

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

v. )

MID-STATE MACHINE & FABRICATING )  
CORPORATION, )

Defendant. )

Civil Action No.  
99-1091-CIV-T-26E

**CONSENT DECREE**

1. This Consent Decree (the "Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC") and Defendant, Mid-State Machine & Fabricating Corporation (herein after referred to as "Mid-State"). The Commission and Mid-State are collectively referred to as the "Parties".
2. On May 6, 1999, the Commission initiated this suit against Mid-State in the United States District Court for the Middle District of Florida, Tampa Division, Civil Action No.: 99-1091-CIV-T-26E, based upon a charge filed by James Nolan (EEOC Charge No. 151 96 1770). The Complaint alleges that Mid-State violated the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. §12101 et seq. (the "ADA") when it regarded Mr. Nolan as disabled based on the results of a pre-employment medical examination and, as a direct result, denied him employment in a position for which he was qualified. In addition, the Complaint alleges

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**that Mid-State's employment policies for at least three of its positions are in violation of the ADA as they require all applicants for those positions to submit to a prohibited pre-employment medical examination and they deny employment opportunities to qualified individuals because they are regarded by Defendant as disabled based on that pre-employment medical examination.**

3. **On or about July 27, 1999, Mid-State filed its Answer and Affirmative Defenses to EEOC's Complaint, denying allegations contained in the EEOC's Complaint that its actions were unlawful or discriminatory and raising several affirmative defenses to the Complaint.**
4. **This Decree does not constitute an admission of liability on the part of Defendant.**
5. **In the interests of resolving this matter and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding upon the Parties, their successors and assigns.**
6. **The Parties agree that this Decree resolves all claims arising out of EEOC Charge Number 151 96 1770 and the Complaint filed in this action, and constitutes a complete resolution of all claims under the ADA that were made by the Commission in this action.**
7. **This Decree constitutes the complete agreement between the EEOC and Mid-State with respect to the matters referred to herein. No representations or inducements to compromise this action have been made, other than those recited or referenced in this Decree. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court.**

**NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Decree, and based on the pleadings filed by the parties, it is ORDERED, ADJUDGED AND DECREED THAT:**

8. This Court has jurisdiction of the subject matter of this action and over the parties for the purposes of entering and enforcing this Decree.

**GENERAL INJUNCTIVE PROVISIONS**

9. Defendant Mid-State, its officers and/or employees, are enjoined from engaging in conduct which violates the ADA by making pre-employment offer medical inquiries of applicants for employment or by subjecting applicants for employment to pre-employment offer medical examinations.
10. Defendant Mid-State, its officers and/or employees, are enjoined from engaging in conduct which violates the ADA by denying employment opportunities to qualified individuals because of an actual disability, a record of a disability or because Defendant regards them as disabled.

**EMPLOYMENT POLICIES AND PRE-EMPLOYMENT MEDICAL EXAMINATIONS**

11. Mid-State has revised its employment policies for its "Fitter/Welder", "Machinist" and "Mechanical" positions. The employment policies accurately state the physical requirements of each position. In the event Mid-State determines that, due to business necessity, it needs to administer a pre-employment medical examination. the employment policies have been revised to clearly state applicants' rights and requirements with respect to such an examination. The revised policies are attached as Exhibit A and will become effective upon execution of this Decree by all parties and the Court.
12. In the even that Mid-State determines that, due to business necessity, it needs to administer

**a pre-employment medical examination, Mid-State shall require all physicians performing its pre-employment medical examinations to visit its facility located at 2730 Mine and Mill Road, Lakeland, Florida, to observe the performance of the jobs for which they are examining candidates and will continue to provide those physicians with current and accurate job descriptions. In place of personal visits to the facility, Mid-State may provide examining specialists with videotapes of the duties of the jobs for which they are examining candidates, if the physician is outside of the Lakeland, Florida, area.**

