

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, by ELIOT
SPITZER, ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Plaintiffs,

ORDER ON CONSENT

-against-

01 Civ. 4366 (NGG)(VVP)

FEDERAL EXPRESS CORPORATION,

Defendant.

This Stipulated Order on Consent ("Order") is entered into by and between plaintiffs THE PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK and defendant FEDERAL EXPRESS CORPORATION ("FedEx Express"), a corporation organized under the laws of the State of New York;

WHEREAS, the Office of the Attorney General ("OAG") received complaints from several individuals who alleged they wore dreadlocks as a sincere expression of their religious beliefs and who alleged that FedEx Express had refused to hire them for, had discharged them from, or had failed to promote them to positions involving customer contact because of their dreadlocks;

WHEREAS, the OAG conducted an investigation of these complaints pursuant to his authority under New York Executive Law § 63(12);

WHEREAS, the OAG filed a charge of discrimination against FedEx Express with the Equal Employment Opportunity Commission ("EEOC") on February 15, 2001;

WHEREAS, the EEOC found probable cause that FedEx Express had discriminated on the basis of plaintiffs' charge, among others, on May 9, 2001;

WHEREAS, the EEOC, through the filing of a complaint dated June 28, 2001, commenced the above-captioned lawsuit in the United States District Court for the Eastern District of New York alleging that FedEx Express violated Title VII of the Civil Rights Act of 1964;

WHEREAS, plaintiffs filed a motion to intervene in this lawsuit, which was granted on July 26, 2001, and subsequently filed a complaint-in-intervention dated June 28, 2001, and an amended complaint dated July 22, 2003;

WHEREAS, plaintiffs' amended complaint alleges that FedEx Express has violated federal and state law by maintaining a policy, pattern and practice of refusing to hire, failing to promote, and discharging religiously observant employees on the basis of their sincere religious practice of wearing their hair in dreadlocks;

WHEREAS, FedEx Express denies any wrongdoing or liability in this action;

WHEREAS, the parties herein desire to resolve this matter without further litigation or adjudication and it is expressly understood that this is a compromise settlement of a disputed claim entered into solely for the purpose of avoiding the expense and inconvenience of further litigation; and

WHEREAS, in consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, the parties agree to the terms of this Order;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.
DEFINITIONS

- 1.1. **"Court"** means the United States District Court for the Eastern District of New York, which shall have jurisdiction over this Order and the parties to this Order.
- 1.2. **"Effective Date"** means the date that this Order is entered by the Court.
- 1.3. **"FedEx Express"** means the Federal Express Corporation, a for-profit entity with executive offices at 3610 Hacks Cross, Memphis, Tennessee 38125, and any employees, agents, officers, owners, successors, assigns, affiliates, representatives or subsidiaries of this corporation in existence at all relevant times.
- 1.4. **"Order"** means this Order on Consent.
- 1.5. **"Religious accommodation"** means an exception to or exemption from one or more of FedEx Express's job requirements that does not cause undue hardship to the conduct of FedEx Express's business and is granted to an employee or applicant whose sincere religious beliefs or practices conflict with the requirement(s) in question.
- 1.6. **"Responsible Employees"** mean all individuals employed by FedEx Express who have authority, pursuant to "Policy 2-80 Personal Appearance," to act upon, review, or provide advice in relation to a request for a religious accommodation made by a FedEx Express employee or applicant within the State of New York, including, but not limited to, managing directors, human resource managing directors, attorneys, and paralegals.

II.
COMPLIANCE WITH LAW

2.1. FedEx Express shall comply fully with the obligations, terms and conditions set forth in Title VII of the Civil Rights Act of 1964. FedEx Express shall not discriminate against any employee or applicant in any aspect of employment on the basis of their religion, and shall provide reasonable accommodation of their sincerely-held religious beliefs where such accommodation does not cause undue hardship to the conduct of FedEx Express's business.

III.
CLARIFICATIONS OF THE
PERSONAL APPEARANCE POLICY

3.1. Within thirty (30) days of the Effective Date, FedEx Express shall clarify its People Manual such that any policy concerning personal appearance, including "Policy 2-80 Personal Appearance," includes the following language:

A manager who observes an employee whose personal appearance does not comply with this policy shall inform the employee of the noncompliance, provide a reasonable period of time for the employee to comply, and refer the employee to the Personal Appearance Policy. Requests for exceptions to the Policy must be submitted by an employee in writing to his/her manager and should describe the basis for the request (for example, a certifiable medical condition or a sincerely held religious belief) and attach any supporting documentation. Requests for exceptions are dealt with on a case-by-case basis. The employee's request is forwarded to all of the following:

- the employee's managing director
- the matrix Human Resources managing director
- the Legal Department

After consultation with Human Resources and the Legal Department, the employee's managing director approves or disapproves the request and notifies the employee and the employee's manager of the decision.

