

Sears Hit With Age Discrimination Class Action

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Wednesday, April 18, 2007 --- Retailer Sears Holdings Corp. was hit with discrimination suit on Tuesday brought on behalf of a potential class of more than 200 former sales associates who allegedly lost pay and benefits when they were transitioned to a Sears home improvement subsidiary.

Seven former sales associates filed a lawsuit Tuesday claiming that their job transition to an “inferior” position at Sears Home Improvement Products “dramatically changed” their compensation and caused the loss of about 288 hours of paid time off. Associates worked from home and sold heating, ventilation and air conditioning, or HVAC, products and installation services through customer sales calls.

“As a result of the forced transition of HVAC Sales Associates to SHIP, and the dramatic changes that occurred, many HVAC Sales Associates were terminated or terminated their employment with Defendants,” the complaint said.

The associates filed complaints with the Equal Employment Opportunity Commission alleging violation of the Age Discrimination in Employment Act between 2004 and 2006. The EEOC then allowed the associates to file Tuesday’s suit.

The employees claim Sears violated the ADEA because the job transition had a “disparate impact” on a “statistically significant number” of older employees. More than 200 of the approximately 550 HVAC employees were age 40 and above during the transition.

The proposed class includes HVAC sales associates who were age 40 and above and were separated from employment with Sears between 2004 and 2006.

Sears did not return requests for comment.

In 2001, Sears, then known as Sears, Roebuck and Co., formed Sears Home Improvement Products, or SHIP, to offer installed home improvement products and services. Three years later, Sears announced that its HVAC sales associates would be “transitioned” to SHIP.

“Essentially, this meant that each HVAC sales associate would be terminated from employment by defendant Sears, Roebuck and Co. and hired by defendant SHIP,” the lawsuit said.

The associates claim they lost compensation and many benefits when they transitioned to SHIP, which forced many of them to quit or be fired.

Under SHIP, associates were required to travel greater distances for sales calls and were no longer reimbursed for business expenses such as mobile phone use and mileage driven, according to the suit. The associates said they also did not receive paid holiday, vacation and personal time and were expected to be available to work 72 hours each week instead of the previous 40 hour requirement.

The associates said their compensation, which was based solely on commissions based on sales, was also dramatically changed.

The associates said SHIP priced many of its products higher, which reduced commissions because they were harder to sell. SHIP also forced “high pressure sales tactics” in which sales were required to be made on a first call to a customer or associates risked receiving no commission at all, according to the suit.

Tuesday’s suit follows a proposed class action Employment Retirement Income Security Act suit against Sears filed in June 2006. The pending suit, which involves five of the same plaintiffs from the age discrimination suit, claims that Sears failed to provide severance pay for employees as a result of their “involuntary termination” from Sears, Roebuck to join SHIP.

Sears’ severance plan did not provide benefits if employees were offered a comparable position. However, the associates say the dramatic changes in the business model at SHIP showed that the new positioned were “clearly” not comparable.

The suit, filed in the U.S. District Court for the Eastern District of Michigan, names a potential class of all 550 former HVAC sales associates.

For fiscal year 2006, Sears reported a net income of \$1.5 billion. Sears touts itself as the nation's largest provider of home services, with more than 13 million service calls made annually.

The plaintiffs are represented by Dib Fagan and Brault, PC and Fieger Fieger Kenney & Johnson PC in both cases. Sears is represented by Miller Canfield Paddock and Stone PLC in the ERISA case. Sears’ representation in the age discrimination case was not immediately available.

The age discrimination case is Garold Allen et al. v. Sears Roebuck and Co. et al., case number 07-cv-11706, in U.S. District Court for the Eastern District of Michigan.

The ERISA case is Gary Caudill et al. v. Sears Transition Pay Plan et al., case number 06-cv-12866, in U.S. District Court for the Eastern District of Michigan.