13. **In the event that Mid-State determines that, due to business necessity, it needs to administer a pre-employment medical examination, Mid-State's examining physician(s) shall conduct an individualized assessment of each candidate's ability to perform the physical requirements of the position which they were offered. That individualized assessment shall consist of:**
- (a) review of any past or ongoing medical history of back injuries, ailments or problems.**
  - (b) a "functional work test" which requires lifting weights from five (5) to fifty (50) pounds in 5-pound increments in different postures and durations reflective of the lifting requirements for the position at issue.**
  - (c) a musculoskeletal examination (physical examination of the back).**
14. **All candidates rejected for employment by Mid-State because of any physical condition or impairment or any finding made during the individualized physical assessment, shall be informed of such rejection in writing by Mid-State within seven (7) days of the decision. The rejection notice shall contain a section wherein rejected candidates may request a second opinion (an "Appeal"). The rejection notice and request for an appeal are attached hereto as Exhibit B.**

15. **Rejected candidates who wish to appeal the decision must complete the appeal form and return it to Mid-State within twenty (20) calendar days of receipt of the notice of rejection.**
16. **Within ten (10) calendar days after Mid-State receives the appeal request form, a second opinion shall be requested from the independent physician chosen by the parties to serve as its medical appeals officer:**

**Steven A. Field, M.D., M.S.P.H.  
CONSULTANTS IN OCCUPATIONAL MEDICINE  
13201 Bruce B. Downs Boulevard, MDC 56  
Tampa, Florida 33612**

17. **The second opinion shall be based on the documentation of the candidate's original individualized physical assessment for Mid-State and, if necessary in the opinion of the medical appeals officer, a second physical examination or other testing of the candidate. Mid-State shall not refuse to hire any candidate deemed qualified to perform the position at issue by the medical appeals officer. Mid-State shall bear the cost of the second opinion.**

#### **TRAINING**

18. **Defendant Mid-State has established a written policy of compliance with the ADA, which is attached as Exhibit C. Mid-State agrees that all its employees will have been provided with a complete copy of its policy within 30 days of the entry of the Decree.**
19. **In order to further ensure the effective implementation of Mid-State's ADA policy, as well as the revised employment policies referred to in Paragraph 11 above, Mid-State will conduct training for all of its managerial personnel regarding those policies. Such training will be conducted in one-hour sessions to be held twice annually. The first training session will be conducted within six months of the Court's execution of this Decree and the second session will be conducted no later than six months after the first session. Thereafter the training**

**sessions will be held twice annually throughout the duration of this Decree. Mid-State agrees to provide the EEOC at least two weeks notice before it conducts each training session, with the date and location of the session, copies of all training materials to be used at the training session, the name of the individual(s) who will be providing the training and a list of the names and titles of each employee who will be in attendance. Additionally, Mid-State agrees that EEOC shall, at the EEOC's discretion, be in attendance at the training session.**

#### **POSTING**

20. **Defendant Mid-State agrees to post, and keep posted, the Notice attached hereto as Exhibit D. The Notice shall be posted at all of Mid-State's facilities in a conspicuous location accessible to all employees.**

#### **MONETARY RELIEF**

21. **The Parties agree that Defendant Mid-State will pay the sum of twenty thousand dollars (\$20,000.00) to be divided among all eligible claimants identified and located by the EEOC in this action. The claimants include Charging Party James Nolan and similarly situated individuals Thomas Farrell and Travis Garrison. The monies are to be dispersed as follows:**
- (a) **Mid-State agrees to pay James Nolan a total of \$3,200.00, which represents back pay. Mid-State shall withhold appropriate amounts for federal state and local income tax and social security withholding and shall issue a Form W-2 with respect to this payment. Mid-State shall be responsible for the employer's share of any federal, state or local income taxes, and social security withholdings. Mid-State also agrees to pay James Nolan an additional sum of \$10,000.00, in lieu of any compensatory and/or punitive damages EEOC was seeking in this litigation and shall issue a form**

1099 itemizing same. Both payments shall issue within forty-five (45) days from the Court's execution of this Decree, and shall be made by certified check payable to James Nolan and forwarded to his address at [REDACTED] by certified mail with a return receipt requested. Any additional sums paid to James Nolan in accordance with Paragraphs 21(b), 21(c), or 21(d) shall be paid within ten (10) days of notification from EEOC that either Thomas Farrell or Travis Garrison is not able to perform the essential functions of the position initially offered by Mid-State or that Thomas Farrell or Travis Garrison declined to undergo the individualized assessment outlined in Paragraph 21(b). Mid-State shall issue a form 1099 itemizing any said additional sums.

