

**Ohio Civil
Rights Commission**

Memo

To: Desmon Martin, Director of Enforcement & Compliance

From: Denise M. Johnson, Chief Administrative Law Judge

Date: 8/28/2013

Re: *Damon Pace v. AM Central Ohio, Inc.*

COL 71 (36215) 11122008 22A-2009-01405C

Complaint No. 09-EMP-COL-36215

**CONSIDERATION OF
ADMINISTRATIVE LAW JUDGE'S REPORT**

ALJ RECOMMENDS CEASE AND DESIST

Report Issued: August 28, 2013

Report Mailed: August 28, 2013

*****Objections Due:*** September 20, 2013**



Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners

Leonard J. Hubert, *Chairman*
Stephanie M. Mercado, *Esq.*
William W. Patmon, *III*
Tom Roberts
Rashmi N. Yajnik

G. Michael Payton, *Executive Director*

August 28, 2013

Damon Pace
5610 Roche Drive, Apt F.
Columbus, Ohio 43229-4226

Robert E. Fitz, *Esq.*
25125 Detroit Road, Suite 155
Westlake, OH 44145

Re: *Damon Pace v. AM Central Ohio, Inc.*

COL71 (36215) 11122008 22A-2009-01405C Complaint No. 09-EMP-COL-36215

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty three (23) days from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be **received** by the Commission no later than **September 20, 2013**. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.

*Please send the original Statement of Objections to: **Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, Rhodes Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414.** All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

Desmon Martin / apo

Director of Enforcement and Compliance

DM:apo

Enclosure

Cc: Lori A. Anthony, **Chief – Civil Rights Section** / Megan H. Hudson, **AAG**;
Robert E. Fitz, *Esq.* / Damon Pace, **Complainant** / Denise M. Johnson, **Chief Administrative Law Judge**

CENTRAL OFFICE • State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414
• Central Office: 614-466-2785 • TOLL FREE: 1-888-278-7101 • TTY: 614-466-9353 • FAX: 614-644-8776

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OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Damon Pace

Complainant

Complaint No. 09-EMP-COL-36215

v.

AM Central Ohio, Inc.

Respondent

**CHIEF ADMINISTRATIVE LAW JUDGE'S
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

**MIKE DeWine
ATTORNEY GENERAL**

Megan H. Hudson, AAG
Rhodes Office Tower,
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Counsel for the Commission

Robert E. Fitz, Esq.
25125 Detroit Road, Suite 155
Westlake, Ohio 44145

Counsel for the Respondent

ALJ'S REPORT BY:

Damon Pace
5610 Roche Drive, Apt. F
Columbus, Ohio 43229-4226

Complainant

Denise M. Johnson
Chief Administrative Law Judge
Ohio Civil Rights Commission
State Office Tower, 5th Floor
30 East Broad Street
Columbus, OH 43215-3414
Ph. (614) 466-6684
Fax: (614) 644-8776

INTRODUCTION AND PROCEDURAL HISTORY

Damon Pace (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (the Commission) on November 12, 2008.

The Commission found probable cause that Respondent (AM Central Ohio) engaged in unlawful discriminatory practices on September 9, 2009. The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued Complaint and Notice of Hearing on October 22, 2009.

The Complaint alleged that Respondent subjected Complainant to different terms, conditions, and privileges of employment, including refusal to hire, based on his sex in violation of Revised Code Section 4112.02(A).

Respondent filed an Answer to the Complaint on January 15, 2010. Respondent admitted certain procedural allegations, but

denied that it engaged in any unlawful discriminatory practices. Respondent also pled affirmative defenses.

A public hearing was held on August 27, 2010 at the Ohio Civil Rights Commission Central Office, 30 E. Broad St., 5th Floor, Columbus, Ohio 43215.

At the hearing, the Commission moved to amend the Complaint to dismiss the failure to hire allegation and proceed on the allegation that Respondent announces or follows a policy of denying or limiting employment opportunities based on sex in violation of R.C. 4112.02 (E)(5). The Commission's motion to amend the complaint to conform with the evidence was granted.¹

The Commission filed a Motion To Deem Admissions Admitted on April 21, 2010. The Commission's Motion is granted.

¹ RC. 4112.05 (C): Any complaint issued pursuant to division (B) of this section may be amended by the commission, a member of the commission, or the hearing examiner conducting a hearing under division (B) of this section, at any time prior to or during the hearing. The respondent has the right to file an answer or an amended answer to the original and amended complaints and to appear at the hearing in person, by attorney, or otherwise to examine and cross-examine witnesses.

The record consists of the previously described pleadings, the exhibits and a transcript of 67 pages, the post-hearing briefs filed by the Commission on February 9, 2011; by Respondent on March 4, 2011; and a reply brief filed by the Commission on March 14, 2011.

FINDINGS OF FACT

1. Respondent advertised that it had open cleaning positions in October-November 2008. (*Admission No. 1*)
2. Damon Pace (Pace), a male, visited Respondent's place of business on or about November 8, 2008. (*Admission No. 2*)
3. Pace inquired about a cleaning position with Respondent. (*Admission No. 3*)
4. Respondent had cleaning positions available at the time Pace inquired about employment with Respondent. (*Admission No. 4*)
5. Patricia Rivers (Rivers) was Respondent's office supervisor for its Mediterranean Ave. location in Columbus in November 2008. (*Admissions No. 5*)

6. Rivers informed Pace that Respondent was no longer hiring males for its cleaning positions. (*Admission No. 6*)

7. Rivers suggested to Pace that he should refer females to Respondent for employment. (*Admission No. 7*)

CONCLUSIONS OF LAW

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected.

