

# Failure to Promote Employee Because His Accent Makes Him Difficult to Understand is Unlawful

July 3, 2007

The U. S. Court of Appeals for the Sixth Circuit, which reviews federal cases arising in Michigan, ruled against FedEx Freight East, Inc. in a national origin discrimination case brought under Title VII, the federal civil rights law. On June 27, 2007, the court held that FedEx's refusal to promote a Hispanic employee to a supervisory position because his accent made him difficult to understand was *direct evidence* of its intent to discriminate based on national origin.

Specifically, in *In re: Jose Antonio Rodriguez*, the plaintiff had evidence that the decision-maker found him to be qualified, but failed to promote him because the Regional Human Resource Manager had expressed a concern about the plaintiff's "accent and speech pattern" and that his "language and how he . . . [spoke]" made him difficult to understand.

Under oath, the manager denied making the comment, claimed the plaintiff does not have a noticeable accent, and stated that the plaintiff was not considered for promotion because he lacked commitment to the Leadership Apprentice Course, which was a prerequisite for promotion at FedEx. The plaintiff conceded that he never completed the course.

Ruling against the employer, the appellate court approved the position of the Equal Employment Opportunity Commission that linguistic discrimination equated to national origin discrimination. It also cited the relevant regulation, which states that national origin discrimination is broadly defined as: "the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or *linguistic characteristics* of a national origin group." (emphasis added) On this basis, the court found the Regional Human Resource Manager's comments were direct, and not just circumstantial, evidence of discrimination based on the plaintiff's national origin. Therefore, absent evidence on remand that FedEx would have made the same decision absent a discriminatory motive, it will be found liable under Title VII.

Is this case an anomaly? No. As emphasized by the Sixth Circuit Court, its decision is consistent with decisions of the U. S. Supreme Court and all of its sister circuits. Employers beware! As with all other characteristics associated with protected statuses, accents (even those which make it difficult to understand the employee) *cannot* be part of the decision making process for hiring, promoting or terminating an employee.