- (b) Mid-State agrees to pay Steven A. Field, M.D., M.S.P.H., a total of \$800.00 to perform individualized assessments of Thomas Farrell and Travis Garrison to determine whether they are able to perform the essential functions of the positions they were initially offered by Mid-State and thus entitled to compensation in this action. The monies shall be forwarded to Dr. Field within fifteen (15) days of the court's execution of this Decree. The results of the individualized assessment of each individual shall be forwarded to EEOC no later than sixty (60) days from the court's execution of this Decree. Should either individual choose not to undergo the individualized assessment, EEOC shall notify Mid-State and Mid-State shall pay the costs of the exam(s) to James Nolan as specified in Paragraph 21(a).
- (c) Upon receipt of results from the individualized assessment confirming that Thomas Farrell is able to perform the essential functions of the position initially offered by Mid-State, EEOC shall notify Mid-State. Within ten (10) days of that notice, Mid-

**State shall pay Thomas Farrell a total of \$3,000.00 which represents back pay. Mid-State shall withhold appropriate amounts for federal state and local income tax and social security withholding and shall issue a Form W-2 with respect to this payment. Mid-State shall be responsible for the employer's share of any federal, state or local income taxes, and social security withholdings. Payment shall be made by certified check payable to Thomas Farrell and forwarded to his address at [REDACTED], by certified mail with a return receipt requested. Should Dr. Field determine that Thomas Farrell is not able to perform the essential functions of the position he was initially offered by Mid-State, the monies shall be paid to James Nolan as specified in Paragraph 21 (a).**

- (d) Upon receipt of results from the individualized assessment confirming that Travis Garrison is able to perform the essential functions of the position initially offered by Mid-State, EEOC shall notify Mid-State. Within ten (10) days of that notice, Mid-State shall pay Travis Garrison a total of \$3,000.00 which represents back pay. Mid-State shall withhold appropriate amounts for federal state and local income tax and social security withholding and shall issue a Form W-2 with respect to this payment. Mid-State shall be responsible for the employer's share of any federal, state or local income taxes, and social security withholdings. Payment shall be made by certified check payable to Travis Garrison and forwarded to his address at [REDACTED], by certified mail with a return receipt requested. Should Dr. Field determine that Thomas Farrell is not able to perform the essential functions of the position he was initially offered by Mid-State, the monies shall be paid to James Nolan as specified in Paragraph 21(a).**

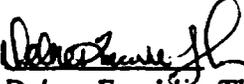
### **REPORTING**

22. On a semi-annual basis beginning on September 1, 2001, and for the duration of this Decree, Defendant shall provide the EEOC Miami District Office with a listing of all managers receiving the training described in Paragraph 18, the date the individual was placed in a management or supervisory position, and the date of the training.
23. Semi-annually beginning with September 1, 2001, Defendant Mid-State shall provide the EEOC with a list of all individuals denied employment because of any physical condition or impairment or any finding made during the individualized physical assessment. The list will include each individual's name, address, social security number, the date he or she applied, the position applied for, the reason for rejection, and a statement as to whether the individual appealed the decision and the results of that appeal.
24. Defendant Mid-State shall provide the EEOC with verification of all monetary payments made pursuant to this Decree.
25. All reports made pursuant to this "Reporting" section should be directed to Michael J. Farrell, Supervisory Trial Attorney, U.S.E.E.O.C., One Biscayne Tower, Two South Biscayne Boulevard, Suite #2700, Miami, Florida, 33131.

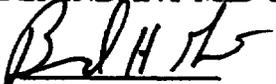
### **DURATION AND ENFORCEMENT PROVISIONS**

26. The effective date of this Decree shall be its date of entry as an Order of the Court.
27. The Consent Decree shall continue in force and effect for a period of three (3) years from entry of the Decree.
28. The Parties shall pay their own costs associated with this

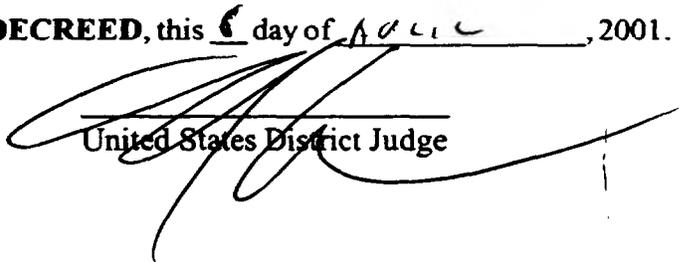
**AGREED TO:  
FOR THE PLAINTIFF,  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

by:  Date: 4/5/01  
Delner Franklin-Thomas  
Regional Attorney  
Miami District Office  
United States Equal Employment Opportunity Commission  
One Biscayne Tower, Suite 2700  
2 South Biscayne Boulevard  
Miami, Florida 33131

