performed her job duties satisfactorily. In January 2000, she received her certification as a Nurse Aide and was registered in the Pennsylvania Nurse Aide Registry.

B. Since October 28, 2000, Ford was permanently assigned as a full-time CNA in the South Wing Unit on the 7:00 a.m. to 3:00 p.m. shift. On February 14, 2001, Defendant Employer terminated her employment for the “critical offense of insubordinate acts or statements or willful failure to carry out orders” after she refused to go to the Arcadia Unit, to which she was not permanently assigned.

C. Prior to February, 2001, White Certified Nurse Assistants had similarly refused assignments to other Units to which they were not permanently assigned, yet they were not similarly disciplined or subject to termination.

D. Augustin, who is also Black, was employed with Defendant Employer as a CNA from June, 2000 to February 4, 2001. She was paid \$8.00 per hour. She was permanently assigned to the Newtown Unit on the 7:00 a.m. to 3:00 p.m. shift. Augustin was qualified for her position as CNA and performed her job duties satisfactorily. In August, 2000, she had successfully completed the Nurse Aide Training Program conducted by TLC Institute in Mercer County, New Jersey. At the time of her termination, she was eligible to retake the state test for Nurses Aides to get appropriate certification.

E. Gaither, who is Black, was employed as a CNA with Defendant Employer from July 25, 2000 to February 4, 2001. She was also paid \$8.00 per hour. Along with Augustin, she was permanently assigned to the Newtown Unit on the 7:00 a.m. to 3:00 p.m. shift. Gaither was qualified for her position as CNA and performed her job duties satisfactorily. In or around August, 2000, she had successfully completed the Nurse Aide Training Program sponsored by Defendant Employer. At the time of her termination, she was eligible to retake the state test for Nurse Aide to get appropriate certification.

F. On February 6, 2001, Defendant Employer terminated both Augustin and Gaither from their employment as Certified Nursing Assistants based on “conduct detrimental to company operations that results in serious negative public relations or customer service” for their involvement in a verbal dispute in front of residents.

G. However, on previous occasions, White employees who had engaged in similar misconduct, in violation of Defendant Employer’s policies, were not similarly subjected to discipline and/or termination.

H. In addition, on a regular basis, Black CNAs were subjected to reprimands for infractions such as tardiness, absenteeism, leaving their assignment without authorization, and other violations of company policies at a substantially higher rate than White CNAs who engage in similar misconduct.

I. No other employee had been terminated for similar incidents of misconduct or violation of company policy prior to the occurrence of the incidents identified above concerning Ford, Augustin, and Gaither.

8. The effect of the practices complained of in paragraph 7(A)-(I) above has been to

deprive Ford, Augustin, and Gaither of equal employment opportunities and otherwise adversely affect their status as employees because of their race, Black, in violation of Title VII.

9. The unlawful employment practices complained of in paragraph 7 above were intentional and were done with malice or with reckless indifference to the federally protected rights of Ford, Augustin, and Gaither.

PRAYER FOR RELIEF

10. Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from continuing to wrongfully terminate individuals, and any other employment practice which discriminates on the basis of race, Black.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities to individuals, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Ford, Augustin, and Gaither 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, including, but not limited to, front pay or reinstatement.

D. Order Defendant to make whole Ford, Augustin, and Gaither by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described above, including, but not limited to, their losses resulting from humiliation, pain, suffering, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.

E. Order Defendant to pay punitive damages to Ford, Augustin, and Gaither for its

malicious and reckless conduct described above, in amounts to be determined at trial.

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

G. Award the Commission its costs of this action.

JURY TRIAL DEMAND

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

Respectfully submitted,

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