

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MID-STATE MACHINE & FABRICATING )  
CORPORATION, )  
 )  
Defendant. )

CIVIL ACTION NO.  
99-1091-CIV-T-26E  
COMPLAINT  
JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §12101 et seq., and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to James E. Nolan and similarly situated individuals who were adversely affected by such practices. As stated with greater particularity in paragraphs 7 - 11, the Commission alleges that Defendant Mid-State Machine & Fabricating Corp. ("Mid-State") regarded Mr. Nolan as disabled based on the results of a pre-employment medical examination and, as a direct result, denied him employment in a position for which he was qualified. In addition, the Commission alleges that Mid-State's employment policies for at least three of its positions are in violation of the ADA as they require all applicants for those positions to submit to a prohibited pre-employment medical examination and they deny employment opportunities to qualified individuals because they are regarded by Defendant to be disabled based on that pre-employment medical examination.

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**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is also authorized and instituted pursuant to Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Middle District of Florida, Tampa Division.

**PARTIES**

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Mid-State has continuously been a Florida corporation doing business in the State of Florida and the City of Lakeland, and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant Mid-State has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. §12111(5), and Section 101(7) of the ADA, 42 U.S.C. §12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§2000e(g) and (h).

6. At all relevant times, Defendant Mid-State has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

### STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, James E. Nolan filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Mid-State. Mr. Nolan is a "qualified individual with a disability" under Section 101(8) of the ADA, 42 U.S.C. §12111(8). All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least January 1, 1993, Defendant Mid-State has engaged in unlawful employment practices at its Lakeland, Florida facility in violation of Sections 102(a), 102(b)(1), 102(b)(6) and 102(d)(2)(A) of Title I of the ADA, 42 U.S.C. §§12112(a), 12112(b)(1), 12112(b)(6) and 12112(d)(2)(A).

- a. Defendant Mid-State denied employment to James E. Nolan and other similarly situated individuals because it regarded them as disabled within the meaning of the ADA; and
- b. Defendant Mid-State has maintained and enforced employment policies for at least three positions, "Fitter/Welder", "Machinist", and "Mechanical", which require an employment test that screens out a class of qualified individuals who are regarded as disabled within the meaning of the ADA; and
- c. Defendant Mid-State has maintained and enforced employment policies for at least three positions, "Fitter/Welder", "Machinist" and "Mechanical", under which it has conducted prohibited pre-employment medical examinations of

all applicants for those positions.

9. The effect of the practices complained of in paragraph 8 above has been to deprive James E. Nolan and other similarly situated individuals of equal employment opportunities and otherwise adversely affect their status as applicants for employment because they are regarded as being disabled.

10. The unlawful practices complained of in paragraph 8 above were intentional.

11. Defendant Mid-State, at all relevant times, has acted with malice or reckless indifference to the federally protected rights of Mr. Nolan and other similarly situated individuals it subjected to prohibited pre-employment medical examinations and regarded as disabled, in violation of the ADA.

#### PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Mid-State, its officers, management personnel, employees, agents, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice which discriminates on the basis of disability.

B. Order Defendant Mid-State to institute and carry out policies, practices, and programs which provide equal employment opportunities to qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Mid-State to make whole James E. Nolan and other similarly situated individuals adversely affected by the unlawful employment policies described above, by

providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices including rightful-place hiring and seniority.

D. Order Defendant Mid-State to make whole James E. Nolan and other similarly situated individuals adversely affected by the unlawful employment policies described above, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices in amounts to be determined at trial.

E. Order Defendant Mid-State to make whole James E. Nolan and other similarly situated individuals adversely affected by the unlawful employment policies described above, by providing compensation for non-pecuniary losses, including emotional pain, suffering, inconvenience, humiliation and loss of enjoyment of life in amounts to be proved at trial.

F. Order Defendant Mid-State to pay James E. Nolan and similarly situated individuals adversely affected by the unlawful employment practices described above, punitive damages for its malicious and/or reckless conduct described in paragraph 8 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

**JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully Submitted,

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