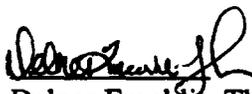
**AGREED TO:  
FOR DEFENDANT MID-STATE MACHINE AND FABRICATING CORPORATION**

by:  Date: 3-30-01  
Bernard H. Gentry  
CLARK & CAMPBELL, P.A.  
4740 Cleveland Heights Boulevard  
Lakeland, Florida

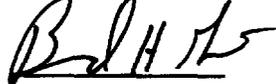
**SO ORDERED, ADJUDGED AND DECREED, this 6 day of April, 2001.**

  
United States District Judge

AGREED TO:  
FOR THE PLAINTIFF,  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by:  Date: 4/5/01  
Delner Franklin-Thomas  
Regional Attorney  
Miami District Office  
United States Equal Employment Opportunity Commission  
One Biscayne Tower, Suite 2700  
2 South Biscayne Boulevard  
Miami, Florida 33131

AGREED TO:  
FOR DEFENDANT MID-STATE MACHINE AND FABRICATING CORPORATION

by:  Date: 3-30-01  
Bernard H. Gentry  
CLARK & CAMPBELL, P.A.  
4740 Cleveland Heights Boulevard  
Lakeland, Florida

SO ORDERED, ADJUDGED AND DECREED, this \_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
United States District Judge

# **EXHIBIT A**

**EFFECTIVE 03/01/01**

**MID STATE MACHINE & FABRICATING CORPORATION  
POLICY OF EMPLOYMENT  
GENERAL JOB REQUIREMENTS FOR  
FITTER/WELDER POSITION**

- 1. FITTERS/WELDERS SHALL BE EXPERIENCED IN THE FITTING AND OCCASIONAL WELDING OF COMPONENT PARTS COMPRISING OF VARIOUS METAL WELDMENTS.**
- 2. EMPLOYEES SHALL BE CAPABLE OF PERFORMING MATHEMATICAL REQUIREMENTS IN THE LAYOUT AND FITTING OF STRUCTURAL COMPONENTS.**
- 3. EMPLOYEES SHALL BE PHYSICALLY ABLE TO PERFORM ALL LIFTING REQUIREMENTS THAT ARE GENERALLY REQUIRED IN THE HEAVY STEEL INDUSTRY.**
- 4. FITTER/WELDER POSITIONS WILL REQUIRE LIFTING OF TOOLS AND MATERIALS IN EXCESS OF 50 LBS. FREQUENT LIFTS ARE NECESSARY IN EXTREMELY AWKWARD POSITIONS.**
- 5. IN THE EVENT MID-STATE DETERMINES THAT, DUE TO BUSINESS NECESSITY, IT NEEDS TO ADMINISTER A PRE-EMPLOYMENT MEDICAL EXAMINATION TO APPLICANTS OFFERED A FITTER/WELDER POSITION, THE COMPANY SHALL REQUIRE EACH SUCH APPLICANT TO UNDERGO A PHYSICAL EXAMINATION OF HIS OR HER BACK. THE SOLE PURPOSE OF THE EXAMINATION WILL BE TO DETERMINE WHETHER THE APPLICANT IS ABLE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE FITTER/WELDER POSITION.**
- 6. IN THE EVENT MID-STATE DETERMINES THAT, DUE TO BUSINESS NECESSITY, IT NEEDS TO ADMINISTER A PRE-EMPLOYMENT MEDICAL EXAMINATION TO APPLICANTS OFFERED A FITTER/WELDER POSITION, THE COMPANY'S OFFER OF EMPLOYMENT IS CONDITIONAL UPON RECEIPT OF RESULTS OF THE PHYSICAL EXAMINATION CONFIRMING THAT THE APPLICANT IS CAPABLE OF PERFORMING THE ESSENTIAL FUNCTIONS OF THE FITTER/WELDER POSITION.**

