

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Equal Employment Opportunity
Commission and Paul B. Hummel,

Civil No. 99-1477 (DWF/AJB)

Plaintiffs,

v.

**ORDER ON SECOND MOTION TO
COMPEL DISCOVERY RESPONSES
AND FOR RULE 37 SANCTIONS**

Federal Express Corporation,

Defendant.

This matter is before the Court on plaintiff EEOC's second motion to compel discovery and for sanctions. Hearing was held on July 5, 2000, at the U.S. Courthouse, 316 No. Robert St., St. Paul, MN 55101. Dennis R. McBride, Esq., appeared by telephone on behalf of plaintiff EEOC, and Joni M. Thome, Esq., appeared by telephone on behalf of plaintiff intervenor Paul Hummel. Michael J. Vint, Esq., and Martin K. LaPointe, Esq., appeared by telephone on behalf of defendant Federal Express. Plaintiff EEOC now moves to compel responses to interrogatories and additional document production requests. Defendant contends that it has responded properly to EEOC's discovery.

Based upon the file in this matter, along with memorandums, affidavits, and arguments of counsel, and in consideration of the Court's previous ruling on discovery and sanctions dated July 26, 2000, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff EEOC's second motion to compel discovery responses and for Rule 37 sanctions is **granted in part and denied in part** [Docket No. 42]. Required responses shall be provided within ten days of the date of this order.

FILED **AUG 09 2000**
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTD _____
DEPUTY CLERK _____

2. Plaintiff's motion for Rule 37 sanctions is denied.

3. Discovery scheduling and motion practice in this matter shall hereafter proceed in accordance with the Stipulation and Order to Amend the Amended Pretrial Scheduling Order, executed by the Court on July 18, 2000.

Interrogatories

4. **Interrogatory No. 4.** Plaintiff's motion for an order requiring defendant to identify persons questioned or contacted in regard to its investigation of underlying claims in this case, and to further identify documents reflecting the substance of investigative interviews, is granted. It is the Court's determination that such investigative information is not protected by attorney-client privilege or the work product doctrine in this instance.

5. **Interrogatory No. 6.** Plaintiff's motion to compel further response to its inquiry regarding communications about reasonable accommodations and returning to work is granted. Defendant shall either directly provide the requested information or shall specifically indicate where the information has already been provided in previous discovery.

6. **Interrogatory No. 7.** Plaintiff's motion to compel a response to an interrogatory regarding communications between defendant and counsel for the employee is granted. Defendant shall either directly provide the requested information or shall specifically indicate where the information has already been provided in previous discovery.

7. **Interrogatory No. 8.** Plaintiff's motion for information relating to communications between defendant and health care providers with respect to reasonable accommodations and return to work matters is granted. Defendant shall either directly provide the requested information or shall specifically indicate where the information has already been

provided in previous discovery.

8. **Interrogatory No. 9.** Plaintiff's motion for identification and description of documents containing policy on employee reassignment, employee discharge, return from medical leave, and dealing with HIV and AIDS issues is granted. Defendant shall provide a complete answer to Interrogatory No. 9.

9. **Interrogatory No. 10.** Plaintiff's motion seeking identification of defendant's employees who have requested reasonable accommodation based upon their HIV or AIDS status is granted as provided herein. Defendant shall produce the confidential list of employees that was compiled and forwarded to the Court under cover letter dated July 28, 2000. The material shall remain confidential and subject to the Stipulated Protective Order signed by the parties and executed by the Court on July 6, 2000. Defendant shall supplement the disclosure in the event that it becomes aware of additional applicable material.

10. **Interrogatory No. 11.** Plaintiff's motion seeking identification of defendant's employees who have been discharged and were known to be HIV- positive or to have AIDS at the time of discharge is granted as provided herein. Defendant shall produce the confidential list of employees that was compiled and forwarded to the Court under cover letter dated July 28, 2000. The material shall remain confidential and subject to the Stipulated Protective Order signed by the parties and executed by the Court on July 6, 2000. Defendant shall supplement the disclosure in the event that it becomes aware of additional applicable material.

11. **Interrogatory No. 12.** Plaintiff's motion for further identification of computer files containing personnel data is denied. The Court is not persuaded that it is

necessary to “test” the adequacy of defendant’s current responses with respect to Interrogatory Nos. 10 and 11, and does not find the question is otherwise reasonably calculated to lead to discovery of admissible material. Fed. R. Civ. P. 26(b)(1).

Document Production, Second Set

To the extent that disclosure of documents is herein required, the Court does not herein preclude the appropriate assertion of work-product doctrine with respect to opinions and mental impressions which are incorporated into otherwise discoverable material through handwritten and margin notations. In such circumstances the work product may be deleted from the produced copies, but the deletions shall be indicated on a privilege log.

12. **Request No. 1.** Plaintiff’s motion for production of all documents maintained by defendant as its litigation file in this matter is withdrawn.

13. **Request No. 2.** Plaintiff’s motion for disclosure of all documents relating to statements taken from any person regarding this litigation is granted. The requested documents are discoverable and shall be disclosed in connection with information provided in response to Interrogatory No. 4.

14. **Request No. 3.** Plaintiff’s motion for disclosure of documents related to conversations between defendant and potential witnesses in this action is granted to the extent that the request seeks discovery of documents created during the internal investigation and does not seek disclosure of attorney opinions or mental impressions.