1. The Commission alleged in the amended Complaint that Respondent announces and follows a policy that limits and denies employment opportunities to individuals based on their sex, male.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

(E) Except where based on a bona fide occupational qualification certified in advance by the commission, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to do any of the following: (...)

(5) Announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the ..., sex, ...of that group;

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(E) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G), 4112.06(E).

4. Respondent's supervisor, Rivers, made statements to Pace that stated a policy that denies employment to males seeking employment with Respondent. Rivers' reason for not hiring males was because the Respondent had problems with men working for the company. Tr. 20

5. Pursuant to R.C. 4112.02(E), before the employer utilizes a facially discriminatory employment practice or policy they must seek certification from the Commission to justify the business necessity for the policy or practice.

The BFOQ defense to a facially discriminatory employment policy requires the employer to initially demonstrate that the hiring criteria utilized involve the "essence" of its business.

Dothard v. Rawlinson, 433 U.S. 321 at 333, 97 S.Ct. 2720 at 2729, 53 L. Ed. 2d 786 at 800 (1977).

6. The "essence of the business" requirement is not satisfied merely because the facially discriminatory criteria further

some peripheral function of the employer. *Little Forest Medical Center v. Ohio Civil Rights Com.*, 61 Ohio St. 3d 607 at 612.

7. The Respondent's conduct is a violation of R.C. 4112.02 (E)(5).

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 36215 that:

1. Respondent Cease and Desist from following a policy of denying or limiting employment opportunities of any group because of the ..., sex, ...of that group;
2. That Respondent receive training within ninety (90) days from an agency certified to provide training to employers on Ohio's anti-discrimination law;² and
3. The Commission order Respondent, within ninety (90) days of receipt of the Commission's Final Order, to provide documentation of completion of the employer training received on Ohio's anti-discrimination law.

² The Ohio Civil Rights Commission provides training to employers on Ohio's laws against discrimination, especially regarding employment and housing issues. There is no cost for this service. The Commission's Compliance Department oversees these trainings.

Denise M. Johnson

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

August 28, 2013



Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners

Leonard J. Hubert, Chairman
Lori Barreras
William Patmon, III
Stephanie M. Mercado, Esq.
Tom Roberts

G. Michael Payton, Executive Director

February 21, 2014

Damon Pace
5610 Roche Drive, Apt. F
Columbus, Ohio 43229-4226

RE: Damon Pace v. AM Central Ohio, Inc.
COL71 (36215)11122008
22A-2009-01405C
Complaint No. 09-EMP-COL-36215

The enclosed Order dismissing Complaint No. 09-EMP-COL-36215 the above captioned matter was issued by the Ohio Civil Rights Commission at its meeting February 20, 2014.

This case is closed.

FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pjw
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Megan M. Hudson, Esq., Assistant Attorney General- Civil Rights Section



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Robert E. Fitz, Esq.
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FOR THE COMMISSION

Desmon Martin/pju

Director of Enforcement & Compliance
Ohio Civil Rights Commission

DM/pju
Enclosure

cc: Denise M. Johnson, Chief Administrative Law Judge
Lori A. Anthony, Esq., Chief – Civil Rights Section
Megan M. Hudson, Esq., Assistant Attorney General- Civil Rights Section



John Kasich, Governor

| | | |
|-----------------------|---|--------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| Damon Pace |) | COMPLAINT NO. 09-EMP-COL-36215 |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | |
| |) | |
| AM Central Ohio, Inc. |) | |
| |) | |
| Respondent. |) | |
| |) | |

FINAL ORDER

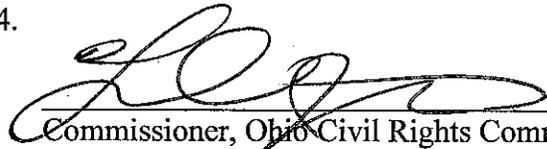
This matter comes before the Commission upon the Complaint and Notice of Hearing No. 08-EMP-COL-34472; the official record of the public hearing held on August 27, 2010, before Chief Administrative law Judge Denise M. Johnson, a duly appointed administrative law judge; the post-hearing briefs and reply brief filed by the Commission and Respondent; and the Chief Administrative Law Judge's Report and Recommendation dated August 28, 2013. At its October 17, 2013 meeting, the Commission considered the Administrative Law Judge's report and Recommendation.

The complaint alleges that Respondent announces or follows a policy of denying or limiting employment opportunities based on sex in violation of R.C. 4112.02(E)(5). After a public hearing, the Chief Administrative Law Judge recommended that the Commission order Respondent to Cease and Desist from all discriminatory practices in violation of R.C. Chapter 4112.

After careful consideration of the entire record, the Commission hereby adopts all of the Administrative Law Judge's Recommendations. Therefore, the Commission incorporates the findings of fact, conclusions of law, and the recommendations for relief contained in the Administrative law Judge's report as if fully rewritten herein.

The Commission orders Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112.

This ORDER issued by the Ohio Civil Rights Commission this 20th day of FEBRUARY, 2014.


Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



Desmon Martin
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: 2/21/2014