



September 28, 2018

VIA E-MAIL AND FIRST-CLASS MAIL

Mr. Robin Bailey
Chief Human Capital Officer
Internal Revenue Service
OS:HC IR Room 3513
1111 Constitution Avenue, NW
Washington, DC 20224

**RE: NATIONAL GRIEVANCE ON BEHALF OF VISUALLY DISABLED
EMPLOYEES FOR CONTINUING VIOLATIONS OF §§501 AND 508 OF
THE REHABILITATION ACT AND ARTICLE 4 §2A4 OF THE
CONTRACT**

Dear Mr. Bailey:

The National Treasury Employees Union (NTEU) hereby files this national grievance pursuant to Article 42 §4 of the parties' 2016 National Agreement (2016 NA) on behalf of all impacted IRS bargaining unit employees against the Internal Revenue Service (IRS or agency) for its ongoing and continuing failure to accommodate the visual disabilities of its employees.

To ensure equal access to information and the tools to perform their jobs as compared to their non-disabled coworkers, visually disabled employees must use technology that works seamlessly with hardware, software, and assistive devices, as well as be provided with other reasonable accommodations such as *e.g.*, readers or personal assistants, that enable them to perform the essential functions of their jobs. To comply with §§501 and 508 of the Rehabilitation Act, the agency must ensure that all visually disabled employees are accommodated with necessary technology and other accommodations, such as readers or personal assistants, that allow them to perform the full range of their essential job duties. In addition, to comply with §§501 and 508 of the Rehabilitation Act, the agency must ensure that software and hardware used by visually disabled employees as well as all updates to such software and hardware and other EIT are compliant with §508 of the Rehabilitation Act and must otherwise provide appropriate accommodations to visually disabled employees. *See e.g., United States Dept of the Treasury, IRS, Austin, TX and NTEU, 66 FLRA No. 42 (2011).*

For years, and currently, the agency has been aware that its visually disabled employees have routinely experienced and continue to experience, disruptions in their ability to perform the essential functions of their jobs because, among other things, the software, hardware, and other

assistive devices provided to them are not compliant with the Rehabilitation Act and are insufficient to accommodate their visual disabilities. For just two examples, JAWS and Zoom Text tools are not fully compatible with many of the programs routinely used by IRS employees, such as *e.g.*, the Correspondence Imaging system (CIS) and various IAT tools, such as *e.g.*, “Results.” ZoomText itself, in its varying iterations, does not permit the seamless viewing and manipulating of pdf documents, and visually disabled employees cannot routinely use the voice function of ZoomText to read documents they need to perform the essential functions of their jobs. Moreover, the agency has failed to establish scanning protocols that ensure all documents scanned into the agency’s databases are scanned and stored in a format and in a manner that works seamlessly with assistive technology and other EIT needed by visually disabled employees when performing their jobs. It has also failed to provide necessary tax forms, the IRM, and other written materials in a format and in a language that allows visually disabled employees to decipher, use, read, and manipulate the documents they need for their jobs. The agency has compounded these many problems by also failing to provide readily available assistants and readers to assist visually disabled employees confronting these long-known and ubiquitous problems with technology. Instead, visually disabled employees are left with having to find sighted colleagues, work leaders, or managers who will assist them, often causing frustration, discomfort, anxiety, and work delays.

These technical problems are often so disrupting that visually disabled employees are hampered in their ability to submit ERC or other help tickets in an attempt to get IT professionals to address their issues. The agency has also failed to provide IT technicians who are familiar with and experts at resolving problems involving the programs and assistive technology used by its visually disabled employees. In addition, the agency has issued new laptop computers and/or other hardware and software that are not properly configured and/or are not compatible with assistive technology necessary for visually disabled employees to access *e.g.*, IDRS, CIS, and other necessary programs to perform their work. Moreover, it appears there is no plan in place to ensure that JAWS and ZoomText will be compatible with Windows 10 when the agency rolls it out. Visually disabled employees have experienced and currently experience freezes, work stoppages, and have been unable to properly perform their job duties because of the agency’s violations of the Rehabilitation Act. When technology has failed or been unavailable, the agency has failed to provide alternative accommodations, such as personal readers, or granting impacted employees administrative leave and has instead forced them to continue working without effective accommodations. In other instances, managers have improperly told employees they can or should take their own leave and go home if they are unable to work given the problems with technology. Such failures to accommodate visually disabled employees affect every aspect of these employees’ working conditions in their technology-dependent environment.