Whenever an employee's request for an exception is based upon a sincerely held religious belief, the Company shall provide a reasonable accommodation as long as it does not impose an undue hardship on the conduct of the Company's business.

3.2. Within thirty (30) days of the Effective Date, FedEx Express shall ensure that any electronic, intranet, or online version of its People Manual contains the language set forth in paragraph 3.1 above.

3.3. Subject to the provisions of paragraph 3.4 below, the language set forth in paragraph 3.1 above shall be included in all printed versions of FedEx Express's People Manual prepared subsequent to the Effective Date for the duration of this Order. The first printed version of FedEx Express's People Manual prepared subsequent to the Effective Date shall also contain a brief statement of the modifications to its personal appearance policy in any section highlighting or summarizing policy revisions.

3.4. FedEx Express shall not amend or remove the language set forth in paragraph 3.1 from any electronic, intranet, online, or printed version People Manual for the duration of this Order, except upon prior written approval of the OAG, which shall not be unreasonably withheld.

IV.

RELIGIOUS ACCOMMODATION PRACTICES

4.1. Within ten (10) days of the Effective Date, FedEx Express shall provide a copy of the document entitled "Guidance on Religious Accommodation Requests" (hereinafter "the Guidance"), which is attached as Exhibit A to this Order and incorporated by reference herein, to all Responsible Employees, each of whom shall sign an acknowledgment that he or she has read the Guidance.

4.2. Within thirty (30) days of the Effective Date, FedEx Express shall provide to the OAG a list of all Responsible Employees, including each person's full name and position or job title, along with copies of the acknowledgments signed by each of these individuals.

4.3. For each individual who becomes a Responsible Employee after the Effective Date, FedEx Express shall:

(a) provide a copy of the Guidance to such individual within ten (10) days of the date he or she begins working as a Responsible Employee;

(b) have such individual sign an acknowledgment that he or she has read the Guidance; and

(c) provide to the OAG a copy of such acknowledgment, along with a revised list of Responsible Employees, within thirty (30) days of the date the individual begins working as a Responsible Employee.

4.4. Seven (7) months after the Effective Date, and every six (6) months thereafter, FedEx Express shall provide the OAG with a report identifying any request for religious accommodation relating to the wearing of dreadlocks ("Dreadlocks Request") and any complaint, whether written or oral, concerning FedEx Express's handling of a request for religious accommodation relating to the wearing of dreadlocks ("Dreadlocks Complaint") made by an employee or applicant within the State of New York during the previous six (6) months.

- (a) For each Dreadlocks Request, the report shall identify:
 - (i) the full name, position or job title, home address, and telephone number of each employee or applicant who made the request;
 - (ii) the religious accommodation requested;
 - (iii) the steps undertaken by FedEx Express to accommodate such request and the FedEx Express employee(s) involved in those efforts;
 - (iv) what, if any accommodation, was provided; and
 - (v) if the request was denied or only partially met, the reasons why the requested accommodation was not granted.
- (b) For each Dreadlocks Complaint, the report shall identify:
 - (i) the full name, position or job title, home address, and telephone number of each employee or applicant who made the complaint; and
 - (ii) the steps undertaken by FedEx Express in response to such complaint and the FedEx Express employee(s) involved in those efforts.

V.

JURISDICTION AND OTHER PROVISIONS

5.1. This Order, when fully executed and performed by FedEx Express to the reasonable satisfaction of plaintiffs, will resolve all claims against FedEx Express that were raised in the complaint filed by plaintiffs in this action. However, nothing in this Order is intended to, nor shall, limit the OAG's investigatory or compliance review powers otherwise provided by law.

5.2. Notwithstanding any provision of this Order to the contrary, plaintiffs may, in their sole discretion, grant written extensions of time for FedEx Express to comply with any provision of this Order.

