U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Tampa Field Office

EEOC Charge No: 511-2015-01402

Jessica Robison

Charging Party

Sam’s East, Inc. (Sam’s Club)
c/o LITTLER MENDELSON, P.C.
Wells Fargo Center
333 SE 2nd Avenue
Suite 2700, Miami, FL 33131

Respondent

LETTER OF DETERMINATION

On behalf of the U.S. Equal Employment Opportunity Commission, I issue the following determination on the merits of this charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII) and the Americans with Disabilities Act of 1990, as amended (ADA). Respondent is an employer within the meaning of Title VII and the ADA, and all statutory requirements for timeliness and coverage have been met.

Charging Party, a transgender female, alleges that she has unfairly been denied the opportunity to be considered for promotions, that her wages are being partially withheld, and that her complaints are being ignored because of her sex (transgender status/gender identity). Charging Party further alleges that she is being denied medically necessary care that would be covered by her employer-provided health benefit plan if not for her transgender status, and that she is being retaliated against for her complaints of discrimination both internally and to the EEOC (EEOC Charge No. 511-2015-00058 Amended) in violation of Title VII and the ADA.

I have determined that the evidence obtained during the investigation establishes that there is reasonable cause to believe that Respondent has discriminated against Charging Party due to her sex (transgender status/gender identity) and retaliated against the Charging Party for engaging in protected activity in that she was denied wages and promotion opportunities in violation of Title VII. Respondent has also discriminated against Charging Party by denying her medical benefit coverage for treatment due to her sex (transgender status/gender identity). Respondent provides health care coverage through the Walmart Stores Associate’s Health and Welfare Plan, which applies to Sam’s Club and Walmart employees nationwide. Evidence obtained during the course of the investigation establishes reasonable cause to believe that Walmart Stores Associate’s Health and Welfare Plan at the time of Charging Party’s charge filing and continuing through at
least 2016 by its terms categorically excluded coverage of any services for “transgender treatment/sex therapy,” denying Charging Party medically necessary care that would have been covered if not for her transgender status. As such, Respondent’s policy discriminated against the Charging Party based on sex (transgender status/gender identity), as well as against transgendered individuals as a class, in violation of Title VII. Respondent has provided some information to indicate that it has removed the categorical exclusion for services related to “transgender treatment/sex therapy” from Walmart Stores Associate’s Health and Welfare Plan effective January 1, 2017.

Upon finding that there is reason to believe that a violation has occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites Respondent to join with it in reaching a just resolution of this matter. The confidentiality provisions of Title VII of the Civil Rights Act of 1964, as amended and the Commission Regulations apply to information obtained during conciliation.

An invitation to Conciliate is enclosed for your review. Please complete the enclosed Invitation to Conciliate and return it to Beverly Collins, at the above address within 15 days from the date of this letter. You may also fax your response directly to (813) 228-2841. If no response is received within this time period, it will be interpreted as an unwillingness on the part of the Respondent to participate in conciliation efforts. At that time, conciliation efforts will cease.

If the Respondent declines to discuss conciliation or when, for any other reason, a conciliation agreement acceptable to the Commission is not obtained, the Commission will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

You are reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission’s determination on the merits of the charge.

On Behalf of the Commission:

7/24/17
Date

Evangeline Hawthorne
Director

cc:
Elizabeth Overton, Esq.
LITTLER MENDELSON, P.C.
2301 McGee Street
8th Floor
Kansas City, MO 64108

Jillian Weiss, Esq., Executive Director
Transgender Legal Defense &Education Fund, Inc.
20 W. 20th Street, Suite 705
New York, NY 10011
EEOC Charge No: 511-2015-00058 (Amended)

Jessica Robison

Charging Party

Sam’s East, Inc. (Sam’s Club)
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333 SE 2nd Avenue
Suite 2700, Miami, FL 33131

Respondent

LETTER OF DETERMINATION

On behalf of the U.S. Equal Employment Opportunity Commission, I issue the following determination on the merits of this charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII). Respondent is an employer within the meaning of Title VII, and all statutory requirements for timeliness and coverage have been met.

Charging Party, a transgender female, alleges that she was subjected to harassment and intimidation based on her sex and gender identity (transgender female). As a result of the harassment and intimidation, Charging Party filed an internal complaint of transgender discrimination on or about April 4, 2014. In retaliation for complaining of discrimination, Charging Party alleged that around April 10, 2014, she was subjected to disciplinary action and was ultimately forced to take a demotion from a management position to a night-shift line worker position in order to save her job. Charging Party further alleges that once she transferred to the new Bradenton, Florida location she continued to experience discrimination because of her sex and retaliation for engaging in protected activity in that she was subjected to further acts of harassment, disciplinary actions, and adverse terms and conditions of employment resulting in a hostile working environment.

I have determined that the evidence obtained during the investigation establishes that there is reasonable cause to believe that Respondent discriminated against Charging Party due to her sex (transgender status/gender identity) and retaliated against the Charging Party for engaging in protected activity, by subjecting her to harassment, adverse terms and conditions of employment, discipline, a forced demotion and hostile working environment, in violation of Title VII.
Letter of Determination
EEOC Charge No. 511-2015-00058 (Amended)
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Upon finding that there is reason to believe that a violation has occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites Respondent to join with it in reaching a just resolution of this matter. The confidentiality provisions of Title VII of the Civil Rights Act of 1964, as amended and the Commission Regulations apply to information obtained during conciliation.

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On Behalf of the Commission:

Date 7/26/17

Evangeline Hawthorne
Director

cc:
Elizabeth Overton, Esq.
LITTLER MENDELSON, P.C.
2301 McGee Street
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