



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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Announcement

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Trucking Company Pays \$450,000 to Settle Fresno Workplace Discrimination Case

ELK GROVE, CA – California's Department of Fair Employment and Housing (DFEH) announced today the \$450,000 settlement of a group action lawsuit the DFEH filed in Fresno County Superior Court against Penske Logistics, LLC (Penske). The Department filed the action on behalf of 13 newspaper delivery drivers on the basis that Penske refused to hire the drivers because of their real or perceived disabilities.

The case arose after Penske entered into a contract with the Fresno Bee to deliver newspapers. The Bee informed its newspaper delivery drivers that it had outsourced their jobs to Penske, and advised them that they could apply for employment with Penske if they so desired. When the drivers applied, Penske required them to disclose non job related physical conditions, which is prohibited.

The DFEH alleged in its lawsuit that Penske rejected 13 delivery applicants who had ably performed their jobs for the Fresno Bee for 4 or more years, after they received unsatisfactory scores on Penske's Physical Capabilities Exam. According to the Department, the exam was neither job related nor consistent with business necessity, which the Fair Employment and Housing Act (FEHA) requires. FEHA-prohibited disability-related questions included whether an applicant has heart disease, diabetes, or high blood pressure. The exam also required applicants to achieve a strength rating of "medium-heavy," while the U.S. Department of Transportation standard Penske claimed to follow assigns a strength demand of "medium" to a wholesale newspaper delivery driver job. The Department alleged that because the 13 applicants did not achieve the artificially high strength demand Penske required, Penske refused to hire them, although they had safely and successfully performed the duties of a newspaper delivery driver for the Fresno Bee for years.

"Job applicants should not face discrimination because of actual or perceived disabilities that do not prevent them from performing the essential functions of their jobs," said DFEH Director Phyllis Cheng. "I am glad that Penske has agreed to stop using the exam to screen future job seekers for disability."

In settling the lawsuit, Penske did not admit to liability. In addition to paying \$450,000 to the 13 applicants, Penske agreed to cease and desist from subjecting applicants at any of its facilities in California to the Physical Capabilities Exam, to maintain and distribute

a written policy prohibiting workplace discrimination on the basis of actual or perceived disability, to train its officers, managers, supervisors and Human Resources personnel in California on the policy, and to maintain and distribute written procedures by which current and prospective employees in California may report discrimination.

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.

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