

EEOC Delivers Hefty Fine for Disability Discrimination

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In May, the Equal Employment Opportunity Commission ("EEOC") announced that FedEx Ground Package System, Inc. ("FedEx") will pay \$3.3 million dollars and provide programmatic relief to resolve a disability discrimination charge against the company.

Allegations against FedEx

In its Complaint (*Equal Employment Opportunity Comm'n v. FedEx Ground Package Sys., Inc.*, 15-cv-00256 (Western District of Pennsylvania, February 25, 2015)) the EEOC alleged that FedEx violated the Americans with Disabilities Act ("ADA") by discriminating against deaf and hard-of-hearing individuals who applied for and/or worked in the package handler positions with the company. To be hired for such positions, applicants must be at least eighteen years old and pass a criminal background check. Applicants attend a mandatory sort-observation tour (where they see an active package handling shift, observe loading and unloading delivery vehicles, the conveyor systems, scanning, sorting, and the routing of packages), and participate in an interview.

Package handlers perform a variety of tasks that would require accommodation if they are to be performed by deaf or hard-of-hearing individuals. For example, the scanners used to scan package barcodes typically emit an audible beep, and regular meetings and training sessions often contain auditory presentations and/or videos. In all phases of hiring, training, orienting, and employing package handlers, the agency alleged that FedEx failed to make reasonable accommodations required by law for deaf and hard-of-hearing individuals. Seventeen (17) deaf or hard-of-hearing individuals filed Charges of Discrimination against FedEx, which the EEOC then consolidated as part of a nationwide investigation of potential ADA violations. The parties engaged in a conciliation process, but those efforts were unsuccessful and the EEOC brought suit for the benefit of the seventeen individuals and other "similarly aggrieved individuals."

The Remedy

Ultimately, the parties settled. The two-year consent decree settling the suit identified 229 individuals who may receive payment as part of the settlement. It also requires FedEx to provide deaf and hard-of-hearing package handlers with access to live and video remote American Sign Language interpreting, captioned videos, and scanning equipment with non-audible cues such as vibrations. Going forward, FedEx will also take steps to protect the safety of deaf and hard-of-hearing package handlers. Finally, FedEx will also train managers and human resource representatives on ADA compliance and create written resources to assist them in identifying and providing accommodations for deaf and hard-of-hearing package handlers.

ADA Refresher

The ADA is a federal civil rights law that went into effect in 1992. One of its main purposes is to protect people with disabilities from discrimination in employment. Under the ADA, employers must make *reasonable accommodations* to the known limitations of *qualified individuals* with disabilities to enable them to perform the essential functions of their jobs and to enjoy equal benefits and privileges of employment. A *reasonable accommodation* is a modification or adjustment to a job, work environment, or the way things are usually done that enables a *qualified individual* (a person who meets legitimate skill, experience, education, or other requirements of an employment position and who can perform the essential functions of the position with or without reasonable accommodation) with a disability to enjoy an equal employment opportunity. The ADA applies to all aspects of employment, including job advertisements, applications, interviews, and post-offer medical examinations.

Takeaways and Tips

Failure to comply with the ADA can be costly.

- Train managers and human resource representatives on ADA compliance and create resources to assist them in providing accommodations for job applicants and employees.
- The EEOC's [website](#) is a great resource for practical job accommodations.
- Work with in-house or outside counsel to ensure there are adequate policies and procedures around accommodation requests and the interactive processes.