

UNCLASSIFIED



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Date/DTG: Jan 17, 2023 / 171955Z JAN 23
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *Immediate*
E.O: 13526
TAGS: APER, AMED, AMGT, KDIS, KDNI
Subject: Settlement in Meyer, et al. v. U.S. Department of State and Changes to the Worldwide Availability Requirement for Career Department of State Foreign Service Applicants

1. SUMMARY: The Department is pleased to announce it has reached a settlement in *Meyer, et al. v. U.S. Department of State*, a class action pending at the Equal Employment Opportunity Commission (EEOC) that challenges the Department's Worldwide Availability requirement for career Foreign Service applicants. This is an important step forward in the Department's efforts to create a workforce that reflects the full diversity of the American people and ensure we have the best team representing the United States abroad. Our greatest accomplishments are achieved when diverse, dynamic perspectives power our diplomatic efforts.
2. The settlement resolves the claims of over 230 class members whose hiring was either delayed or denied as a result of their inability to obtain a "Class 1" medical clearance, otherwise known as a "Worldwide Available" medical clearance. The terms of the settlement agreement have received preliminary approval by the EEOC and have been briefed to the American Foreign Service Association. Class members will now have an opportunity to comment. A final hearing to approve the settlement agreement is scheduled for March 15, 2023. The terms of the settlement agreement will become effective shortly thereafter, depending on whether any appeals of the final approval order are available and filed.
3. Pursuant to the terms of the settlement agreement, the Department has agreed to adopt a revised minimum medical qualification standard for Department career Foreign Service applicants that would replace our current Class 1 medical clearance requirement; this will be monitored by the EEOC for a period of five years. During the monitoring period, the Department will periodically assess the impact of the revised policy on the needs of the Foreign Service. The settlement agreement includes a mechanism to allow for modifications of the revised policy if the Department determines it is not meeting the needs of the Foreign Service. It does not affect the Department's medical clearance requirements, policies, or procedures for current employees or eligible family members (EFMs).

4. The terms of the settlement announced today are commensurate with the Department's commitment to inclusive workforce policies. The Department continues to examine areas in which policies can be designed or updated to reflect the Secretary's modernization agenda, which includes attracting and retaining top talent that reflects our nation's diversity. END SUMMARY.

5. What is the Department's Current Worldwide Availability Requirement?

Currently, Department of State Career Foreign Service Applicants, Foreign Service Fellows, and some first-time Limited Non-Career Appointees must be available to serve at any post in the world to qualify for hire. These individuals must receive a Class 1 (Worldwide Available) medical clearance, based on their pre-employment medical exam, or a waiver of this requirement. *See* 16 FAM 216; 3 FAM 1911.

6. What is a Class 1 Medical Clearance?

A Class 1 medical clearance, also referred to as a Worldwide Available medical clearance, is issued to individuals who have no identifiable medical conditions that would limit their assignment abroad. *See* 16 FAM 211.2(a).

7. When did the Meyer Suit Originate and What Led to the Settlement Agreement?

Class Agent Meyer filed an EEO complaint against the Department in 2006, alleging discrimination on the basis of disability. Meyer, an applicant to the Department's Foreign Service, alleged that the Department's Worldwide Availability requirement for career Foreign Service applicants, and denial of a Class 1 medical clearance, violated the Rehabilitation Act of 1973, as amended. Meyer subsequently sought and received approval to also proceed on behalf of others similarly situated (class certification) and added a second Class Agent.

In 2021, the parties began discussing settlement with the assistance of a mediator. Following more than a year of negotiations, in December 2022, the parties signed a settlement agreement.

8. What is the Definition of the Class Involved in the Meyer Litigation?

The class is defined as "all qualified applicants to the Foreign Service beginning on October 7, 2006, who were denied employment, or whose employment was delayed pending application for and receipt of a waiver, because the State Department deemed them not 'Worldwide Available' due to their disability."

9. Why did the Department and the Class Agree to Settle?

The litigation in *Meyer* was ongoing for more than 16 years. The settlement provides benefits and certainty to the class and to the Department now, instead of prolonging the disagreement. The terms of the settlement also align with the Department's ongoing efforts to build a workforce that is more inclusive and representative of the American people. Our greatest accomplishments are achieved when diverse, dynamic perspectives power our diplomatic efforts.

10. **When Will the Settlement Agreement Take Effect?**

The terms of the settlement agreement have received preliminary approval by the EEOC. Class members will be provided notice of the settlement agreement and an opportunity to object to its fairness, as required by 29 C.F.R. § 1614.204(g)(4). A final fairness hearing is scheduled for March 15, 2023. If the settlement agreement receives final EEOC approval, its terms will take effect shortly thereafter, depending on whether any appeals are available and filed.

11. **What are the Terms of the Settlement Agreement?**

Pursuant to the terms of the settlement agreement, the Department will extend conditional offers of employment to many of the class members (excluding, for example, those who have already been hired or who are no longer eligible for hire by the Department for non-medical reasons). The Department also has agreed to adopt a revised minimum medical qualification standard for career Foreign Service applicants that would replace our current requirement for a Class 1 medical clearance; this will be monitored by the EEOC for a period of five years. During the monitoring period, the Department will periodically assess the impact of the revised policy on the needs of the Foreign Service. The settlement agreement includes a mechanism to allow for modifications of the revised policy if the Department determines it is not meeting the needs of the Foreign Service. Finally, the Department will pay \$37.5 million to settle the case. The complete settlement agreement and related documents are available at <https://www.state.gov/meyer-et-al-v-state-settlement>.

