

For Dockets See 6:04CV02244

United States District Court, D. South Carolina.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,

v.

CRITICAL CARE SPECIALIST, INC., Nurse Associates, LLC and Advance Nursing Institute, LLC Defendants.

No. 6 04 2244 13 BI.

July 6, 2004.

Civil Action
Jury Trial Demand

Complaint

Eric S. Dreiband, General Counsel, James L. Lee, Deputy General Counsel, Gwendolyn Young Reams, Associate General Counsel, Equal Employment Opportunity, Commission, 1801 L Street, N.W., Washington, D.C. 20507, Lynette A. Barnes, Acting Regional Attorney, Charlotte District Office, Kara Gibbon Haden, Senior Trial Attorney, Equal Employment Opportunity Commission, Charlotte District Office, 129 W. Trade Street, Suite 400, Charlotte, NC 28202, Telephone: 704.344.6885, Robert F. Daley, Jr. Assistant U.S. Attorney, Local Bar No. 6460, District of South Carolina, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, Telephone: 803.929.3054, Attorneys for Plaintiff

Nature of The Action

This is an action under the Equal Pay Act of 1963, 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, to collect back wages due to employees as a result of such unlawful payments, and to correct unlawful employment practices on the basis of sex and retaliation. As alleged with greater particularity below, Plaintiff the United States Equal Employment Opportunity Commission ("EEOC" or "Commission"), alleges that Defendants Critical Care Specialist, Inc., Nurse Associates, LLC, and Advance Nursing Institute, LLC (collectively "Defendants"), paid and are paying, female employees wages which were and are less than wages paid to comparable male employees who perform or performed the same or substantially equal work. The EEOC further alleges that Defendants discriminated against Tammie Joyce Lawrence by discharging her in retaliation for her complaints of gender based pay discrimination, all in violation of Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963.

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 Sections 15(a)(3), 16(c) and 17 of the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. §§ 215(a)(3), 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963 ("EPA"), codified as Section 6(d) of the FLSA, 29 U.S.C. § 206(d). This action is further authorized and instituted pursuant to Section 704(a), 706(f) (1) and (3) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. §§ 2000e-3(a), 2000e-5(f)(1) and (3) 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 South Carolina, Greenville and Spartanburg Divisions.

PARTIES

3. Plaintiff EEOC is the agency of the United States of America charged with the administration, interpretation and enforcement of the EPA and Title VII, and is expressly authorized to bring this action by Sections 15(a)(3), 16(c) and 17 of the FLSA, 29 U.S.C. §§ 215(a)(3), 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, by Section 704(a), 706(f) (1) and (3) of Title VII, 42 U.S.C. §§ 2000e-3(a), 2000e-5(f)(1) and (3) and by Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

4. At all relevant times, Defendant Critical Care Specialist, Inc., has continuously been a South Carolina corporation doing business in the State of South Carolina and the Cities of Greenville and Spartanburg, and has continuously had at least 15 employees.

5. On information and belief, at all relevant times, Defendant Nurse Associates, LLC, has continuously been a South Carolina limited liability corporation doing business in the State of South Carolina and the Cities of Greenville and Spartanburg, and has continuously had at least 15 employees.

6. On information and belief, at all relevant times, Defendant Advance Nursing Institute, LLC, has continuously been a South Carolina limited liability corporation doing business in the State of South Carolina and the Cities of Greenville and Spartanburg, and has continuously had at least 15 employees.

7. On information and belief, Defendants Critical Care Specialist, Inc., Nurse Associates, LLC and Advance Nursing Institute, LLC, have operated as an integrated business enterprise since at least April 2001, and maintain their principal place of business in Greenville, South Carolina.

8. At all relevant times, Defendants Critical Care Specialist, Inc., Nurse Associates, LLC and Advance Nursing Institute, LLC have, jointly and severally, 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).

9. At all relevant times, Defendants Critical Care Specialist, Inc., Nurse Associates, LLC and Advance Nursing Institute, LLC have, jointly and severally, 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).

10. At all relevant times, Defendants Critical Care Specialist, Inc., Nurse Associates, LLC and Advance Nursing Institute, LLC have, jointly and severally, 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 G).

STATEMENT OF CLAIMS

11. More than thirty days prior to the institution of this lawsuit, Tammie Joyce Lawrence filed a charge against Critical Care Specialists, Inc., with the Commission alleging violations of the EPA and Title VII. On information and belief, all Defendants constitute an integrated business enterprise. All conditions precedent to the institution of this lawsuit have been fulfilled.

Title VII-Wanes

12. Since at least June 2002, Defendants have engaged in unlawful employment practices at their Greenville, S.C. and Spartanburg, S.C. facilities in violation of Sections 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Specifically, Defendants subjected Tammie Joyce Lawrence, Rachel Semenach, Melinda Hoffman and other similarly situated female employees who worked as Staffing Coordinators, Staffing Associates, Staffing Team Leaders or in similar positions, to discrimination by paying lower wages to the female employees than paid to male employees in the same positions or performing the same or substantially similar work, based on their sex, female, in violation of Section 703(a)(1) of Title VII.

