

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

CIVIL ACTION NO.
6:15-cv-00109-MC

Plaintiff,

[PROPOSED] CONSENT
DECREE

v.

RUBY TUESDAY, INC.,

Defendant.

I. INTRODUCTION

1. This action originated when Andrew Herrera filed a charge of discrimination dated April 29, 2013 (the "Charge") with the Equal Employment Opportunity Commission ("EEOC"). Mr. Herrera alleged that Defendant Ruby Tuesday, Inc. ("Defendant" or "Ruby Tuesday") discriminated against him based on his sex (male) in violation of § 703 of Title VII, 42 U.S.C. § 2000e-2(a) ("Title VII") when Ruby Tuesday excluded him from consideration for a temporary server or bartender position at the Ruby Tuesday restaurant in Park City, Utah for the summer of 2013.

2. The EEOC sent Ruby Tuesday a Letter of Determination dated August 4, 2014 (the "Administrative Determination") with a finding of reasonable cause to believe that Ruby Tuesday violated Title VII based on Mr. Herrera's Charge, and that other similarly-situated male employees had also been adversely affected by such practices. Thereafter, the EEOC attempted

to conciliate the Charge with Defendant. However, conciliation was unsuccessful.

3. The EEOC filed this lawsuit on January 22, 2015, in the United States District Court for the District of Oregon (the "Lawsuit") on behalf of Mr. Herrera, Class Member Josh Bell, and other similarly-situated male employees of Ruby Tuesday who were not considered for the temporary reassignment to Park City, Utah in the summer of 2013 (altogether, the "Class Members").

4. The EEOC and Ruby Tuesday agree to the entry of this Consent Decree, which shall fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No. 6:15-cv-00109-MC. This Consent Decree shall not constitute either an adjudication or finding on the merits of the complaint and shall not be construed as an admission by Defendant of any violation of Title VII.

II. JURISDICTION AND VENUE

5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This Lawsuit is authorized pursuant to Sections 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), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The parties agree that the United States District Court for the District of Oregon has jurisdiction over this Lawsuit.

III. SETTLEMENT SCOPE

6. This Consent Decree is the final and complete resolution of all Title VII allegations of unlawful employment practices contained in Mr. Herrera's Charge, the Administrative Determination, and the EEOC's Complaint (filed in this Lawsuit on Jan. 22, 2015, ECF No. 1) including all claims by the EEOC and Ruby Tuesday for back pay, damages, attorney fees and costs as to the Class Members. This Decree resolves all issues and claims

stemming from Title VII that were or could have been asserted in this Lawsuit on behalf of any individual or class of individuals regarding the allegations contained in the Charge. This Consent Decree does not affect the EEOC's right to process any other pending or future charges that may be filed against Ruby Tuesday and to commence civil actions on any such charges as the EEOC sees fit.

IV. MONETARY RELIEF

7. In settlement of the Lawsuit, Charge and Administrative Determination, Ruby Tuesday agrees to pay the Class Members a total of \$100,000 (less required deductions and withholding) (the "Settlement Amount") within ten (10) days of the date of entry of this Consent Decree in full and final settlement of all claims that were made in the Charge, Administrative Determination, and Lawsuit, including claims for back pay, compensatory damages and punitive damages to Class Members, and attorney's fees, litigation expenses and costs. The parties agree that the portion of the Settlement Amount allocable to back pay for Andrew Herrera is \$2,975 and the amount allocable to back pay for Josh Bell is \$877.81. The EEOC shall allocate the balance of the Settlement Amount between the Class Members as compensatory damages, to be determined by the EEOC and then communicated to Ruby Tuesday.

Ruby Tuesday will pay the back pay amounts to Andrew Herrera and Josh Bell net of all applicable employment taxes, including federal, state and local income tax withholding and the employee share of the FICA (social security) tax, and will report the wages and withheld amounts to the IRS and the Class Member on an IRS Form W-2. Ruby Tuesday will pay the employer share of the FICA tax and any federal or state unemployment tax owed with respect to the back pay. Ruby Tuesday will pay the non-wage compensation without withholding and will report the non-wage compensation amounts to the IRS and the Class Member on an IRS Form

1099-MISC (Box 3). Andrew Herrera and Josh Bell will be responsible for all taxes due with respect to the non-wage compensation.

V. INJUNCTIVE AND OTHER RELIEF

A. General Provisions

8. Ruby Tuesday, its officers, agents, managers, assistant managers and other supervisors, and all human resource staff who provide advice and assistance to the foregoing individuals with respect to hiring, are enjoined from engaging in practices which constitute discrimination based on an employee's sex with respect to temporary and permanent job assignments, and benefits related to those job assignments at all of its facilities in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah. In recognition of its obligations under Title VII, Ruby Tuesday shall institute the policies and practices set forth below at all of its facilities in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah.

B. Anti-Discrimination Policies and Procedures

9. Ruby Tuesday shall prevent employment discrimination based on sex with respect to temporary and permanent job assignments, and benefits related to those job assignments at all of its facilities in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah. Ruby Tuesday shall provide training to its employees, managers, and supervisors at all of its facilities in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah so they understand its Equal Employment Opportunity ("EEO") policies and how those policies define and identify what constitutes employment discrimination based on sex with regard to temporary and permanent job assignments, and shall take appropriate disciplinary action against managers and supervisors who engage in employment discrimination based on sex

with respect to temporary and permanent job assignments, and benefits related to those job assignments.

