

*The U.S. Equal Employment Opportunity Commission*

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## PRE-EMPLOYMENT TEST BY DIAL CORP. DISCRIMINATES AGAINST WOMEN, COURT RULES IN EEOC CASE

DES MOINES, Iowa - A federal district court in Iowa has ruled that a pre-employment strength test used by The Dial Corporation at its Armour meat packing plant in Fort Madison, Iowa, has a disparate impact against women, and is therefore illegal under Title VII of the Civil Rights Act of 1964, the U.S. Equal Employment Opportunity Commission (EEOC) announced today.

Chief Judge Ronald E. Longstaff of the U.S. District Court, Southern District of Iowa, ruled on February 3 in *EEOC v. The Dial Corporation* (# 3-02-CV-10109) that Dial's "work tolerance test" (WTS) was passed by 97% of male applicants and less than 40% of female applicants, and that Dial had failed to prove that the test was necessary for performance of entry-level jobs in the plant's sausage-making department. The court also approved the finding of a jury, following a trial in August 2004, that Dial's use of the test intentionally discriminated against women.

In Judge Longstaff's words: "Dial has failed to fulfill its burden to show it had a 'compelling need' for implementation of the WTS, and that other, non-discriminatory mechanisms namely, many of the same safety programs actually implemented by Dial could not produce the same results."

The court's decision rejects the validity of the strength test, which was implemented by Dial in January 2000. Prior to the test, nearly half of the people hired for entry-level jobs in the sausage department of the plant had been female. The job is physically demanding, requiring the repetitive lifting of a 35-pound rod of sausages to a height of approximately 65 inches.

Although women had been successfully performing the job for years, Dial argued that the test was necessary to reduce injuries. Judge Longstaff rejected that argument, noting that women had been no more likely than men to be injured prior to the use of the test, that the test was more difficult than the job, and that an overall reduction in injuries was likely related to other safety initiatives implemented by Dial. The court will now consider appropriate relief for the approximately 50 women who had been rejected at the time of the trial.

Jean P. Kamp, Regional Attorney for the Milwaukee District Office of the EEOC, which litigates employment discrimination cases in Iowa, Wisconsin and Minnesota, said, "Disparate impact cases are somewhat unusual, but they are an important tool when, as here, an apparently neutral screening test excludes large numbers of women, or any other protected group, who are able to perform the job. Judge Longstaff's opinion affirms the right of women to be judged on their qualifications for the actual requirements of a job."

The case was brought in 2002 by the EEOC based on a charge of discrimination filed by Paula Liles, who applied for a position at Dial in February 2000. Ms. Liles and other unsuccessful female applicants testified at trial that they had performed heavy physical work, including lifting, in the past, and that they had met all the other job requirements and had been made conditional job offers prior to being rejected by Dial based on the work tolerance test. Ms. Liles completed the seven-minute test, but was graded as failing because of her height, which required her to go on her toes to complete the lifts to 65 inches.

The EEOC is the federal agency which enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex (including sexual harassment or pregnancy), race, color, religion, or national origin and protects employees who complain about such offenses from retaliation. The EEOC also enforces the ADEA, which protects workers age 40 and older from discrimination based on age; the Equal Pay Act of 1963, which prohibits gender-based wage discrimination; the Rehabilitation Act of 1973, which prohibits employment discrimination against people with disabilities in the federal sector; Title I of the Americans with Disabilities Act of 1990 (ADA), which prohibits employment discrimination against people with disabilities in the private sector and state and local governments; and sections of the Civil Rights Act of 1991. Further information about the Commission is available on the agency's web site at [www.eeoc.gov](http://www.eeoc.gov).

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