Moreover, because of the agency’s failure to provide compliant technology and other accommodations, visually disabled employees have been denied equal access to training materials and experiences, equal ability to participate in real-time discussions and ask questions about materials they are unable to access or read and have been denied opportunities for details and/or teaching assignments and hence to the sorts of experiences that lead to promotional opportunities. Whereas the agency has provided laptops to visually disabled employees and told

them they can bring their laptops to meetings and trainings, such an accommodation is ineffective because the laptop screens are too small, there are no monitors in the training or meeting locations, and in some instances, the laptops are chained to the desk and the visually disabled employee was not given the combination, and/or the visually disabled employees are unable because of their disability to unlock the combination to remove the laptop from the work station. Upon information and belief, visually disabled employees are promoted into higher graded positions at a slower rate than their similarly situated, non-disabled coworkers and/or are not promoted at all because of their disability and/or because of the agency's violations of the Rehabilitation Act and the 2016 NA. Visually disabled employees have also experienced lowered performance ratings because they have not been given §508 compliant tools and other accommodations, have experienced retaliation for asserting their right to be provided with compliant technology and other accommodations, have been told words to the effect that they should be grateful to have jobs at all and/or should not make waves, or that they are to be blamed for the high cost of technology necessary to accommodate their disabilities, or that they should take leave and go home when they are unable to perform their jobs because of non-compliant technology and the agency's failure to provide appropriate accommodations, and have otherwise been treated less favorably than their non-disabled coworkers because of their disability and/or because they have participated in protected EEO activity.

These failures to provide reasonable accommodations pursuant to §501 of the Rehabilitation Act and to provide §508 compliant technologies that allow visually disabled employees to perform their work date back many years and have been the subject of previous grievances, settlement agreements, meetings, surveys, and assurances by the agency that it will address the problems. Yet the agency has failed and continues to fail to provide accommodations and compliant technology in violation of the Rehabilitation Act and Article 4 §2A4 of the parties' 2016 NA.

Such failures constitute disability discrimination and/or retaliation in violation of the Rehabilitation Act. We specifically allege these, and other acts constitute a continuing violation of Article 4 §2A4 of the parties' 2016 NA as well as of §§501 and 508 of the Rehabilitation Act.

The agency's actions have caused and continue to cause physical and mental harm and injury to visually disabled employees, including but not limited to eye strain, loss of visual acuity and/or exacerbations and/or progression of their visual disabilities, headaches, anxiety, depression, stress, loss of family time, intimacy, and comfort. Such failures have also exacerbated other ailments because of the stress of working in untenable working conditions.

In addition, the agency's violations have caused financial harm to impacted visually disabled employees who have been forced to take leave and/or leave without pay, incurred medical and other expenses, been forced into early retirement, been harmed in the trajectory of their careers, and have otherwise suffered pecuniary damages as a result of the agency's violations of the Rehabilitation Act and of the 2016 NA.

As a remedy, NTEU requests that the IRS:

1. Immediately rescind all software systems and EIT that are not §508 compliant and provide NTEU with written notice and an opportunity to negotiate the implementation of such systems going forward;
2. Provide a make-whole remedy for each visually disabled employee whose performance evaluations may have been impacted by the agency's failures to provide §508 compliant technology and/or to otherwise accommodate their visual disability;
3. Provide a make-whole remedy for visually disabled employees who did not receive an award based on the aforementioned violations of the Rehabilitation Act, including retroactive awards, with interest, under the Back Pay Act and consistent with the NPAA;
4. Provide pecuniary damages to the impacted employees for all pecuniary damages caused by the agency's violations, including but not limited to back pay, with interest, under the Back Pay Act and compensation to account for all adverse tax consequences, if any, related to the receipt of lump sum awards, as well as compensation for medical and other financial harms caused by the agency's discrimination as alleged in this grievance;
5. Provide non-pecuniary damages up to the statutory maximum of \$300,000 to each impacted employee;
6. Restore all leave, or award the value thereof, as a result of the agency's failures to provide accommodations pursuant to §501 of the Rehabilitation Act and its failure to provide §508 compliant technology, including compensation for all adverse tax consequences, if any, for any lump sum award;
7. Provide §508 compliant technology as to every database, system, or program a visually disabled employee must use, and to do so each and every time it provides new or upgraded EIT to any visually disabled employee;
8. Relieve every visually disabled employee from any and all quantity and/or quality standards and other performance measures unless and until the agency provides each such employee with §508 compliant technology and/or other reasonable accommodation;
9. Ensure that no visually disabled employee is negatively impacted related to his or her performance appraisals or evaluations in the future by any failure of the agency to provide §508 compliant technology or other reasonable accommodation;

