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FAILURE TO ACCOMMODATE IN INTERVIEW PROCESS RESULTS IN \$8 MILLION JURY VERDICT

A federal jury in Colorado has hit EchoStar Communications Corp. with an \$8 million punitive damage verdict, finding that the employer had failed to accommodate a blind job applicant in the job interview and selection process.

The Americans with Disabilities Act requires employers to extend reasonable accommodations to individuals with disabilities in the employee selection process. Employers are also prohibited from using selection procedures that unfairly reflect a disabled applicant's impaired sensory, manual, or speaking skills (unless those skills are the target of the measurement). A federal court in New York succinctly summarized the ADA's application to employment selection procedures as follows:

[The] purpose of the ADA as it relates to examinations and testing procedures is to guarantee that those with disabilities are not disadvantaged and to place those with disabilities on an equal footing, but not to give them an unfair advantage over others taking the test.

In the lawsuit, the EEOC charged that EchoStar failed to accommodate a vision-impaired job applicant for a customer service representative position. The EEOC claimed that the applicant could have performed the job through computer software called JAWS (Job Access With Speech); EchoStar countered that JAWS could not be installed on its complex computer systems. The EEOC also presented evidence that, after EchoStar received the applicant's charge



of discrimination, it put him through a “sham” selection procedure that was more difficult than the selection procedure administered to other applicants.

The jury returned a verdict of \$2,000 in back pay, \$5,000 in compensatory damages (e.g., mental anguish), and \$8 million in punitive damages. Although the verdict may be reduced through post-trial motions or on appeal, the verdict clearly illustrates the legal risks involved in failing to extend reasonable accommodations to job applicants with disabilities.

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