10. Within ninety (90) days of the effective date of this Consent Decree, Ruby Tuesday shall distribute its EEO policy to all present employees and thereafter for the duration of the Consent Decree all future employees, both management and non-management, at all of its facilities in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah.

C. Training

11. Within 90 days of the date of entry of this Consent Decree, Ruby Tuesday shall present to each current regional partner and operating partner in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, and the Human Resource staff person who advises them with respect to hiring no less than one (1) hour of training by a qualified trainer on employment discrimination including but not limited to how Title VII prohibits employment decisions based on an employee's sex with respect to temporary and permanent job assignments and benefits related to those job assignments. The EEOC will have an opportunity to view the training materials prior to the training date.

Annually thereafter for the life of this Consent Decree, Ruby Tuesday will require each regional partner and operating partner in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, and the Human Resource staff person who advises them with respect to hiring to complete one (1) hour of training by a qualified trainer on employment discrimination and the requirements of Title VII.

12. Annually for the life of this Consent Decree, Ruby Tuesday will provide one (1) hour of training by a qualified trainer on employment discrimination including but not limited to how Title VII prohibits employment decisions based on an employee's sex with respect to

temporary and permanent job assignments and benefits related to those job assignments to each manager, assistant manager, and employee at each Ruby Tuesday restaurant in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah.

D. Employee Records and Neutral Employment References

13. Ruby Tuesday shall not disclose any information or make reference to the Charge or this lawsuit in responding to employment reference requests for information about Mr. Herrera or Mr. Bell.

14. Ruby Tuesday hereby certifies that the personnel files of Mr. Herrera and Mr. Bell have no reference to any charge or allegation of employment discrimination against Ruby Tuesday or this lawsuit; records of the charge and the lawsuit will be kept separately. Ruby Tuesday shall not disclose any information or make reference to the Charge or this lawsuit in responding to requests for information by potential employers about Mr. Herrera or Mr. Bell, except to the extent the request for information is by a Class Member, or a response is required by law.

E. Policies Designed to Promote Supervisor Accountability

15. Ruby Tuesday shall specifically advise each regional partner, operating partner, manager, assistant manager, and supervisor at each Ruby Tuesday restaurant in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, and each Human Resource staff person who provides advice to each of the foregoing individuals with respect to hiring, to report any incident of employment discrimination based on sex with respect to temporary and permanent job assignments, and benefits related to those job assignments of which they become aware. If a regional partner, operating partner, manager, assistant manager, or supervisor

violates Ruby Tuesday's EEO policies, he or she may be subject to discipline up to and including termination and his or her compensation may be affected.

16. Ruby Tuesday shall include "commitment to Equal Employment Opportunity" or similar designation as a criterion for evaluation of its managerial and supervisory staff in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, and each Human Resource staff person who provides advice to each of the foregoing individuals with respect to hiring.

F. Reporting

17. Ruby Tuesday shall report to the EEOC for a period of three (3) years. The reports shall be in writing and submitted on an annual basis during the three (3) year reporting period. The reporting period will run from the date of the entry of this Consent Decree, and shall include the following information:

a. Certification of the completion of training and list of attendees set forth in Paragraphs 11 and 12 above, and a list of all attendees including job titles.

b. Certification that its EEO policy has been sent to all current and newly hired employees as described in Paragraph 10 above.

c. A copy of its EEO policy and a list of any changes, modifications, revocations or revisions to its EEO policies and procedures if any, which concern or affect the subject of employment discrimination based on sex; and

d. A summary of all employment discrimination complaints based on sex regarding temporary and permanent job assignments and benefits related to those job assignments brought by Ruby Tuesday employees in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, if any, since the date of entry of this Consent

Decree. The summary will include the nature of the complaint and indicate what actions, if any, Ruby Tuesday took in response, the complaining party by name, the alleged discriminator by name, the time during which the actions given rise to the complaint occurred, and the resolution of each such complaint.

G. Posting

18. Ruby Tuesday shall post a Notice, attached as **Exhibit A** to this Consent Decree. The Notice shall be posted on Ruby Tuesday's internal website or intranet, and at each Ruby Tuesday restaurant in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, for the first year of the Consent Decree. Ruby Tuesday also agrees to provide a copy of the posting to each regional partner, manager, assistant manager, supervisor and employee in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah during the first year of the Consent Decree.

H. Release and Waiver.

19. In consideration of receiving a monetary award pursuant to this Consent Decree, any Class Member must execute a Limited Release acceptable to Ruby Tuesday.

VI. ENFORCEMENT

20. If the EEOC determines that Ruby Tuesday has not complied with the terms of this Consent Decree, the EEOC shall provide written notification of the alleged breach to Ruby Tuesday and an opportunity to cure the alleged breach. The EEOC shall not petition the Court for enforcement of this Consent Decree for at least thirty (30) days after providing written notification of the alleged breach. The thirty (30) day period following the written notice shall be used by the EEOC and Ruby Tuesday for good faith efforts to resolve the dispute. If Ruby

Tuesday is taking reasonable steps to cure the breach within the thirty (30) day period, the EEOC may agree to a reasonable extension of additional time.