10. Ensure that visually disabled employees have the same opportunities to be selected for details as their non-disabled coworkers and are not harmed by reason of the agency's failure to provide §508 compliant technology and/or other reasonable accommodations;
11. Ensure that visually disabled employees have the same opportunities to compete and be selected for promotional opportunities as their non-disabled coworkers;
12. Ensure that visually disabled employees have the same opportunities to further their careers and actively participate in the workplace culture through education, training, details, acting assignments, and competitive actions as their similarly situated non-disabled coworkers and are not harmed by reason of the agency's failure to provide §508 compliant technology and/or other reasonable accommodations, such as *e.g.*, readers as needed to ensure equal access to information;
13. Require that every future request for proposals related to any upgrades and/or purchases of EIT include a requirement that such EIT be §508 compliant with all technology and/or software systems that are or might be used by visually disabled employees, and provide trained, competent IT specialists with expertise in EIT for visually disabled employees and the IRS programs they must use, and require such IT professionals to be readily available to all visually disabled employees wherever they work;
14. Award attorney's fees and costs to NTEU;
15. Provide a minimum of sixteen (16) hours of in-person training to all agency supervisors up to and including the Assistant Commissioner level in the laws prohibiting disability discrimination, paying particular attention to the agency's obligation to engage in the interactive process and provide reasonable accommodations to disabled employees such as *e.g.*, readers and assistive technology for visually disabled employees, and to ensure that all EIT is §508 compliant with all systems that are or might be used by visually disabled employees, and to ensure that such employees have equal access to information, developmental opportunities, training, details, acting assignments, and promotional opportunities, and for all employees to be free from retaliation for engaging in protected EEO activities, including requesting reasonable accommodations and §508 compliant technology;
16. Take disciplinary action against all supervisors who failed to address these §508 compliance issues, failed to accommodate the needs of visually disabled employees, made comments that discouraged employees from seeking accommodations, made comments that visually disabled employees should be grateful to have jobs, or should refrain from complaining, and who otherwise failed to provide the same opportunities to their visually disabled employees that they provided to their non-disabled employees;

17. Post a notice, signed by the Commissioner of the IRS, both in hard copy and electronic format, for no fewer than sixty (60) days in conspicuous places, including all places where hard copy and electronic notices to employees are customarily posted, including but not limited to all employees' e-mail addresses and on all bulletin and other notice boards, that specifically states that as a result of a national grievance filed by NTEU, the agency acknowledges it has engaged in a long-standing pattern of discriminating against visually disabled employees by failing to provide equal access to information, technology, resources, and promotional opportunities in violation of the Rehabilitation Act. Such notice will further inform employees that as a result, the agency has paid damages to impacted employees as required by the Rehabilitation Act, has disciplined responsible supervisors, will provide training to all supervisors on their obligations under the Rehabilitation Act, has agreed to provide § 508 compliant technology and resources to all visually disabled employees now and in the future, and will not retaliate against or otherwise harm employees who seek accommodations or otherwise assert their rights under the Rehabilitation Act or any other EEO laws; and

18. Require all documents scanned into any IRS system and/or that any employee must access be stored in all IRS databases in a format and in a manner that is searchable and usable by any visually disabled employee in the performance of his or her job.

We have included an information request as Attachment A to this grievance. As always, we are happy to work with the agency to clarify any requests and will quickly respond to any objections in an effort to move the process forward.

NTEU's representatives in this matter will be Gretchen Paulig, Assistant Counsel, NTEU Austin Field Office, and Brandon Braithwaite, National Negotiator in Negotiations. You may reach Gretchen Paulig at (512) 912-7622, or via e-mail at Gretchen.paulig@nteu.org.

Sincerely,



Anthony M. Reardon
National President

Enclosure

cc: Gretchen Paulig
Brandon Braithwaite