

After 15 Years Observing Sabbath, Employee Required to Work Sundays

On October 1, 2010, the EEOC filed a federal lawsuit against Walmart for disciplining and threatening to fire an assistant manager at its Colville, WA, store when he refused to violate his religious beliefs. Richard Nichols, a devout Mormon, began working for Walmart in 1995, started as a manager at the Colville store in 2002, and observes the Sabbath by doing no work of any kind (including household chores or shopping). From 1995 to 2009, Walmart accommodated his request for leave on Sundays, but in the fall of 2009, the company revised its scheduling system and refused to continue accommodating Nichols.

"For the last 15 years, I have loved working for Walmart," Nichols said. "I enjoy what I do and the people I work with. But this refusal to take into account my religious needs is causing me a great amount of stress. I'm afraid I'll be fired for choosing my religion over my work; it's not a choice I want to have to make."

"Where there is a conflict between an employee's religious beliefs and work rules, the law mandates that employers make a sincere effort to accommodate those beliefs," said Luis Lucero, director of the EEOC's Seattle Field Office. "Walmart's refusal to explore any workable solutions with Nichols is not only illegal but short-sighted. Why would anyone treat a long-time, dedicated employee this way?"

¹⁸ Adapted from EEOC press release at <http://www.eeoc.gov/eeoc/newsroom/release/10-1-10c.cfm>, accessed October 3, 2010.

Kmart to Pay \$120,000 to Settle EEOC Age Bias Suit⁴¹

Pharmacist Called "Greedy" for Working at Age 70, Then Forced to Quit, and Threatened with Legal Action in Retaliation for Complaining, Federal Agency Charged

Kmart Corporation will pay \$120,000 and furnish other relief to settle an age harassment, constructive discharge, and retaliation lawsuit filed by the EEOC, which had charged that Kmart discriminated against a 70-year-old pharmacist at a Honolulu store. According to the EEOC's suit, over the course of four years, a pharmacy manager openly professed on several occasions that the pharmacist was "too old," "should just retire," and was "greedy" for continuing to work at age 70. The EEOC said that the manager humiliated the pharmacist by saying, "you need to retire from pharmacy work now," in a communication book open to the entire department. According to the EEOC, the manager also purposely scheduled her to work on Sundays—knowing that she attended church those days—to encourage her to quit. The victim complained to a district manager, general manager, and human resources manager regarding the age-based harassment, to no avail. Finally, the pharmacist quit to escape the discrimination, harassment, and retaliation.

In cooperation with the EEOC, Kmart entered into a three-year consent decree and agreed to post a notice on the matter; hire an EEO trainer; review and revise its existing antidiscrimination policy; provide annual ADEA training to all staff; and ensure that performance evaluations reflect discriminatory misconduct by management staff.

A major inadequacy of federal legislation related to age in the United States is its failure to include any workers under age 40 from age-related discrimination. As a result, younger workers, who are the "minority" in many cases, are subject to and experience age-related stereotyping and discrimination. In contrast, as discussed further in Chapter 13, in the United Kingdom, Australia, and some states and cities in the United States, employment discrimination on the basis of any age is prohibited.

companies can also be involved, and smaller settlements are also possible, as described in the following case against a family-owned and -operated business.⁴⁹

Finch Air Conditioning Settles EEOC Lawsuit for Sexual Harassment of Young Female Employees

Family-Owned and -Operated Business Pays \$80,000 to Settle Class Claims of Sexual Harassment by Owner

Finch Air Conditioning and Heating, Inc., agreed to pay \$80,000 to settle claims of sexual harassment and constructive discharge of female employees brought by the EEOC. The EEOC alleged that female employees at Finch were routinely subjected to sexual harassment and discrimination. According to the EEOC, the owner of the family-owned and -operated business used his position and power to harass young female employees, commenting on his own sexual preferences and asking them questions about theirs, touching them inappropriately and without their permission, including forcing one employee's hands on his private parts and menacing and frightening employees into silence about his conduct. The EEOC also alleged that sexual harassment was condoned within the workplace.

The settlement terms required the company to pay \$80,000 to compensate class members for the sexual harassment they suffered. The decree also contains provisions to ensure that Finch's owner, managers, and employees are properly trained to fully understand and comply with employment discrimination laws. In addition, Finch is required to maintain policies and procedures for addressing illegal discrimination in the workplace, including effective complaint procedures, as well as guidelines for investigating complaints of discrimination.

⁴⁸U.S. Equal Employment Opportunity Commission. "Sexual Harassment Charges. EEOC & FEPA's Combined: FY 1997-FY 2010." http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm, accessed October 2, 2010.

⁴⁹Adapted from EEOC press release at, <http://www.eeoc.gov/eeoc/newsroom/release/8-25-10b.cfm>, accessed October 2, 2010.