

08 | 30 | 2010 Posted By

[Lawsuit by Deaf Employee Based on Failure to Provide Sign Language Interpreter Sent to Jury](#)

In a recent decision involving a deaf employee's professed need for a sign language interpreter to understand and participate in mandatory departmental meetings, the Ninth Circuit Court of Appeals unanimously reaffirmed that pursuant to the Americans with Disabilities Act ("ADA"), an appropriate "reasonable accommodation" must be *effective* to enable a covered employee to enjoy equal benefits and privileges of employment.

In the case of *U.S. Equal Employment Opportunity Commission v. UPS Supply Chain Solutions*, - F.3d -, 2010 WL 3366256 (9th Cir., August 27, 2010) ("UPS"), the Ninth Circuit held that it was for a jury to decide whether UPS's accommodations to a deaf employee were effective, and whether UPS was aware, or should have been aware, that its accommodations were not effective.

The employee in the *UPS* case was Mauricio Centeno, a junior clerk in accounting. Centeno had been deaf since birth. His first and primary language was sign language. He only was able to read and write English at the fourth or fifth grade level. Centeno did not need a sign language interpreter to perform his job duties, but did request an interpreter for mandatory weekly and monthly departmental meetings, for certain job-related training, and to understand the company's sexual harassment policy. Although UPS occasionally provided Centeno with a sign language interpreter for monthly meetings, its primary attempt to accommodate Centeno came in the form of providing him with the written agendas from the meetings, contemporaneous written notes from the meetings, and after-the-fact written summaries of the meetings, as well as access to a dictionary for words he did not understand. Centeno repeatedly informed UPS that the note-taking and summaries were insufficient because they were vague, incomplete, and did not enable him to participate; that he did not understand a number of the words they contained; and that the dictionary did not solve the problem. In addition, although UPS did provide Centeno with a sign language interpreter for the training, that was only after a two-year delay.

UPS did not dispute that Centeno's ability to understand and participate in the mandatory departmental meetings was a benefit and privilege of employment, such that it was obligated under the ADA to make reasonable accommodations. UPS also did not contend that providing a sign language interpreter would have been an undue hardship. The issue was whether there were disputed issues of material fact for a jury to decide regarding whether UPS's accommodations were effective, and whether UPS had acted in good faith. The Ninth Circuit was persuaded that there were questions that needed to be decided by a jury, citing the fact that Centeno had repeatedly informed UPS that its accommodations were not working for him, UPS did not have good or consistent reasons for not using a sign language interpreter, and UPS had waited too

long to obtain a sign language interpreter in connection with the training.

There are several lessons to be taken from the *UPS* decision. First, the accommodation utilized by the employer must be effective. The employer's accommodation will not be deemed reasonable and lawful if it is not effective. Second, the employer's duty to accommodate and engage in the interactive process is a continuing one. The employer must listen to an employee's requests for different accommodations, and be attuned to whether its accommodations are working. Lastly, employers should be as consistent, reasonable, and prompt as possible in their decision-making regarding accommodations.

Whether other employers need to provide sign language interpreters for their deaf employees, and under what circumstances, will need to be evaluated on a case-by-case basis.