

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
Plaintiff,	)	
	)	
	)	No. 12 C 7793
v.	)	
	)	Judge Leinenweber
HARRIS BANK,	)	Magistrate Judge Cox
	)	
Defendant.	)	
_____	)	

CONSENT DECREE

THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission (the "EEOC") filed this action on September 28, 2012 alleging that Defendant BMO Harris Bank N.A. ("Harris Bank"), violated Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12112, by:

- a. Terminating the employment of Charging Parties Araceli Hurtado, Regina Sanders, Cynthia Pickens, and Erika Rodriguez (hereinafter "Charging Parties") and a class of qualified disabled employees rather than accommodating them;
- b. Failing to provide reasonable accommodations to the Charging Parties and a class of qualified disabled employees who were able to return to work from medical leave. Such accommodations could include extension of leave with job protection, allowance of intermittent leave when the employee returns to work, and/or other accommodations permitted under the ADA; and
- c. Discriminating against the Charging Parties and a class of disabled former employees by failing to rehire them after being terminated pursuant to its medical leave policy.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by EEOC in this action. Neither party admits the claims or defenses of the other. Nothing in this Decree will be admissible in any proceeding as evidence of a violation of any law, except in a proceeding to enforce or implement the Decree.

FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of EEOC, the Charging Parties, the claimants, and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of the ADA, and will be in the best interests of the parties, the Charging Parties, the claimants, and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

INJUNCTION AGAINST DISABILITY DISCRIMINATION

4. Harris Bank and its officers, agents, employees, successors and assigns, and all persons acting in concert with it are hereby enjoined from discriminating on the basis of disability by not providing reasonable accommodation(s) to employees who state their interest in returning to work from a medical leave of absence and who qualify for reasonable accommodation under the ADA.

INJUNCTION AGAINST RETALIATION

5. Harris Bank its officers, agents, employees, successors, assigns and all persons acting in concert with it will not engage in any form of retaliation against any person because such person has opposed any practice as unlawful under the ADA, filed a Charge of Discrimination under the ADA, testified or participated in any manner in any investigation, proceeding, or hearing under the ADA, or asserted any rights under this Decree.

MONETARY RELIEF

6. Harris Bank will pay monetary damages totaling \$400,000 to the following fourteen (14) persons (collectively, "Claimants"). The division among the Claimants is as follows:

	<u>Name</u>	<u>Award Amount</u>
1.	Erica Rodriguez	\$37,500
2.	Cynthia Pickens	\$37,500
3.	Regina Sanders	\$37,500
4.	Araceli Hurtado	\$37,500
5.	Angela Trunzo	\$25,000
6.	Charmecca Townsend	\$25,000

7.	Carey Grabe	\$25,000
8.	Kystina Sonner	\$25,000
9.	Margaret Larson	\$25,000
10.	Richard Wright	\$25,000
11.	Rudy Woodward	\$25,000
12.	Banuma Vijapura	\$25,000
13.	Angela Rankins	\$25,000
14.	Griselda Green	\$25,000

7. Within one hundred twenty (120) days after entry of this Decree, EEOC will mail a copy of the Release Agreement (attached hereto as Exhibit A) to each Claimant. The Claimant must execute and return the Release Agreement to EEOC in order to receive the payment set forth in Paragraph 6. EEOC will forward to Harris Bank the executed Release Agreements as it receives them from each Claimant.

8. Within ten (10) days after receipt by Harris Bank of a signed Release Agreement for each Claimant, Harris Bank will issue and send by certified mail a check in the amount set forth above in Paragraph 6 to the Claimant who has signed the Release Agreement, with a copy of the check sent to EEOC. Harris Bank will issue the checks as the Release Agreements are received by Harris Bank and will not wait for receipt of all Release Agreements before issuing the checks to Claimants whose signed Release Agreements have been received. Harris Bank will send the checks to the addresses listed on the Release Agreements.

9. The monetary awards will be allocated 100% to compensatory damages, and no deductions will be taken out of them. The recipient of each award will be responsible for the payment of all taxes due on the award.

