



## Labor and Employment News Alert

August 30, 2010

# New Ninth Circuit Decision Emphasizes Employer Obligations In Disability Accommodation Cases

Last week the United States Court of Appeals for the Ninth Circuit (i.e., which includes Washington) issued a decision in the matter of EEOC v. UPS Supply Chain Solutions. The decision is a reminder that employers dealing with requests for accommodation should be patient, seek information through the interactive process, and consider new or additional accommodations if initial efforts fail. The decision is also a reminder that, at least here in Washington, it is increasingly difficult for disability discrimination lawsuits to be dismissed before trial.

The case involved a congenitally deaf worker who satisfactorily performed his job duties without accommodation. But the employee--who has only a 4th or 5th grade understanding of written English--complained that he was not provided with an interpreter at weekly department meetings, and thus did not have all of the information that was being provided to his peers. UPS provided various accommodations, such as pre-meeting agendas and post-meeting notes of conversations that took place at various meetings. In fact, UPS even provided American Sign Language interpreters at monthly meetings, which tended to be two hours or longer. But UPS did not provide such interpreters at shorter weekly meetings, and did not provide interpreters at disciplinary sessions or training sessions. Although the employee admitted this did not adversely affect his ability to perform his job duties, he complained he was still being denied terms and conditions of employment that were available to his non-deaf colleagues. For example, he said he wasn't able to contribute his ideas and fully participate in meetings to the same extent as his peers.

According to the court, the employee's inability to effectively communicate in English (as opposed to American Sign Language) made it difficult for him to understand company-provided training--such as computer-based Excel training--and to understand the company's anti-harassment policy materials and a disciplinary notice he had received. His communication limitations also resulted in some amount of interpersonal conflict with co-workers.

UPS argued that it had acted to reasonably accommodate the employee's limitations. The lower court agreed, and dismissed the employee's claims at summary judgment. But the Ninth Circuit reversed, saying there were too many questions that needed to be resolved at trial. For example, according to the Ninth Circuit:

- It was not clear whether the company-provided meeting notes and agendas were a reasonable accommodation.
- It was not clear whether UPS knew or should have known whether the meeting notes and agendas were effective accommodations. If those accommodations were not effective, they didn't count as "reasonable accommodations" and this may have created an obligation for UPS to become more involved in the interactive process to consider other possible accommodations.

- It was not clear whether UPS engaged in a sufficiently sustained effort to try various reasonable accommodations. This is important because, in prior decisions, the Ninth Circuit has stated that employers must try-and-try-again if initial accommodation efforts are not successful.
- In light of the employee's purported difficulty with the computer-based Excel training, it was not clear whether UPS unlawfully discriminated against the employee by failing to provide different training.

Reasonable accommodation questions are almost certainly the most difficult issues faced by human resources professionals and the managers they support. This new decision by the Ninth Circuit is a reminder that employers should make sure they have explored all of the possibilities before they deny accommodations or suspend efforts to provide such accommodations. This decision should also be a reminder that employers should carefully document their efforts to engage in the interactive process, and should engage the assistance of counsel as soon as it becomes apparent that there is no easy resolution in any particular case involving an accommodation request.

Should you have any questions about the application of UPS to your workforce, or any other labor or employment-related matter, please do not hesitate to contact us.

---

The **Riddell Williams Labor and Employment Group** helps businesses comply with labor and employment laws and resolve disputes with employees. Our practice consists of four primary areas: counseling, litigation, training, and traditional labor law.

Riddell Williams P.S.  
1001 Fourth Avenue, Suite 4500  
Seattle, WA 98154-1192

Telephone: 206.624.3600  
Facsimile: 206.389.1708  
[www.riddellwilliams.com](http://www.riddellwilliams.com)