

Another EEOC Lawsuit Is Rejected

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On October 1, 2009, the EEOC issued a [press release](#) that it had sued the Picture People ("TPP") – a nationwide chain of photography studios – alleging that it had harassed and discharged a deaf employee in violation of the Americans With Disabilities Act. Nearly two years later, Judge Philip Brimmer of the U.S. District Court for the District of Colorado [granted summary judgment](#) for the employer in *EEOC v. The Picture People, Inc.*, No. 09-CV-2315 (D. Colo. May 9, 2011). The ruling stands in stark contrast to the EEOC's press release, and marks another loss in the Commission's litigation program this year, which we have previously analyzed [here](#) and [here](#).

Picture People hired Jessica Chrysler in 2007 understanding that she was deaf. TPP hired Chrysler as a "performer," a job that involved photography, sales, lab work, front desk duties and interacting with customer. Chrysler performed a number of the job duties of the position, but was later moved primarily into the lab. Chrysler repeatedly demanded an interpreter to assist at meetings, and complained that she was treated poorly because of her disability. After the 2007 holiday season, PPT cut Chrysler's hours, and later she stopped working for the company altogether.

The EEOC sued under a number of theories, the thrust of which alleged that TPP had not done enough to make the studio an environment where she could succeed. After extensive discovery, TPP moved for summary judgment. The company did not dispute that Chrysler was disabled under the ADA. Instead, TPP argued that she was not qualified to perform the essential functions of the performer positions because she could not communicate orally.

Picture People focused on its job description for a performer, which emphasized that "strong communication skills" was a job qualification. The Court observed that an employer's job description is not always the final word on what is an essential job function, but as long as the description was job-related, uniformly enforced, and consistent with business necessity, it would not second guess those job functions. TPP insisted that the ability to speak with customers throughout their visit to the studio was necessary to the position. The EEOC countered that requiring oral speech was just the sort of stereotype that the ADA was designed to combat. But TPP made what the Court ultimately found was an important distinction, as the company argued that it was not concerned that non-oral speech was somehow off-putting to customers (as the EEOC implied), but rather it was the speed of oral communication that was so important to its business. The Court agreed, and held that oral communication was an essential function of the performer job.

Thus, the case turned on whether Chrysler could do the job when factoring in a reasonable accommodation. The EEOC argued strategies like written notes, gestures, and other non-oral communication could take the place of oral speech. The Court disagreed, holding that TPP was not required to alter the essential job function of oral speech. In this respect, the Court's decision not to require TPP to re-write its core job functions was fatal to the EEOC case.

The EEOC also brought a handful of related claims, including hostile work environment, unlawful discharge and retaliation. Although the EEOC was able to provide certain anecdotal instances and statements where Chrysler's disability was in play in the workplace, none of these other claims survived summary judgment either.

In the end, the Court dismissed the EEOC's entire case, entering summary judgment on behalf of the employer.

After the recent ADA amendments, most battles in litigation brought by the EEOC will not be waged over whether an individual is or is not disabled, as they had in the past. Instead, we can expect to see more cases like *EEOC v. The Picture People*, testing whether and/or what accommodations are reasonable in a competitive marketplace. The EEOC has promised to aggressively litigate these issues, and the *EEOC v. The Picture People* case demonstrates that it will make good on that promise. In this instance, however, given the compelling evidence the employer marshaled and the nature of its business, the Court held that the accommodations the EEOC was proposing simply went too far.