

- **EEOC v. Pepsi Bottling Group, Inc.**

No. 05-72583 (E.D. Mich. July 11, 2005)

In this ADA action, the Detroit District Office alleged that defendant, a soft drink bottling company, failed to accommodate charging party's disability, diabetes, and discharged him from his position in its Detroit warehouse due to his disability. After 17 years as a delivery driver for defendant, charging party was diagnosed with diabetes. Three years later he was diagnosed with insulin-dependent diabetes, which meant that he was no longer qualified under the then-applicable U.S. Department of Transportation (DOT) regulations to transport goods in interstate commerce. Defendant refused to place charging party in an alternative position (warehouse loader) because he did not pass a Physical Ability Test (PAT) applicable to the position, even though charging party's delivery driver job was at least as physically demanding as the loader position. Defendant's procedures did not allow for an individualized assessment of a person's ability to perform the job. Defendant discharged charging party in April 2002.

Under the 18-month consent decree resolving this case, charging party will receive \$75,000 in monetary relief. Charging party declined defendant's offer (made after defendant received the charge) to reinstate him into the warehouse loader position with seniority to November 2002. Defendant will make good faith efforts to help charging party obtain a DOT waiver, and if he obtains the waiver, defendant will consider him for a driver position in its Detroit warehouse if one is available. Defendant will not give the PAT to any current employee seeking a transfer into a loader, route salesman, or merchandiser position if the employee has safely and adequately performed an equally or more physically demanding job for defendant. Also, defendant will prepare materials advising applicants who may have disabilities of their right to seek a reasonable accommodation in taking the PAT. Defendant will not discriminate against employees under the ADA.