

---

**CASE LAW UPDATE****Disability – Failure to Provide Reasonable Accommodation**

---

*EEOC v. UPS Supply Chain*, \_\_\_F.3d\_\_\_ (9<sup>th</sup> Cir. August 27, 2010)

On Friday, August 27, 2010, the Ninth Circuit published a decision that reinforces three important principles under the ADA: (1) that accommodations offered to a disabled employee must be effective to be reasonable; (2) that the duty to engage in the interactive process requires the employer take into consideration the unique circumstances of the employee in evaluating whether an accommodation is effective; and (3) that employers must provide reasonable accommodation to ensure that disabled employees enjoy the same privileges and benefits of employment as non-disabled employees (hence the duty to provide reasonable accommodations is not limited to providing those accommodations that enable disabled employees to perform the essential functions of the job).

***Background of the Case***

In *EEOC v. UPS Supply Chain*, the Ninth Circuit reversed summary judgment granted in favor of the employer, UPS Supply Chain (“UPS”), in a case involving a deaf employee with a fifth grade reading level. The employee, Centeno, requested that UPS provide him with a sign language interpreter during weekly and monthly staff meetings that covered topics such as employee benefits, compensation, vacation scheduling, bonuses and reductions in force. He also requested a sign language interpreter to assist with Excel training, to explain the Company’s anti-harassment policy, and to explain a written warning issued to Centeno for violating the anti-harassment policy. As an alternative to a sign language interpreter, UPS initially provided Centeno with:

- (1) Written agendas, notes and summaries of the weekly and monthly meetings;
- (2) Repeated on-line Excel training after Centeno was marked down on his performance evaluation for having inadequate knowledge about Excel; and
- (3) A written explanation of the written warning and anti-harassment policy by presenting Centeno with a dictionary to define the words that he did not understand.

UPS eventually provided Centeno with a sign language interpreter for some of the meetings. UPS also provided Centeno with a sign language interpreter to explain the written warning (but not the anti-harassment policy) and to assist Centeno with the Excel training.

### ***Why Did the Trial Court Grant Summary Judgment for UPS?***

In granting summary judgment for UPS, the trial court found that UPS complied with the ADA by engaging in the interactive process with Centeno and by providing Centeno with written notes, agendas and summaries of the meetings. It also found no evidence that Centeno missed out on any significant privileges or benefits of employment due to UPS' failure to provide him with a sign language interpreter.

### ***Why Did the Ninth Circuit Reverse the Trial Court?***

In reversing summary judgment for the employer, the Ninth Circuit held that there was evidence in the record to suggest the accommodations that UPS initially offered to Centeno were not effective [though that issue will now be left to a jury to decide]. The Ninth Circuit found that the written summaries may not have been effective since Centeno had difficulty reading English which UPS was aware. Further, the agendas and notes contained only cursory information, and Centeno did not have an opportunity to participate in the meetings. In addition, the Ninth Circuit found that there was evidence that UPS did not explore accommodations in good faith since it did not take into account the nature of the meeting or the length of meeting in providing Centeno with notes and summaries instead of a sign language interpreter.

As for the Excel training, the Court found summary judgment on that issue was not appropriate since UPS had delayed providing Centeno with an interpreter and further, that UPS may not have engaged in good faith in the interactive process. In connection with the anti-harassment policy, there was no evidence, according to the Ninth Circuit, to suggest that Centeno understood the anti-harassment policy after using the dictionary.

### ***Lessons Learned***

The UPS decision reinforces the importance of the interactive process in making reasonable accommodation decisions. Whether or not an accommodation is effective must be made with input from the employee – hence, the interactive process must be engaged in order to make this determination. In addition, all circumstances must be taken into account in determining whether or not an accommodation is effective (*e.g.*, in Centeno's case, UPS should have considered the nature and length of the meetings in offering written notes and summaries as an accommodation in lieu of a sign language interpreter).

The UPS decision is also a reminder that the duty to provide a reasonable accommodation extends not only to enabling the employee to perform essential job functions but also extends to enabling a disabled employee to enjoy the same privileges and benefits of as offered to non-disabled employees.

For more information about how the UPS decision applies to your reasonable accommodation process, please contact one of RJO's labor and employment attorneys.