5.3. This Order shall become effective upon its execution by all parties and its entry by the Court.

5.4. The signatories to this Order warrant and represent that they are duly authorized to execute this Order and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Order to effectuate its terms;

- 5.5. This Order may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
- 5.6. This Order is final and binding on the parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Order. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.
- 5.7. All of the terms of this Order are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all parties hereto approved by the Court, or with Court approval.
- 5.8. The Court shall retain jurisdiction over the parties and the matter and retain the power to order all applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.
- 5.9. This Order supersedes and renders null and void any and all written or oral prior undertakings or agreements between the parties regarding the subject matter hereof.
- 5.10. The parties hereby waive and shall not have any right to appeal any of the terms of this Order or in any way challenge the validity of any of the terms of this Order in any forum.
- 5.11. If any provisions, terms, or clauses in this Order are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Order shall remain valid and binding on the parties.
- 5.12. The parties may seek to enforce this Order by motion before the Court to the full extent of the law; however, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.
- 5.13. Failure by any party to seek enforcement of this Order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.
- 5.14. All communications and notices regarding this Order shall be sent by first-class mail and, if twenty-five (25) pages or less in length, by facsimile, to:

OAG
Dennis Parker, Bureau Chief
Office of the NYS Attorney General
Civil Rights Bureau

FedEx Express
Edward J. Efke
Senior Attorney – Litigation
3620 Hacks Cross

120 Broadway, 23rd Floor
New York, New York 10271
Tel. (212) 416-8240
Fax (212) 416-8074

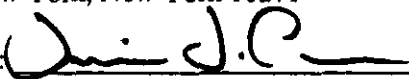
Building B, 3rd Floor
Memphis, Tennessee 38125
Tel. (901) 434-8555
Fax (901) 434-9271

5.15. The parties shall cover their own costs, including attorney's fees.


5.16. This Order shall expire two (2) years and two (2) months from the Effective Date.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Order on Consent on the dates written below.

ELIOT SPITZER
Attorney General of the State of New York
120 Broadway
New York, New York 10271

By: 
Dennis D. Parker
Bureau Chief
Civil Rights Bureau

FEDERAL EXPRESS CORPORATION
3620 Hacks Cross
Building B, 3rd Floor
Memphis, Tennessee, 38125

By: 
Edward J. Efke
Senior Attorney – Litigation


Attorney for Plaintiffs People of the State of
New York, by Eliot Spitzer, Attorney
General of the State of New York

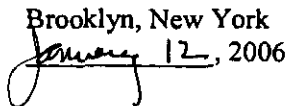
Dated: New York, New York
December 30, 2005

Attorney for Defendant Federal Express
Corporation

Dated: Memphis, Tennessee
December 30, 2005

SO ORDERED:


NICHOLAS G. GARAUFGIS
UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York
 January 12, 2006

[Exhibit A]

GUIDANCE ON RELIGIOUS ACCOMMODATION REQUESTS

Both the law and longstanding Company policy prohibit discrimination against any employee or applicant in any aspect of employment on the basis of that individual's sincerely-held religious beliefs or practices. When an employee requests an exception to a policy based upon a sincerely-held religious belief or practice, the Company must provide reasonable accommodation unless it would subject the Company to undue hardship.

The following principles should guide your considerations of employee requests for accommodation for religious purposes:

First, an employee must show that his or her religious beliefs are sincerely held. Absent evidence of fraud or other plain reasons to disbelieve their sincerity (for example, inconsistency of practice), written employee representations as to the sincerity of their beliefs should be given great weight as evidence of sincerity.

Second, an employee must show that the practice at issue is based upon his or her own religious belief. However, employees need not prove that they are members of an organized religion or that their religion, even if organized, actually mandates the practice in question. As such, employees do not need to (though of course they may choose to) provide proof of membership in a particular religion or of a religious belief or practice, such as a written statement of a cleric or other witness.

Third, here are some examples of potentially reasonable "accommodations":

- allowing employees to remain out of compliance with the personal appearance policy to the limited extent necessitated by their sincerely-held religious beliefs;
- requiring employees to shield any noncompliant hair or dress to the extent possible (for example, by wearing head coverings), provided this is consistent with their beliefs;
- adjustments in job duties, work schedules, or scope of work, provided they result in comparable pay and benefits; and
- job transfers or swaps, again provided the new positions are comparable in pay and benefits.

Fourth, here are some examples of "undue hardship":

- more than minimal financial cost to the company (for example, significant overtime expense);
- substantial and involuntary changes in the shifts or jobs of other employees; and
- specific safety concerns.