15. **Request No. 4.** Plaintiff’s motion for production of documents which evidence contacts between the defendant and counsel for Paul Hummel is granted. The requested documents shall be disclosed in connection with information provided in response to

Interrogatory No. 7.

16. **Request No. 6.** Plaintiff's motion for production of documents relating to defendant's communications with health care providers with respect to reasonable accommodations and return to work matters is granted. The requested documents shall be disclosed in connection with information provided in response to Interrogatory No. 8.

17. **Request No. 7.** Plaintiff's motion for disclosure of documents which evidence the identity and the content of statements of persons contacted by defendant in its investigation in this matter is granted.

18. **Request No. 8.** Plaintiff's motion for production of documents which describes defendant's policies and procedures relating to medical leave, transfer and reassignment, handling of employees with HIV or AIDS, and employee discharges is granted. The requested documents shall be disclosed in connection with information provided in response to Interrogatory No. 9.

19. **Request No. 9.** Plaintiff's motion for disclosure of documents relating to communications between defendant and Paul Hummel regarding medical leave and reasonable accommodations is granted. The requested documents shall be disclosed in connection with information provided in response to Interrogatory No. 6.

20. **Request No. 10.** Plaintiff's motion for documents relating to instances in which defendant and the employee's attorney have communicated is granted. The requested documents shall be disclosed in connection with information provided in response to Interrogatory No. 7.

21. **Request No. 11.** Plaintiff's motion seeking documents relating to all

requests for reasonable accommodation by defendant's employees who were known to be HIV-positive or to have AIDS is granted as provided herein. Defendant shall produce the confidential list of employees that was compiled and forwarded to the Court under cover letter dated July 28, 2000, and shall further produce documents responsive to Request No. 11 with respect to the listed employees. The material shall remain confidential and subject to the Stipulated Protective Order signed by the parties and executed by the Court on July 6, 2000. Defendant shall supplement the disclosure in the event that it becomes aware of additional applicable material.

22. **Request No. 12.** Plaintiff's motion seeking documents relating to the discharge of defendant's employees who were known to be HIV- positive or to have AIDS is granted as provided herein. Defendant shall produce the confidential list of employees that was compiled and forwarded to the Court under cover letter dated July 28, 2000, and shall further produce documents responsive to Request No. 12 with respect to the listed employees. The material shall remain confidential and subject to the Stipulated Protective Order signed by the parties and executed by the Court on July 6, 2000. Defendant shall supplement the disclosure in the event that it becomes aware of additional applicable material.

Document Production, Third Set

23. **Request No. 3.** Plaintiff's request for disclosure of memoranda, notes, and documents relating to the Corporate Human Management Committee from July 1, 1996, to the present is granted in part and denied in part. Defendant shall produce documents that reflect committee activity with respect to any employees included on the confidential list of employees that was compiled and forwarded to the Court under cover letter dated July 28, 2000, along with any additional documents that reflect Committee policy or activity relating to employees known

to be HIV-positive or to have AIDS. In other respects the motion is over broad and unnecessarily seeks information which is subject to privacy interests of persons not involved in this action.

24. **Request No. 16.** Plaintiff's motion for production of defendant's *Personnel Legal Manual* is granted. The Court finds that any viable privilege claim has been waived and the request is not over broad. Furthermore, the discovery satisfies the Rule 26(b) requirement of being reasonably calculated to lead to discovery of admissible evidence.

25. **Request No. 23.** Plaintiff's motion for discovery of all written materials distributed by defendant's legal department attorneys at any speeches or presentations relating to the Americans with Disabilities Act of 1990 is granted in part and denied in part. Defendant shall produce written materials distributed in conjunction with any employer sponsored training or awareness sessions relating to the ADA for which the defendant mandated attendance by either all or a specified group of employees. Defendant is not required to produced written materials distributed in association with speeches to non-employee groups.

25. **Request No. 24.** Plaintiff's motion for production of all outlines, notes, and documents used by attorneys in defendant's legal department for any speeches or other presentations relating to the ADA is denied.

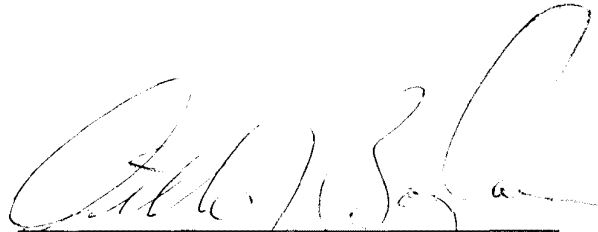
26. **Request No. 25.** Plaintiff's motion for production of documents distributed by defendant's legal department to managers, supervisors, and employees relating to the ADA is granted in part and denied in part. Defendant shall produce documents generally relating to ADA subjects which have been generally distributed since January 1, 1995. This particular ruling does not mandate disclosure of ADA materials relating to specific individuals.

27. **Request No. 26.** Plaintiff's motion for production of all newsletters

distributed by the Labor & Employment Group of defendant's legal department is granted. The production may be limited to newsletters distributed since January 1, 1995.

Dated: _____

8/9/00



Arthur J. Boylan
United States Magistrate Judge