



U.S. Equal Employment Opportunity Commission

PRESS RELEASE

3-24-10

Kmart To Pay \$120,000 To Settle EEOC Age Bias Suit

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

HONOLULU – Kmart Corporation will pay \$120,000 and furnish other relief to settle an age harassment, constructive discharge and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today. The EEOC 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. Further, the EEOC said, the manager continued to humiliate her in writing by stating, “The pharmacy is no longer your forte” and “You need to retire from pharmacy work now,” in a communication book open to the entire department.

The manager also purposely scheduled her to work on Sundays – knowing that she attended church those days – to encourage her to quit, according to the EEOC. The agency further contended that the victim complained to a district manager, general manager and human resources manager regarding the age-based harassment, to no avail.

Further, the EEOC charged, Kmart threatened legal action against the pharmacist using a pretext on an unrelated matter to retaliate against her for her discrimination complaint. Finally, the EEOC said, she had to quit to escape the mistreatment.

In June 2009, the EEOC filed its lawsuit in U.S. District Court, District of Hawaii (*EEOC v. Kmart Corporation, et al.*, Case No. CV09-00300 SOM BMK), claiming that Kmart failed to take remedial action, which forced the pharmacist to resign. The EEOC argued that the harassment and Kmart’s failure to adequately address it were in direct violation of the Age Discrimination in Employment Act (ADEA).

“Instead of addressing this pharmacist’s legitimate complaints of age discrimination, Kmart made a bad situation worse by threatening her for

complaining,” said EEOC Acting Chairman Stuart J. Ishimaru. “Such retaliation only compounds an employer’s culpability.”

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

“Older workers should be valued for their experience, not viewed as a liability,” said Anna Y. Park, regional attorney for the EEOC’s Los Angeles District Office, which includes Hawaii in its jurisdiction. “Under no circumstances will the EEOC tolerate employers pushing out their older workers simply because of age. The EEOC forcefully protects people against this kind of age-based discrimination.”

Timothy Riera, director of the EEOC’s Honolulu Local Office, added, “Employers should handle complaints of discrimination, including harassment, in an expeditious manner. Training on a company’s EEO policies should occur periodically, and if someone is found to be in violation, appropriate disciplinary action should immediately be taken.”

According to company information, Kmart, a wholly owned subsidiary of Hoffman Estates, Ill.-based Sears Holdings Corporation, operates 1,368 general merchandise stores across the U.S. and its territories.

The EEOC is the federal agency that enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on the agency’s web site at <http://www.eeoc.gov/>.