

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

MICHAEL ROSSIELLO,

Plaintiff-Intervenor,

Case No. 6:19-cv-1853-Orl-41GJK

v.

PIRTEK USA LLC,

Defendant.

ORDER

This cause came on for consideration without oral argument on the following motion:

**MOTION: JOINT MOTION FOR THE APPROVAL AND
ENTRY OF CONSENT DECREE
(Doc. No. 26)**

FILED: June 5, 2020

THEREON it is ORDERED that the motion is DENIED.

On March 16, 2020, Plaintiffs United States Equal Employment Opportunity Commission (“EEOC”) and Michael Rossiello (“Rossiello”) filed a First Amended Complaint against Defendant Pirtek USA LLC (“Pirtek”) for violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.* Doc. No. 24. Plaintiffs allege that Pirtek terminated Rossiello prior to his anticipated return to work, after an illness and hospitalization, based on a perceived disability. *Id.* Plaintiffs seek back and front pay, compensatory and punitive damages, declaratory and equitable relief, and attorney’s fees, interest, and costs. *Id.*

On June 5, 2020, the parties filed a Joint Motion for the Approval and Entry of Consent Decree (the “Motion”) pursuant to Federal Rules of Civil Procedure 7(b)(1) and 65(d). Doc. No. 26. The parties request that the Court enter the consent decree attached to the Motion (the “Consent Decree”), administratively close the case, and retain jurisdiction to enforce the terms of the Consent Decree. *Id.* at 2.

The Consent Decree has a three year term. Doc. No. 26-1 at 4. Pirtek will pay Rossiello \$85,000 in settlement of his claim. *Id.* at 5. The Consent Decree provides for specific injunctive relief requiring that: Pirtek not engage in discriminatory practices; Pirtek adopt and distribute a policy regarding discrimination on the basis of disability; Pirtek provide management and human resources personnel training on discrimination on the basis of disability; Pirtek submit to compliance, monitoring, and reporting requirements; Pirtek post the

notice appended to the Consent Decree in its workplace; and that Pirtek give Rossiello a neutral job reference. *Id.* at 7-13.

On November 6, 2020, the parties filed a consent for the Motion to be resolved by a Magistrate Judge. Doc. No. 27. On November 23, 2020, the District Judge approved the consent. Doc. No. 28.

Federal Rule of Civil Procedure 65(d) provides that every order granting an injunction must: 1) state the reasons why it is issued; 2) state its terms specifically; and 3) describe in reasonable detail the act or acts restrained or required. Fed. R. Civ. P. 65(d)(1). “The specificity requirement of Rule 65(d) is no mere technicality; [the] command of specificity is a reflection of the seriousness of the consequences which may flow from a violation of an injunctive order.” *Fla. Ass’n of Rehab. Facilities v. Fla. Dep’t of Health & Rehab. Servs.*, 225 F.3d 1208, 1223 (11th Cir. 2000) (quoting *Payne v. Travenol Laboratories, Inc.*, 565 F.2d 895, 897 (5th Cir. 1978)). “An injunction must be framed so that those enjoined know exactly what conduct the court has prohibited and what steps they must take to conform their conduct to the law.” *Id.* (citing *Meyer v. Brown & Root Constr. Co.*, 661 F.2d 369, 373 (5th Cir. 1981) (citing *Int’l Longshoremen’s Ass’n v. Phila. Marine Trade Ass’n*, 389 U.S. 64, 76 (1967))). Because of this, the Eleventh Circuit has found that “obey the law” injunctions are unenforceable. *Id.* at 1222; *see, e.g., Burton v. City of Belle Glade*, 178 F.3d 1175, 1200 (11th Cir. 1999) (invalidating an injunction which prohibited a

municipality from discriminating on the basis of race in its annexation decisions because it “would do no more than instruct the City to ‘obey the law,’”); *Payne*, 565 F.2d at 899 (invalidating injunction that prohibited defendant from violating Title VII in its employment decisions).

The Consent Decree provides in its “No Discriminatory Practices” section that:

Pirtek shall take all affirmative steps to ensure that it does not subject its employees to discrimination based on disability or perceived disability.

Pirtek, its owners/members, representatives, agents, managers, officers, supervisors, employees, partners, successors and assigns, are enjoined from engaging in, encouraging, or permitting discrimination on the basis of disability or perceived disability.

Doc. No. 26-1 at 7, ¶¶ 20, 21.

The court in *Payne* found that the word “discriminating,” was too general in an injunction and observed with respect to the provision in question that it was “more specific than Title VII itself only in that it does not prohibit employment discrimination based on religion and natural origin.”¹ 565 F.2d at 898; *see also Sec’y*

¹ The paragraph enjoined the defendant employers from:

discriminating on the basis of color, race, or sex in employment practices or conditions of employment in defendants’ Cleveland, Mississippi facility, against the named plaintiffs in the above captioned action or either of them, or any member of the class which they represent, as such class is defined in the court’s memorandum of opinion this day released in said action.

of *Labor v. Swatkowski*, No. 6:16-cv-359, 2017 U.S. Dist. LEXIS 222323, at *6-7 (M.D. Fla. Aug. 14, 2017) (declining to impose proposed injunctive relief enjoining defendant from “violating the provisions of Title I of ERISA” as an improper obey the law provision).

In *United States EEOC v. Wal-Mart Stores, Inc.*, No. 8:04-cv-1862, 2006 U.S. Dist. LEXIS 50471, at *6 (M.D. Fla. July 24, 2006), the court found that an “obey the law” injunction in a proposed consent decree “vaguely prohibit[ed] all future statutory violations but fail[ed] to describe or specify any prohibited conduct.” The proposed injunction provided that “Defendant, its officers, and employees are enjoined from engaging in conduct at Store No. 528 in Bradenton, Florida which is found to be unlawful sexual harassment in violation of Title VII of the Civil Rights Act of 1964, as amended.” *Id.* at *2. The court also found that the injunction provided no “operative command” capable of enforcement, and that it “prospectively frustrates the circuit court’s appellate review of this court’s adoption of and enforcement of the injunction.” *Id.* at *6-7. As the court explained, every injunction must contain an operative command capable of enforcement because, with the possibility of contempt, an injunction must be tailored to remedy the specific harms shown rather than enjoin all possible breaches of the law. *Id.* at

Payne, 565 F.2d at 897.

*5; see also *EEOC v. Fla. Inst. for Neurologic Rehab., Inc.*, No. 8:09-cv-716, 2009 U.S. Dist. LEXIS 127064, at *2 (M.D. Fla. Nov. 13, 2009) (finding that a consent decree that provided “Defendant, its officers, managers, employees, agents, partners, successors, and assigns will not engage in conduct that discriminates on the basis of a disability in violation of the ADA” contained an unenforceable “obey the law” injunction).

The “No Discriminatory Practices” clauses in the Consent Decree suffer from the same deficiency. The first clause, in paragraph 20, directs Pirtek to take “all affirmative steps” to ensure it does not discriminate on the basis of disability or perceived disability, but provides no specificity as to what those steps are, and provides no operative command that is capable of enforcement. Thus, it is nothing more than an obey the law provision. Similarly, the second clause enjoins Pirtek from engaging in, encouraging, or permitting discrimination based on disability or perceived disability and it is also no more than a direction to obey the law. Thus, the Consent Decree cannot be approved as presented.

Accordingly, the Motion (Doc. No. 26) is **DENIED**.

DONE and **ORDERED** in Orlando Florida on December 1, 2020.



GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record
Unrepresented Parties