10. In the event that EEOC using best efforts is unable to locate any of the Claimants within one hundred and twenty (120) days after the Consent Decree is entered, the amounts allocated to such Claimants will be divided among the Claimants who have signed Release Agreements, in amounts determined by EEOC. Within ten (10) days after EEOC notifies Harris Bank of how the remaining amount will be allocated to the Claimants who have signed Release Agreements, Harris Bank will issue and send by certified mail a check in the amount set forth by EEOC. Claimants receiving additional amounts will not be required to sign an additional release in order to receive such payment.

POSTING OF NOTICE

11. Within twenty (20) calendar days after entry of this Decree, Harris Bank will post at each of its locations same-sized copies of the Notice attached as Exhibit B to this Decree on bulletin boards usually used by Harris Bank for communicating with all its employees. The Notices will remain posted for two (2) years from entry of the Decree.

12. Harris Bank shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Harris Bank shall certify to EEOC in writing within thirty (30) calendar days after entry of this Decree that it has used its best efforts to ensure that the Notice has been properly posted and that it is unaware of any Harris Bank location in which the Notice has not been posted. Harris Bank will permit a representative of EEOC to confirm from time to time that the Notices are posted in the same manner discussed in Paragraph 11.

RECORDKEEPING

13. For a period of two (2) years following entry of this Decree, Harris Bank will maintain a record of employees who state their interest in returning to work at the conclusion of their medical leave of absence and are released to return to work. Harris Bank will record the employee's name, address, and phone number; the employee's job title; the reason for the

employee's medical leave; the employee's medical condition when released to return to work (including copies of any medical releases/restrictions obtained by Harris Bank or its agents); date the employee's leave began and concluded; the employee's termination date (if any); the accommodations requested by the employee concerning his/her return to work at Harris Bank; if Harris Bank denied the accommodation requested by the employee, any alternative accommodation(s) that it offered to the employee; the accommodations provided to the employee, if any; a list of all positions that were open at the employee's work site at the time the employee requested and was capable of, returning to work at Harris Bank; and names of the personnel who handled the accommodation or termination process for the employee.

14. Harris Bank will make all documents or records referred to in Paragraph 13 above, available for inspection and copying within ten (10) business days after EEOC so requests.

REPORTING

15. Harris Bank will furnish to EEOC written reports semi-annually for a period of two (2) years following entry of this Decree. The first report will be due six months after entry of the Consent Decree, and the reporting will continue every six months thereafter until expiration of the Decree. The final report shall be submitted no later than sixty (60) days prior to the expiration of the Decree. Each report will contain the information maintained pursuant to Paragraphs 13.

TRAINING

16. During each of the two (2) years covered by this Decree, all Harris Bank human resources employees involved in administering medical leaves of absence and management employees, including Accommodation Consultants, will be trained on the duty to accommodate employees under the Americans with Disabilities Act; the intersection between the Family & Medical Leave Act and the Americans with Disabilities Act; and Harris Bank's procedures for providing accommodations to employees on or returning from medical leaves of absence. The first

training of human resources employees will take place within sixty (60) days of entry of this Decree. For all human resources employees, this training will be in the form of in-person and/or video conference training whereby the participants of the training may pose live questions to the trainer. The first training of management employees will take place within one hundred twenty (120) days after entry of this Decree, will be completed within one hundred eighty (180) days after entry of this Decree and may be conducted in the form of on-line training.

17. Harris Bank will obtain EEOC approval of its proposed trainer(s) or on-line training course prior to the training session. Harris Bank will submit the name, address, telephone number, resume, training proposal, and any materials to be distributed to the participants, to the EEOC at least fifteen (15) days prior to the proposed date(s) of the training. The EEOC will have five (5) calendar days from the date of receipt of the information described above to accept or reject the proposed trainer(s). In the event the EEOC does not approve Harris Bank's designated trainer(s), Harris Bank will have twenty (20) calendar days to propose an alternate trainer(s). The EEOC will have five (5) calendar days from the date of receipt of the information described above to accept or reject the alternate trainer(s). If the parties cannot through this process agree on a trainer(s), then they may seek the Court's assistance under Paragraph 21.

18. Harris Bank will certify to the EEOC in writing at the end of each calendar month until the training is completed (i) the date, location and duration of the training; and (ii) the name and position of each person in attendance. Harris Bank will provide EEOC with copies of all materials distributed to the participants if different from those materials previously provided.

