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**A Compliance Check Newsletter**

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## **EEOC WINS \$8 MILLION JURY VERDICT FOR BLIND WORKER IN DISABILITY BIAS CASE AGAINST ECHOSTAR**

After a three-day trial, a 12-person jury returned an \$8 million verdict in federal court today for the U.S. Equal Employment Opportunity Commission (EEOC) in a lawsuit alleging that EchoStar Communications Corp. (EchoStar) violated the Americans with Disabilities Act of 1990 (ADA) when it refused to provide a reasonable accommodation to Dale Alton, a qualified blind employee. EchoStar, based in Englewood, Colorado, is a provider of advanced digital television services.

The jury verdict awards \$2,000 in back pay, \$5,000 in compensatory damages, and \$8 million in punitive damages for Mr. Alton. In the trial, presided over by Judge Richard P. Matsch, the plaintiffs alleged the following:

- EchoStar failed to accommodate Mr. Alton in the application process;
- EchoStar failed to accommodate Mr. Alton in the job by never trying to install adaptive software;
- EchoStar denied Mr. Alton an employment opportunity because of his disability or because of the need to provide him an accommodation; and
- EchoStar violated a section of the ADA when it failed to use a proper testing device to determine an applicant's skills.

"This verdict should remind employers that refusing to abide by the law in accommodating individuals with disabilities can be costly," said Joseph Mitchell, Regional Attorney of the EEOC's Denver District Office. "Many individuals with disabilities, such as Dale Alton, are ready, eager and able to work. All they need is the opportunity to do the job without discriminatory barriers based on myths, fears and stereotypes. Employers must remember that disability does not mean inability."

In the trial, the plaintiffs presented evidence that Mr. Alton, who is blind, applied for a customer service representative job at EchoStar in 1999. Prior to applying, Mr. Alton had completed training at the Colorado Center for the Blind for that very type of position. Blind individuals can perform the customer service representative job by using a computer program called JAWS (Job Access With Speech), which translates text into speech. A blind customer service rep uses a split headset, in which he hears the JAWS voice in one ear, and the customer conversation in the other ear. Using JAWS, people with vision impairments can process written language at 400 to 700 words per minute, which is faster than many sighted individuals read. At trial, the plaintiffs' expert, Nelson Reiser, demonstrated to the jury how JAWS works.

When Mr. Alton first went to EchoStar to apply, EchoStar told him it would not do him any good to put in an application because they were not set up to handle blind people. However, after receiving a copy of his charge of discrimination, EchoStar invited Mr. Alton back and put him through a sham interview process that included a Braille test, which was longer and more difficult than the test given sighted people, and a Windows skill test that consisted of a person giving him directions on how to access icons, such as "move to the left, move down, now click."

## *The Focus*

Much of the testimony related to whether, if EchoStar had tried to install JAWS in 1999, it could have worked. EchoStar asserted that JAWS could not have worked because of the complexity of the software environment. Contrary evidence presented by plaintiffs reflected that, in 1999, numerous employers in Denver such as Norwest Bank, American Express, Big Brothers/Big Sisters, and MCI had installed JAWS and employed blind customer service representatives at their call centers.

### **OSHA Cites Lee Mechanical Contractors for Alleged Health Violations**

The U.S. Labor Department's Occupational Safety and Health Administration (OSHA) has cited Lee Mechanical Contractors Inc., Park Hills, Mo., for allegedly failing to ensure appropriate protective programs were in place for employees working in a lead contaminated environment. Proposed penalties total \$113,000.

"This employer failed to provide respirator fit testing for temporary employees and allowed them to work in a lead contaminated environment for about two weeks," said OSHA Regional Administrator Charles E. Adkins, CIH. "The significant penalty of \$113,000 in this case demonstrates our commitment to protecting the health and safety of America's workers."

OSHA cited the company for two alleged willful and seven alleged serious violations. The willful citations charge that the firm did not fit test employees who wore respirators and failed to provide follow-up blood lead level testing or written results of blood lead level tests to lead-exposed employees.

The serious citations alleged the firm's written respirator program was not in compliance with OSHA regulations and personal air monitoring was not conducted. Other deficiencies included inappropriate respirators, blood lead testing not provided every two months, and failure to train employees on proper respirator selection and fit testing and to inform them of their rights to medical and exposure records.

Willful violations are those committed with an intentional disregard of, or plain indifference to, the requirements of the OSH Act and regulations. OSHA defines a serious violation as one in which there is a substantial probability that death or serious physical harm could result from a hazardous condition, and that the employer knew or should have known of the hazard.