**EFFECTIVE 03/01/01**

**MID STATE MACHINE & FABRICATING CORPORATION  
POLICY OF EMPLOYMENT  
GENERAL JOB REQUIREMENTS FOR  
MACHINIST POSITION**

- 1. MACHINISTS SHALL BE EXPERIENCED IN THE AREA OF INDUSTRIAL REPAIR MACHINING A VARIETY OF SIZES AND SHAPES.**
- 2. EMPLOYEES SHALL BE CAPABLE OF PERFORMING MATHEMATICAL REQUIREMENTS IN THE MACHINING OF VARIOUS COMPONENTS.**
- 3. EMPLOYEES SHALL BE PHYSICALLY ABLE TO PERFORM ALL LIFTING REQUIREMENTS THAT ARE GENERALLY REQUIRED IN THE INDUSTRIAL INDUSTRY.**
- 4. MACHINIST POSITIONS WILL REQUIRE LIFTING OF TOOLS AND MATERIALS IN EXCESS OF 50 LBS. FREQUENT LIFTS ARE NECESSARY IN EXTREMELY AWKWARD POSITIONS.**
- 5. IN THE EVENT MID-STATE DETERMINES THAT, DUE TO BUSINESS NECESSITY, IT NEEDS TO ADMINISTER A PRE-EMPLOYMENT MEDICAL EXAMINATION TO APPLICANTS OFFERED A MACHINIST POSITION, THE COMPANY SHALL REQUIRE EACH SUCH APPLICANT TO UNDERGO A PHYSICAL EXAMINATION OF HIS OR HER BACK. THE SOLE PURPOSE OF THE EXAMINATION WILL BE TO DETERMINE WHETHER THE APPLICANT IS ABLE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE MACHINIST POSITION.**
- 6. IN THE EVENT MID-STATE DETERMINES THAT, DUE TO BUSINESS NECESSITY, IT NEEDS TO ADMINISTER A PRE-EMPLOYMENT MEDICAL EXAMINATION TO APPLICANTS OFFERED A MACHINIST POSITION, THE COMPANY'S OFFER OF EMPLOYMENT IS CONDITIONAL UPON RECEIPT OF RESULTS OF THE PHYSICAL EXAMINATION CONFIRMING THAT THE APPLICANT IS CAPABLE OF PERFORMING THE ESSENTIAL FUNCTIONS OF THE MACHINIST POSITION.**

**EFFECTIVE 03/01/01**

**MID STATE MACHINE & FABRICATING CORPORATION  
POLICY OF EMPLOYMENT  
GENERAL JOB REQUIREMENTS FOR  
MECHANICAL POSITION**

- 1. MECHANICS SHALL BE EXPERIENCED IN ALL TYPES OF INDUSTRIAL MECHANICAL DISASSEMBLY AND ASSEMBLY OF COMPONENT PARTS COMPRISING OF VARIOUS INDUSTRIAL ASSEMBLIES, I.E. PUMPS, GEAR BOXES, ETC.**
- 2. EMPLOYEES SHALL BE PHYSICALLY ABLE TO PERFORM ALL LIFTING REQUIREMENTS THAT ARE GENERALLY ACCEPTED IN THE INDUSTRIAL MECHANICAL INDUSTRY.**
- 3. MECHANICAL POSITIONS WILL REQUIRE FREQUENT LIFTING OF TOOLS AND MATERIALS IN EXCESS OF 50 LBS. FREQUENT LIFTS ARE NECESSARY IN EXTREMELY AWKWARD POSITIONS.**
- 4. IN THE EVENT MID-STATE DETERMINES THAT, DUE TO BUSINESS NECESSITY, IT NEEDS TO ADMINISTER A PRE-EMPLOYMENT MEDICAL EXAMINATION TO APPLICANTS OFFERED A MECHANICAL POSITION, THE COMPANY SHALL REQUIRE EACH SUCH APPLICANT TO UNDERGO A PHYSICAL EXAMINATION OF HIS OR HER BACK. THE SOLE PURPOSE OF THE EXAMINATION WILL BE TO DETERMINE WHETHER THE APPLICANT IS ABLE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE MECHANIC POSITION.**
- 5. IN THE EVENT MID-STATE DETERMINES THAT, DUE TO BUSINESS NECESSITY, IT NEEDS TO ADMINISTER A PRE-EMPLOYMENT MEDICAL EXAMINATION TO APPLICANTS OFFERED A MECHANICAL POSITION, THE COMPANY'S OFFER OF EMPLOYMENT IS CONDITIONAL UPON RECEIPT OF RESULTS OF THE PHYSICAL EXAMINATION CONFIRMING THAT THE APPLICANT IS CAPABLE OF PERFORMING THE ESSENTIAL FUNCTIONS OF THE MECHANIC POSITION.**