REVISION OF HARRIS BANK'S MEDICAL LEAVE POLICIES AND
COMMUNICATIONS WITH ITS EMPLOYEES ON MEDICAL LEAVE REGARDING
DISABILITY DISCRIMINATION AND ACCOMMODATIONS

19. Within sixty (60) calendar days after entry of this Consent Decree, Harris Bank will implement the following practices:

A. For the duration of the Decree, Harris Bank will employ one or more persons (referred to herein for reference as "Accommodation Consultants") whose responsibilities include ensuring that Harris Bank is compliant with the Americans with Disabilities Act as detailed in this Decree. All requests for accommodation from employees who are on a medical leave of absence will be referred to an Accommodation Consultant. No employee on a medical leave of absence will be terminated without the approval of an Accommodation Consultant.

B. Prior to the termination of any employee at the end of their medical leave period, Harris Bank will request from Harris Bank's third-party benefits administrator a copy of any doctor's releases or other communication with the employee for review by an Accommodation Consultant.

C. All employees who take a medical leave of absence will be informed in writing by Harris Bank: (i) how long their position will be held for them while on leave according to Harris Bank policy, (ii) the right to request that Harris Bank as an accommodation hold their job for a longer period of time than normal policy provides, and (iii) the name and contact information of an Accommodation Consultant or human resources staff person if the employee wants to request an accommodation. The employee's position will not be filled permanently before confirming whether a request for extended job protection has been made and decided.

D. No later than twenty (20) days prior to the expiration of an employee's medical leave of absence scheduled to be 30 or more days, Harris Bank will inform the employee of his/her right to request a reasonable accommodation to allow the employee to return to work at Harris Bank. Employees will be informed that reasonable accommodations may include, but are not limited to, any of the following: modified duty, part-time work, intermittent leave, reassignment to a different position, additional job-protected leave, and/or assistive devices. Nothing in this Decree will require Harris Bank to place an employee on an indefinite leave or prohibit Harris Bank from

applying its normal leave administration policy as may be revised from time to time except as set forth herein.

E. For employees who state an interest in returning to work but whose positions have been filled, Harris Bank, as of the date the employee states an interest in returning to work and has been released to return to work, will: (i) first consider reassigning the employee to an open position for which he/she is qualified at the location where the employee last worked and at the Harris Bank location(s) within 10 miles of that location and (ii) if no such position exists, provide the employee with access to a list of open positions within fifty (50) miles of his/her last work location for the purpose of permitting the employee to identify such positions for which s/he wishes to be considered for reassignment. The reassignment of employees will be made in coordination with an Accommodation Consultant; provided, however, that Harris Bank will decide whether the employee is qualified and, in the event of multiple positions, which position the employee is assigned to. Harris Bank will not require an employee whose job protection has expired to reapply for a position at Harris Bank unless and until an Accommodation Consultant has certified in writing that Harris Bank complied with the procedure set forth in this paragraph.

20. The inclusion of Paragraph 19(A)-(E) in the Decree does not represent the Court's or EEOC's approval of Harris Bank's policies regarding medical leave or its accommodation process. This Decree applies only to employees who have a "disability" within the meaning of the Americans with Disabilities Act, as amended and its terms will be interpreted and administered in accordance with the ADA.

DISPUTE RESOLUTION

21. In the event that any party to this Decree believes that any other party has failed to comply with any provision(s) of the Decree, the complaining party will notify the other party of the alleged non-compliance and will afford the alleged non-complying party fifteen (15) business days to

remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within fifteen (15) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

22. All provisions of this Decree will be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following the date of entrance of Consent Decree, provided, however, that if, at the end of the 2 year period, any disputes under Paragraph 21, above, remain unresolved, the term of the Decree will be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) with respect to only the issue(s) in dispute until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

23. Each party to this Decree will bear its own expenses, attorneys' fees, and costs.

24. The terms of this Consent Decree will be binding upon the present and future directors, officers, managers, agents, successors and assigns of Harris Bank. Harris Bank, and any successor(s) of Harris Bank, will provide a copy of this Decree to any organization or person who proposes to acquire or merge with Harris Bank, or any successor of Harris Bank, prior to the effectiveness of any such acquisition or merger. This paragraph will not be deemed to limit any remedies available in the event of any finding by the Court regarding a violation of this Decree.

