



Date: September, 2008

---

## Appeals Court Reverses Decision that Boeing's Mesa Plant did not Engage in Sexual Harassment

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced that the United States Court of Appeals for the Ninth Circuit reversed a decision by a lower court which had concluded that The Boeing Company did not engage in unlawful sexual harassment or retaliation at its plant in Mesa, Ariz. The court of appeals returned the case to Arizona for trial.

In the lawsuit, the EEOC seeks relief on behalf of Kelley Miles, a female mechanic who works on the Apache helicopter that Boeing manufactures for the U.S. Army. Miles works at Boeing's facility in Mesa.

In the appellate decision (*EEOC v. The Boeing Company*), the court of appeals reversed the district court's decision because it concluded that there exist triable issues of fact as to whether Miles was subjected to a hostile work environment based on her sex, whether Boeing adequately responded to her complaints, and whether Boeing retaliated against Miles for complaining of the harassment.

The court of appeals concluded that, based on the evidence, a reasonable jury could infer that Miles was subject to sexual harassment by her co-workers. According to the court, "Miles and others testified that, from 1998 to 2001, Miles was the target of offensive and sexual language, as well as physical advances by a male co-worker, and that male co-workers interfered with various aspects of her work."

The court of appeals also concluded that the EEOC raised triable issues of fact as to whether Boeing adequately responded to Miles' complaints of harassment. The court noted that, although Boeing terminated one offending male employee and disciplined another, "a reasonable jury could find that these two employees were part of a much larger problem with respect to Miles' treatment." According to the court, there was evidence that the employee who was eventually terminated had been transferred into Miles's department because he had repeatedly harassed other female employees. The court added that evidence also existed showing that the harassment continued even after Boeing took its initial measures, and the company knew or should have known that the problems were continuing.

Finally, the court of appeals concluded that there existed triable issues of fact on the EEOC's retaliation claim because events occurring after Miles complained of the harassment could cause a reasonable jury to conclude that Miles was subject to an ongoing hostile work environment, and that Boeing knew or should have known about it.

The case has been remanded to a United States District Judge in Arizona for trial.

## *The Focus*

# **Tobacco Superstores, Inc. to Pay \$425,000 for Race Discrimination against Blacks**

### ***EEOC Charged that TSS Failed to Promote African Americans to Managerial Positions***

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced that Tobacco Superstores, Inc. (TSS) will pay \$425,000 and provide significant remedial relief to settle a race discrimination lawsuit on behalf of qualified black workers who were denied promotion to management.

The EEOC's lawsuit was filed on behalf of Theresa Sharkey and a class of African Americans in Arkansas and Mississippi. In addition to rejecting the class of workers for promotion because of their race, the suit also alleged that Sharkey was forced to resign because of the company's failure to promote her. Race discrimination violates Title VII of the Civil Rights Act of 1964.

In addition to the monetary relief for the class of aggrieved individuals, the three-year consent decree settling the case also enjoins TSS from denying promotions to African American employees because of their race and from engaging in retaliation. The decree also requires TSS – which operates retail stores in Arkansas, Missouri, and Mississippi – to:

- Provide training to all managers and supervisors on preventing race discrimination and retaliation;
- Create job descriptions for manager and assistant manager positions that outline the qualifications for each position;
- Develop a written promotion policy that will include the procedures by which employees will be notified of promotional opportunities;
- Report assistant manager and manager vacancies, the name and race of all applicants for the position, and the name of the successful candidate;
- Report the names of all African Americans who are either hired or promoted to manager or assistant manager positions; and
- Report any complaints of race discrimination and describe its investigation in response to the complaint.

In Fiscal Year 2007, the EEOC received 30,510 charge filings alleging race-based discrimination, an increase of 12% from the prior year and the highest level in more than a decade. Historically, race discrimination has accounted for the most frequent type of charge filing with EEOC offices nationwide.