VII. NOTICES

21. Any notice, demand, request or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be addressed to the individuals set forth below:

(i) If to the EEOC: Damien A. Lee, U.S. Equal Employment Opportunity Commission, Seattle Legal Unit, 909 First Ave., Suite 400, Seattle, WA, 98104.

(ii) If to Ruby Tuesday: Rhonda Parish, Chief Legal Officer, 150 W. Church Ave., Maryville, TN 37801 with a copy to Nathan A. Adams, IV, Esq. Holland & Knight LLP, 315 S. Calhoun Street, Suite 600, Tallahassee, FL 32301.

Any such notice shall, for all purposes, be deemed to be given and received: i) if by hand, when delivered; ii) if given by nationally recognized and reputable overnight delivery service, the business day on which the notice is actually received by the Party; or iii) if given by certified mail, return receipt requested, postage prepaid, when delivered.

VIII. RETENTION OF JURISDICTION

22. The United States District Court for the District of Oregon shall retain jurisdiction over this matter for the duration of this Consent Decree.

IX. DURATION AND TERMINATION

23. This Consent Decree shall be in effect for three (3) years from the date of entry of the Consent Decree. If the EEOC petitions the Court for breach of this Consent Decree, and the Court finds Ruby Tuesday to be in violation of the terms of the Consent Decree, the Court may extend the duration of this Consent Decree.

24. The parties are not bound by any provision of this Consent Decree until the Consent Decree and Limited Releases are completed and signed by an authorized representative of each party and the Consent Decree is entered by the Court.

DATED this 15th day of May, 2015.

WILLIAM R. TAMAYO
Regional Attorney

P. DAVID LOPEZ
General Counsel

JOHN STANLEY
Supervisory Trial Attorney

JAMES L. LEE
Deputy General Counsel

DAMIEN LEE
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Attorneys for Plaintiff EEOC

BY: s/ Rhonda Parish
Rhonda Parish
Chief Legal Officer
Ruby Tuesday, Inc.
150 W. Church Ave.
Maryville, TN 37801

Attorney for Defendant Ruby Tuesday, Inc

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2015, I electronically filed the forgoing “[PROPOSED] CONSENT DECREE,” and related documents with the Clerk of the Court using the CMF/ECF system, which will send notice of such filing to the following individuals listed below:

Dayna E. Underhill, 926004
E-mail: dayna.underhill@hklaw.com
111 S.W. Fifth Avenue
2300 U.S. Bancorp Tower
Portland, OR 97204
Telephone: 503.243.2300
Fax: 503.241.8014

Nathan A. Adams, *Pro Hac Vice*
E-Mail: nathan.adams@hklaw.com
315 South Calhoun Street, Suite 600
Tallahassee, FL 32301
Telephone: 850.224.7000
Fax: 850.224.8832

Attorneys for Defendant Ruby Tuesday, Inc.

DATED this 15th day of May, 2015.

/s/ Damien A. Lee
Damien A. Lee
EEOC Senior Trial Attorney



NOTICE TO EMPLOYEES

This notice has been posted pursuant to an Order of the Court, entered on [], approving the Consent Decree entered in resolution of a lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC) against Ruby Tuesday, Inc. in the United States District Court for the District of Oregon. (*EEOC v. Ruby Tuesday, Inc.*, 6:15-cv-00109-MC (D. Or. filed Jan. 22, 2015)). That lawsuit alleged that Ruby Tuesday violated Title VII of the Civil Rights Act of 1964 by limiting temporary reassignments to the Park City, Utah store in the summer of 2013 to female employees. The Consent Decree resolves the EEOC's claims of sex discrimination brought against the company and enjoins it from certain conduct prohibited by law. Ruby Tuesday did not admit any wrongdoing, agreed to the entry of the Consent Decree, and the Court did not make any findings on the merits of the lawsuit.

Federal law and the Consent Decree prohibit discrimination against any individual because of his or her sex with regard to temporary and permanent job assignments.

Federal law also prohibits retaliation against any individual by an employer because the individual complains of discrimination, cooperates with any company or Government Investigation of a charge of discrimination, participates as a class member, witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under the law.

Any employee who is found to have retaliated against any other employee because such employee participated in this lawsuit or the EEOC's investigation will be subject to substantial discipline up to and including immediate discharge.

Should you have any complaints of discrimination or retaliation, you should contact Natalie Moore, phone (865) 379-5700, fax (865) 379-6826.

Employees also have the right to bring complaints of discrimination and retaliation to the U.S. Equal Employment Opportunity Commission, Seattle District Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, 206.220.6884, 1.800.669.4000 (please refer to www.eeoc.gov to locate the EEOC office and State Fair Employment Practice Agency closest to you).

This notice shall remain prominently posted at all facilities until [DATE], 2016. This Official Notice shall not be altered, defaced, covered or obstructed by any other material.