25. If any provision(s) of the Decree are found to be unlawful, only such provision(s) will be severed, and the remainder of the Decree will remain in full force and effect.

26. Certifications made by Harris Bank must be made under oath. When this Decree requires the submission by Harris Bank of reports, certifications, notices, or other materials to EEOC, they will be mailed or emailed to: Aaron DeCamp, Trial Attorney, Equal Employment

Opportunity Commission, 500 West Madison Street, Suite 2000, Chicago, Illinois, 60661. When this Decree requires submission by EEOC of materials to Harris Bank, they will be mailed or emailed to Bruce R. Alper, Vedder Price P.C., 222 North LaSalle Street, Suite 2400, Chicago, IL 60601.

ENTERED AND APPROVED FOR:

For the EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

For BMO HARRIS BANK N.A.

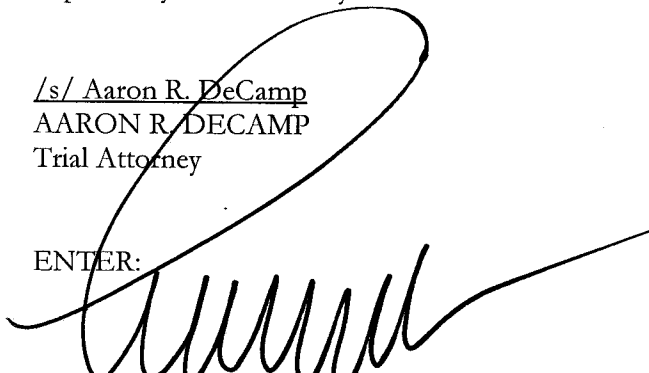
/s/ John C. Hendrickson
JOHN C. HENDRICKSON
Regional Attorney

/s/ Bruce Alper
Bruce R. Alper

/s/ Diane I. Smason
DIANE I. SMASON
Supervisory Trial Attorney

/s/ Aaron R. DeCamp
AARON R. DECAMP
Trial Attorney

ENTER:



United States District Judge

DATE:

5/2/13

EXHIBIT A

RELEASE AGREEMENT

I, _____, in consideration for \$ _____ paid to me by BMO Harris Bank N.A., in connection with the resolution of EEOC v. Harris Bank, Case No. 12 C 7793 (N.D. Ill.), release and waive my right to recover for any claims of disability discrimination arising under the Americans with Disabilities Act and any other claims contained in the underlying EEOC charge I have filed with the EEOC against BMO Harris Bank N.A., its parents, subsidiaries, affiliates, predecessors and successors, prior to the date of this release and all claims that were included in EEOC v. Harris Bank, Case No. 12 C 7793 (N.D. Ill.).

Date: _____

Signature: _____

Address: _____

EXHIBIT B

NOTICE TO ALL BMO HARRIS BANK N.A. EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in *EEOC v. Harris Bank*, Case No. 12 C 7793 (N.D. Ill.) resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against BMO Harris Bank N.A.

In its suit, the EEOC alleged that Harris Bank violated the Americans with Disabilities Act ("ADA") by not providing reasonable accommodations to employees on extended medical leaves that would allow them to return to work at Harris Bank. Harris Bank filed an Answer denying the allegations in the Complaint. To resolve the case, Harris Bank and the EEOC have entered into a Consent Decree that provides, among other things, that:

1) Harris Bank will provide compensation to a class of former employees identified by the EEOC;

2) Harris Bank will provide reasonable accommodations to persons desiring to return to work from medical leaves of absence and will not retaliate against employees who have made allegations of disability discrimination or participated in any way in a proceeding involving disability discrimination;

3) Harris Bank has designated employees in Human Resources who will be trained to help facilitate the process of providing reasonable accommodations to Harris Bank's disabled employees; and

4) Harris Bank will provide training to designated Harris Bank human resources and management personnel.

The EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age or disability. If you believe you have been discriminated against, you may contact the EEOC at (312) 869-8009. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 2 years from the date below. Any questions about this Notice or compliance with its terms may be directed to: The Harris Bank ADA Settlement, EEOC, 500 West Madison Street, Suite 2000, Chicago, Illinois 60661.

Dated: _____

The Honorable Judge Leinenweber