# **EXHIBIT B**

[Corporate Letterhead]

Date: \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Results of Individualized Assessment

Dear Applicant:

As you know Mid-State Machine and Fabricating Corporation ("Mid-State") made an offer of employment to you for an available \_\_\_\_\_ position. The offer was conditional upon Mid-State's receipt of results from your physical examination confirming that you are capable of performing the essential functions of that position, including lifting requirements in awkward positions.

On \_\_\_\_\_ Mid-State received the results of your physical examination. Those results indicate that you are not able to perform the essential functions of the position. As such, Mid-State must revoke the conditional offer made to you.

Should you wish to request a second opinion you must check the box at the bottom of this notice and return it to Mid-State within 20 days of the date of this notice listed above. Upon receipt of your request for a second opinion Mid-State will make arrangements for a second examination with a different physician and inform you of such.

We regret that we are not able to employ you at this time.

Sincerely,

[Company Official]

\_\_\_\_\_

\_\_\_\_\_  
I, \_\_\_\_\_, hereby request a second opinion with respect the results of my physical examination which determined that I am not able to perform the essential functions of the \_\_\_\_\_ position at Mid-State Machine and Fabricating Corporation.

# **EXHIBIT C**

**[Corporate Letterhead]**

**MID-STATE MACHINE AND FABRICATING CORPORATION**  
**EMPLOYMENT POLICY IN COMPLIANCE WITH**  
**THE AMERICANS WITH DISABILITIES ACT OF 1990 (THE "ADA")**

**Under Section 102 of Title I of the Americans with Disabilities Act of 1990:**

**It shall be an unlawful employment practice for an employer:**

- (1) to limit, segregate, or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;**
- (2) to participate in a contractual or other agreement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by the ADA (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);**
- (3) to utilize standards, criteria, or methods of administration -**
  - (A) that have the effect of discrimination on the basis of disability; or**
  - (B) that perpetuate the discrimination of others who are subject to common administrative control;**
- (4) to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;**
- (5) (A) to not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or**
  - (B) to deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;**

**(6) to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and**

**(7) to fail to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).**

**MID-STATE WILL NOT engage in any of the above acts or practices.**

**MID-STATE WILL NOT discriminate or retaliate in any manner against any person because of opposition to any practice declared unlawful under the ADA or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding, or hearing under the ADA.**

**MID-STATE WILL maintain and conduct all employment policies and practices in a manner which does not discriminate on the basis of disability or retaliation.**

**If any individual believes that they have been discriminated against in violation of the ADA they should report such to their immediate supervisor, or to the President Hal Kersey.**

# **EXHIBIT D**

[Company Letterhead]

**NOTICE TO EMPLOYEES**

This Notice is posted pursuant to a Consent Decree entered into with the U.S. Equal Employment Opportunity Commission with respect to the case of EEOC v. Mid-State Machine and Fabricating Corporation, Civil Case No.: 99-1091-CIV-T-26E.

Title I of the Americans with Disabilities Act of 1990, as amended (the "ADA"), prohibits employment discrimination against qualified individuals with disabilities. The ADA's prohibition includes the use of qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity. Mid-State does not discriminate against individuals with disabilities in violation of the ADA. Mid-State does not condone discrimination of any kind set forth in federal laws including, but not limited to, disability discrimination.

Mid-State assures its employees, and applicants for employment, that it will not discriminate or retaliate in any manner against any person because of opposition to any practice declared unlawful under the ADA or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding, or hearing under the ADA.

Appropriate action, up to and including termination, shall be taken against any employee, including management personnel, found to violate the company's policies regarding the ADA.

Employees or applicants for employment who have questions about their rights under the ADA, or any other federal anti-discrimination law may call the EEOC's Miami District Office at 1-800-669-4000.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Hal Kersey  
President