13. The effect of the practice complained of in paragraph 12 above has been to deprive Tammie Joyce Lawrence, Rachel Semenach, Melinda Hoffman and other similarly situated female employees of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, female.

14. The unlawful employment practice complained of in paragraph 12 above was, and is, intentional.

15. The unlawful employment practice complained of in paragraph 12 above was, and is, done with malice and/or with reckless indifference to the federally protected rights of Tammie Joyce Lawrence, Rachel Semenach, Melinda Hoffman and other similarly situated female employees.

EPA - Waees

16. Since at least June 2002, Defendants have violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying lower wages to the female Staffing Coordinators, Staffing Associates, Staffing Team Leaders, and other females in similar positions, than it paid to the 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.

17. As a result of the actions complained of in paragraph 16 above, Defendants have unlawfully withheld, and are continuing to withhold, the payment of wages due to Tammie Joyce Lawrence, Rachel Semenach, Melinda Hoffman and other similarly situated female employees.

18. The unlawful practices complained of in paragraph 16 above was, and are, willful. *Title VII and EPA - Retaliation*

19. On or about July 12, 2002, Defendants engaged in unlawful employment practices in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) and Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), by discharging Tammie Joyce Lawrence because she opposed employment practices made unlawful by Title VII and the Equal Pay Act. Specifically, Tammie Joyce Lawrence opposed gender-based pay discrimination by complaining that Defendants were paying a male employee more wages for the same job that she was performing because of her sex, female. The Commission alleges that Defendants discharged Ms. Lawrence because of her complaint.

20. The effect of the practice complained of in paragraph 19 above has been to deprive Tammie Joyce Lawrence of equal employment opportunities and otherwise adversely affect her status as an employee because of her opposition to practices made unlawful by Title VII and the Equal Pay Act.

21. The unlawful employment practice complained of in paragraph 19 above was intentional.

22. The unlawful employment practice complained of in paragraph 19 above was done with malice or with reckless indifference to the federally protected rights of Tammie Joyce Lawrence.

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 paying lesser wages to female employees than male employees because of their sex, and from discriminating within any of their establishments between employees on the basis of sex, by paying wages to employees of one sex at rates less than the rates at which they pay 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.

B. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for women and which eradicate the effects of their past and present unlawful employment practices.

C. Order Defendants, jointly and severally, to make whole Tammie Joyce Lawrence, Rachel Semenach, Melinda Hoffman and a group of similarly situated female employees by providing appropriate lost wages with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices described in paragraphs 12 and 16 above.

D. Order Defendants, jointly and severally, to make whole Tammie Joyce Lawrence, Rachel Semenach, Melinda Hofftnan and a group of similarly situated female employees by providing compensation for past and future pecuniary losses resulting from the unlawful practices complained of in paragraphs 12 and 16 above in amounts to be determined at trial.

E. Order Defendants, jointly and severally, to make whole Tammie Joyce Lawrence, Rachel Semenach, Melinda Hoffman and a group of similarly situated female employees by providing compensation for past and future non losses resulting from the unlawful practices complained of in paragraphs 12 and 16 above, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, and loss of civil rights in amounts to be determined at trial.

F. Order Defendants, jointly and severally, to pay Tammie Joyce Lawrence, Rachel Semenach, Melinda Hoffman and a group of similarly situated female employees, punitive damages for their intentional, malicious and reckless conduct, as described above, in amounts to be determined at trial.

G. Grant a judgment requiring Defendants, jointly and severally, 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 employees whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to Tammie Joyce Lawrence, Rachel Semenach and Melinda Hoffman.

H. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns and all persons in active concert or participation with them, from engaging in retaliation against employees because they have opposed employment practices or otherwise engaged in protected activity under Title VII or the EPA.

I. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for employees who oppose, or have opposed unlawful employment practices or otherwise engage in protected activity under Title VII or the EPA, and which eradicate the effects of their past and present unlawful employment practices.

J. Order Defendants, jointly and severally, to make whole Tammie Joyce Lawrence by providing appropriate backpay with prejudgment interest, in amounts to be deter-

ined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices described in paragraph 19 above, including but not limited to reinstatement.

K. Order Defendants to make whole Tammie Joyce Lawrence by providing compensation for past and future pecuniary losses resulting from the unlawful practices complained of in paragraph 19 above in amounts to be determined at trial.

L. Order Defendants, jointly and severally, to make whole Tammie Joyce Lawrence by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 19 above, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, and loss of civil rights in amounts to be determined at trial.

M. Order Defendants to pay Tammie Joyce Lawrence punitive damages for its malicious and reckless conduct, as described in paragraph 19 above, in amounts to be determined at trial.

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

O. 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.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. CRITICAL CARE SPECIALIST, INC., Nurse Associates, LLC and Advance Nursing Institute, LLC Defendants.

2004 WL 2081741 (D.S.C.)

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