12. **How Will the Department be Changing Its Minimum Medical Qualification Standard for Career Foreign Service Applicants?**

Upon implementation of the terms of the settlement agreement, applicants for career Foreign Service positions with the Department will no longer be required to receive a Class 1 medical clearance. For generalists and specialists, except medical specialists, applicants will only need to be medically cleared to serve at all designated Regional Medical Evacuation Centers (currently Bangkok, London, Pretoria, and Singapore). A separate revised minimum medical qualification standard has been agreed to for medical specialists.

The revised minimum medical qualification standard agreed to as part of the settlement agreement will be used only to determine whether an applicant is medically qualified for hire and will not be used to define or limit the universe of posts at which the applicant can serve. In this regard, the minimum medical qualification standard will operate differently than the pre-employment medical clearance currently used by the Department. The settlement agreement makes no change to qualification standards other than the Class 1 medical clearance requirement. Additionally, the settlement agreement makes no change to the Department's directed assignment policy for entry-level Foreign Service employees. An employee's first two assignments will generally be to overseas posts except as service needs dictate. The Department's Office of Career Development and Assignments (GTM/CDA) directs, on behalf of the Director General of the Foreign Service and Director of Global Talent, the first, and in most cases, the second posts of assignment.

13. Will the Department be Changing Its Pre-Employment Medical Examination Process for Career Foreign Service Applicants? If so, how?

Yes. Upon implementation of the terms of the settlement agreement, the Department will modify its pre-employment medical examination policy and process for career Foreign Service applicants.

All career Foreign Service applicants who have received a conditional offer will still need to undergo a pre-employment medical examination. If the applicant does not have an identifiable medical condition that may limit their assignment abroad, the applicant will have satisfied the pre-employment medical requirement, will not be subject to further assessment pursuant to the minimum medical qualification standard, and will advance in the hiring process.

If the applicant does have an identifiable medical condition that may limit their assignment abroad, the applicant will be subject to further assessment pursuant to a revised minimum medical qualification standard. For generalists and specialists, except medical specialists, applicants will only need to be medically cleared to serve at all designated Regional Medical Evacuation Centers (currently Bangkok, London, Pretoria, and Singapore). A separate revised minimum medical qualification standard has been agreed to for medical specialists. If the Bureau of Medical Services (MED) determines that the applicant meets the applicable minimum medical qualification standard, the applicant will proceed in the hiring process.

If MED determines that the applicant does not meet the applicable minimum medical qualification standard, the applicant will be referred to the Bureau of Global Talent Management, Office of Accessibility and Accommodations (GTM/OAA), to engage in an interactive process with the applicant and their medical provider in order to assess whether the applicant is able to meet the applicable minimum medical qualification standard with a reasonable accommodation.

14. Some Specialist Categories Include Supplemental Physical Qualification Standards, in Addition to the Medical Clearance Requirement. For Example, DS Special Agent Applicants Are Currently Required to Complete Vision and Hearing Tests. Are Those Requirements Affected by the Settlement?

No. The settlement agreement makes no change to qualification standards other than the Class 1 medical clearance requirement.

15. Will the Adoption of a Revised Minimum Medical Qualification Standard for Career Foreign Service Applicants Mean That Some New Employees Will Be Able to Serve Only at the Four Regional Medical Evacuation Centers?

No. The revised minimum medical qualification agreed to as part of the settlement agreement will be used only to determine whether an applicant is medically qualified for hire and will not be used to define or limit the universe of posts at which the applicant can serve. In this regard, the minimum medical qualification standard will operate differently than the pre-employment medical clearance currently required by the Department. The settlement agreement makes no

change to the Department's directed assignment policy entry-level Foreign Service employees. Foreign Service members bid competitively for assignments and are expected to serve at a variety of overseas posts, including hardship posts. The settlement agreement will not change that.

16. Does the Settlement Agreement Affect Medical Clearances for Current Employees or EFMs?

No. Pursuant to the terms of the settlement agreement, the Department has agreed to adopt a revised minimum medical qualification standard for Department career Foreign Service applicants. The settlement agreement does not affect the Department's medical clearance requirements, policies, or procedures for current employees or their eligible family members.

17. Has AFSA Been Consulted Regarding the Policy Change Agreed to as Part of the Settlement?

Yes. AFSA has been consulted regarding the policy change agreed to as part of the settlement.

18. How Does the Settlement Agreement Affect Applicants for Career Positions with Other Foreign Affairs Agencies?

Pursuant to the terms of the settlement agreement, the Department has agreed to change its medical clearance process and Worldwide Availability requirement for Department of State career Foreign Service applicants. At this time, there will be no change to the way MED adjudicates pre-employment medical clearances for applicants seeking Foreign Service positions with other foreign affairs agencies.

19. Is the Department Obligated to Maintain the Revised Medical Qualification Standard and Medical Examination Process Indefinitely?

It is the intent of the Department to maintain the revised minimum medical qualification standard and medical examination process so long as they remain in compliance with the law and allow the Department to meet the needs of the Foreign Service. During the five-year monitoring period, the Department will periodically assess the impact of the revised policy on the Department's ability to meet the needs of the Foreign Service. The settlement agreement includes a mechanism to allow for modifications of the revised policy if the Department determines it is not meeting the needs of the Foreign Service.

20. I Believe I Meet the Class Definition. Whom Should I Contact?

The class is defined as "all qualified applicants to the Foreign Service beginning on October 7, 2006, who were denied employment, or whose employment was delayed pending application for and receipt of a waiver, because the State Department deemed them not 'Worldwide Available' due to their disability." Although the Department believes that all class members have been contacted, if you believe you meet the definition of the class and have not been contacted

regarding the class action, you may contact class counsel at: Bryan@BryanSchwartzLaw.com and Gary@gelawyer.com.

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