

By JOSEPH G. LARIOS

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CHICAGO (*jGLi*) – The United States Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) has entered a consent decree with Leprino Foods, Inc. of Lemoore, California, which will pay \$550,000 in back wages, interest and benefits to 253 minority workers, who were rejected for on-call laborer positions from 2005 to 2006 because of its use of pre-employment test called WorkKeys to select hires that discriminates against African-American job applicants and those of Asian and Hispanic descent.

Meanwhile, the Hawaii Healthcare Professionals, Inc. – also known as Hawaii Professional HomeCare Services Inc. – and

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its owner have been ordered to pay \$193,236 to a woman allegedly fired due to her age, in a default judgment awarded by U.S. District Judge Alan C. Kay in Hawaii, the U.S. Equal Employment Opportunity Commission (EEOC) of Honolulu

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Hawaii
announced recently.

“I am pleased that we were able to reach a fair settlement in this matter,” said OFCCP Director Patricia Shiu. “While employers can and should hire the most qualified workers for the job, they cannot create artificial barriers to employment that unfairly block any individual from competing for good jobs.”

OFCCP determined that Leprino Foods violated Executive Order 11246, which prohibits federal contractors and subcontractors from discriminating on the bases of race, color, religion, sex and national origin in their employment practices.

The agency made its findings after a scheduled compliance review in which OFCCP investigators conducted interviews, analyzed company data and reviewed documents provided by the company.

Through this review, OFCCP discovered that the administration of the WorkKeys exam had an adverse impact on minority job applicants for these specific positions. The agency further determined that the exam was not job-related, as it tested applicants' skills in mathematics, locating information and observation – skills that are not critical to the entry-level tasks performed by on-call laborers, such as inspecting products, monitoring equipment and maintaining sanitation at the facility.

COMPANY TO DISCONTINUE TEST

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Additionally, the company has agreed to discontinue use of the test for this purpose, hire at least 13 of the original class members, undertake extensive self-monitoring measures and immediately correct any discriminatory practices.

Leprino Foods is one of the largest producers of mozzarella cheese in the world and is based in Denver, Colo. Since 2005, the company has received contracts totaling nearly \$50 million from U.S. Department of Agriculture's Farm Services Agency to provide mozzarella and other dairy products to the federal government.

In addition to Executive Order 11246, OFCCP enforces Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. As amended, these three laws require those who do business with the federal government, both contractors and subcontractors, to follow the fair and reasonable standard that they not discriminate in employment on the basis of sex, race, color, religion, national origin, disability or status as a protected veteran. For general information, call OFCCP's toll-free helpline at 800-397-6251 or

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access <http://www.dol.gov/ofccp>.

In Hawaii, the company's owner, Carolyn Frutoz-De Harne, ordered the 2008 termination of Debra Moreno, a then-54-year-old office coordinator at its Maui facility, according to the EEOC. The termination proceeded despite reports by the facility's manager, who actually hired and supervised Moreno, that Moreno was a thorough and efficient worker.

Frutoz-De Harne allegedly ordered that Moreno be fired after telling the manager that Moreno "looks old," "sounds old on the telephone," and is "like a bag of bones." Frutoz-De Harne also allegedly told the manager that Moreno was not the type of person she wanted representing her company, the EEOC said.

After the termination, the manager reported the ageist comments to Moreno, who in turn filed a discrimination charge with the EEOC.

AWARD TO PREVENT FUTURE BIAS

Following an investigation, the EEOC filed suit against Hawaii Healthcare Professionals in U.S. District Court for the District of Hawaii (EEOC v. Hawaii Healthcare Professionals, Inc. a/k/a Hawaii Professional HomeCare Services, Inc., Case No. CV-10-00549 BMK), and subsequently added Frutoz-De Harne as a named defendant.

The EEOC charged that the conduct was a form of age discrimination, which violates the Age Discrimination in Employment Act (ADEA). In addition to the monetary award for

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Moreno

, the judgment also requires that the defendants prevent future age discrimination and retaliation by developing and disseminating procedures to address such claims and training all staff on their rights with respect to age discrimination and retaliation, with additional training for supervisors on how to deal with complaints. The defendants also must retain an outside equal employment opportunity (EEO) coordinator to assist with these efforts and post a notice for employees regarding the judgment. The EEOC will monitor compliance with the judgment.

“When I learned that my age was the reason for the disparaging remarks and termination, I was embarrassed and demoralized. For me, it was the ultimate blow. Age had never before been a consideration for me,” said Moreno. “The court's decision makes me feel optimistic and vindicated. I am really grateful that the EEOC exists to help people like me.”

Anna Y. Park, regional attorney for the EEOC's Los Angeles District Office, which oversees the agency's litigation in Hawaii,

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said, “Age should never be a factor when evaluating an employee or job applicant’s worth. What makes this case especially appalling is the flagrant disregard for a worker’s abilities, coupled with disparaging ageist remarks and thinking. The EEOC will not tolerate such violations of civil rights law and is pleased by the court’s decision.”

Timothy Riera, director of the EEOC’s Honolulu Local Office, added, “Employers should ensure that equal opportunity is available for all applicants and employees, regardless of age or any other legally protected basis. Employers should have a strong anti-discrimination policy and offer training to reinforce the goal of equal opportunity and to prevent future civil rights issues from arising.”

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov. # # #

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