



CLIENT NEWS BRIEF

November 2011

Number 74

UPS ORDERED TO PAY OVER \$96,000 FOR TERMINATING A DISABLED EMPLOYEE

The Fair Employment and Housing Commission (FEHC) ordered the United Parcel Service (UPS) to pay over \$96,000 in damages after finding that UPS fired Eva Linda Mason because of her disability.

In 1998, Ms. Mason began working for UPS as an Operations Management Specialist to handle customer calls and complaints on shipments. Over 75% of her time was spent on the telephone or the computer, while less than 25% of her duties required physically walking around the warehouse facility.

In June 2007, Ms. Mason aggravated a prior work-related knee injury and visited UPS's medical clinic. The clinic doctor issued a work status report stating that Ms. Mason could return to work with some restrictions such as limited standing, walking, bending, and kneeling. Even with the restrictions, Ms. Mason continued to perform all of her normal job duties. Because Ms. Mason had work restrictions, UPS mailed Ms. Mason an "ADA packet," the documents required in order for Ms. Mason to request a job-related accommodation. Believing that the documents did not apply to her because she had never requested an accommodation and did not need an accommodation, Ms. Mason did not respond. No one from UPS contacted Ms. Mason to discuss her work restrictions or how she was performing her work duties.

In August 2007, Ms. Mason took a workers' compensation leave of absence to have knee surgery and to recover. She returned to work in December 2007 with some restrictions but continued to perform her normal job duties. However, for reasons that were not fully explained, UPS changed Ms. Mason's employment status to "residual disability." UPS had a 12-month cap on the length of time employees with short or long term disabilities could be "absent" from their regular duties, including by assignment to a different or lighter position, known as residual disability.

In April 2008, Ms. Mason went out on another workers' compensation leave and had a second knee surgery. UPS sent Ms. Mason another ADA packet, even though Ms. Mason had not requested an accommodation. Ms. Mason claimed that she returned the completed ADA packet, but UPS contended it was never received. In May 2008, UPS sent Ms. Mason a letter informing her that her request for an accommodation had been withdrawn due to her failure to submit the necessary documentation, and Ms. Mason did not follow up with UPS.

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In August 2008, UPS determined that Ms. Mason had been “absent” from her duties for more than 12 months and terminated her employment. In February 2009, UPS sent Ms. Mason another ADA packet. Because she did not know why she had received the ADA packet, had not asked for an accommodation, and had already been fired, Ms. Mason disregarded the letter. At no point did anyone from UPS call Ms. Mason to discuss her work restrictions or how she was performing her work duties.

In an action brought before the FEHC by the Department of Fair Employment and Housing (DFEH) on behalf of Ms. Mason against UPS, the FEHC determined that UPS had violated the Fair Employment and Housing Act (FEHA, Gov. Code §§ 12940 *et seq.*) by discriminating against Ms. Mason on the basis of disability. The evidence showed that once Ms. Mason reported her knee injury to UPS, UPS regarded her as a person with a disability that was unable to perform her regular job duties. UPS deemed Ms. Mason to be on “residual disability” and terminated her after 12 months, even though Ms. Mason was actually performing her essential job functions. The FEHC found that UPS’s invocation of the 12-month rule was a pretext for its discriminatory termination of Ms. Mason based on her disability.

The FEHC also found that UPS failed to take all reasonable steps necessary to prevent discrimination. The FEHC noted that UPS’s Americans with Disabilities Act (ADA) compliance manual focused on federal law, rather than California’s FEHA, and that UPS needed to provide ongoing training of its managers and supervisors on FEHA.

However, the FEHC determined that UPS and Ms. Mason were mutually responsible for the breakdown in the interactive process. FEHA requires employers, in response to an employee’s request for a job-related accommodation, to engage in a timely, good faith, interactive process with the employee to determine whether effective reasonable accommodations are possible. The FEHC stated that UPS’s reliance on automated, “formulaic, boilerplate letters,” that were factually erroneous and sent at confusing times, were ineffective in engaging Ms. Mason in the interactive process. Nevertheless, Ms. Mason also failed to cooperate in the interactive process by not contacting UPS after receiving the multiple ADA packets and the May 2008 letter stating that her request for an accommodation had been withdrawn.

The FEHC ordered UPS to pay over \$96,000, including payments to Ms. Mason for her lost earnings and emotional distress damages, and to reinstate Ms. Mason to her former position at UPS.

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This decision underscores the importance to employers of engaging in individualized discussions with employees when requests for reasonable accommodations are made. Form documents notifying an employee that his or her request for an accommodation has been received and asking for additional information, such as an authorization for release of medical records, should be followed by personal contact so that the employer and employee may discuss the employee's specific circumstances. Employers should also ensure that their nondiscrimination policies incorporate the requirements of California's FEHA in addition to the federal ADA.

If you have any questions about the impact of this decision, or about the requirements of the Fair Employment and Housing Act, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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