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DFEH SETTLES EMPLOYMENT DISCRIMINATION CASE ON BEHALF OF HIGH SCHOOL CUSTODIAN FOR \$290,000

Sacramento - The Department of Fair Employment and Housing (DFEH) announced today that it has settled a disability discrimination case filed against Liberty Union High School District (District) on behalf of Mark Miguel, a custodian for the District who was fired after an on-the-job injury.

As a result of the settlement, the District has agreed to pay a total sum of \$290,000.00 and offer reinstatement with reasonable accommodations to Miguel for the next available custodian position with the District, which serves schools in Brentwood, Knightsen, Byron, Oakley, and Discovery Bay

After a back injury in 2013, Miguel returned to work without change to his duties until the District informed him that he was unqualified for the custodian position because of a physical restriction and terminated him.

During DFEH's investigation, the District told the DFEH that it relies on a test of physical capabilities to determine if a person is able to perform custodial duties. Anyone taking the test must be able to exert "maximal force." Because Miguel had a lifting restriction that prevented him from being able to exert "maximal force," he was not considered eligible to take the test.

For Miguel, the decision that his restriction prevented him from testing for the custodial position was particularly astonishing, as he had been performing all of his duties for several months after his injury before his abilities were questioned.

After an unsuccessful attempt to mediate the claim, the DFEH filed suit with the California Superior Court in Contra Costa County (Case No.C16-01412) alleging multiple violations of the Fair Employment and Housing Act (FEHA), which prohibits discrimination against employees with disabilities and requires employers to provide a reasonable accommodation to allow qualified employees with disabilities to perform their jobs.

"Whenever an employee with a disability seeks an accommodation, the employer has a duty to provide an individual assessment to determine if that employee can perform the duties of the job, with or without an accommodation," said DFEH Director Kevin Kish.

“The testing requirements in this case meant, in practical terms, that the employee had to be 100% healed from an injury before he would be permitted to take a test for a job he was already successfully performing. That doesn’t make sense. Policies requiring employees to be ‘100% healed from injury’ in order to work deny employees their right to an individual assessment and violate the FEHA.”

As a result of the settlement, the District, has clarified its policies, noting that a lifting restriction does not prevent applicants from taking the screening test for a position. It also states that applicants can pass the test so long as they can safely lift the weight deemed necessary for the duties of that position while staying within any medical restrictions.

The District also clarified that the screening test is strictly for use in pre-employment inquiries by new applicants, and should never apply to employees returning from injury like Miguel. Additionally, the District has agreed to provide disability accommodation training for a number of supervisors and human resources personnel.

The DFEH is the state agency charged with enforcing California’s civil rights laws. The mission of the DFEH is to protect the people of California from unlawful discrimination in employment, housing and public accommodations and from hate violence. For more information, visit the Department’s Web site at www.dfeh.ca.gov.