

For Immediate Release

July 25, 2001

COURT URGED TO PERMIT SAFETY VISION TESTS FOR UPS TRUCK DRIVERS (*EEOC v. United Parcel Service, Inc.*)

The Washington Legal Foundation (WLF) filed a brief with the United States Court of Appeals for the Ninth Circuit arguing that United Parcel Service's (UPS) vision acuity standard for its package drivers does not violate the Americans with Disabilities Act (ADA).

In order to meet safety standards, UPS adopted a Vision Protocol as one of its qualifications for the safety-sensitive position of package driver. UPS's standard excludes only the most severely monocular job applicant who is unable to attain a corrected visual acuity of at least 20/200 in the impaired eye. Nevertheless, the EEOC and three visionally-impaired job applicants sued UPS, claiming that the Vision Protocol violated the ADA.

Under the ADA, a company can impose certain physical qualification standards for a job if they are a "business necessity." The district court, however, agreed with the EEOC and determined that UPS had the burden of disproving qualifications of applicants on an individualized basis. The court then devised its own untested vision standard. While WLF strongly supports the purpose of the ADA in eradicating intentional discrimination against persons with disabilities, the district court improperly imposed an individualized analysis regimen on UPS, striking down UPS's "bright line" standard. This decision forces employers to inappropriately "take a chance" with safety.

If the district court decision is left intact, WLF argued that employers would be effectively prohibited from implementing any uniform safety-standards for any job, no matter how reasonable or rational. Minimum safety standards will now become maximum standards, thereby leaving companies exposed to tort liability if members of the public or co-workers are injured due to the physical impairment of employees.

WLF's brief was drafted with the *pro bono* assistance of Laura M. Franze, a partner in the Dallas, Texas law firm of Akin, Gump, Strauss, Hauer & Feld, LLP. Ms. Franze chairs that office's Labor and Employment Practice Group.

* * *

For information, contact Paul Kamenar, WLF's Senior Executive Counsel at 202-588-0302.