

Complaint of Discrimination

The particulars are:

1. This complaint alleges violations of the Colorado Anti-Discrimination Act (“CADA”), which bars discrimination because of disability or race. Colo. Rev. Stat. § 24-34-402. It also alleges violations of the Americans with Disabilities Act (“ADA”), as amended, 42 U.S.C. §§ 12101 *et seq.*, and Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. §§ 2000e *et seq.*, which prohibit employers, their agents, and employment agencies from discriminating in hiring or promoting on the basis of disability and race, respectively.
2. As detailed herein, D.K., is Indigenous and is a Deaf¹ woman who speaks with a deaf accent. She applied for and was denied a Seasonal Manager position at Intuit, Inc. (“Intuit”) on the basis of her disability and her race. D.K. had worked for Intuit for several years during which she received positive feedback about her communication and annual bonuses based on her outstanding performance. She had the experience, training, and qualifications needed for promotion to the Seasonal Manager role.
3. Yet as part of its Seasonal Manager hiring process, Intuit utilized an automated video interview and assessment system from a third-party vendor, HireVue, Inc. (“HireVue”), that is unlikely to accurately recognize and analyze the speech of a deaf applicant and is likely to score a deaf applicant lower as a result. HireVue’s video interview platform also provides instructions and poses questions audibly through a recording of a person speaking, and, during D.K.’s interview, portions of the audible content lacked subtitles.² D.K. had previously informed the Chair of Intuit’s Accessibility Team that HireVue was inaccessible and harmful to deaf applicants, but Intuit continued to use the product and required D.K. to undergo a HireVue interview when she subsequently applied for Seasonal Manager. D.K. also requested a reasonable accommodation to have human-generated captioning during the interview so that the instructions and questions would be accessible to her, but Intuit failed to provide the requested accommodation. Feedback D.K. received after she was denied the position evidences the adverse impact that the HireVue interview likely had on Intuit’s decision not to promote D.K., as it focused on her communication style and conciseness in answering interview questions and even recommended that she “practice active listening.”

¹ The word “Deaf,” used in the complaint, refers to an individual who identifies with Deaf culture, a sociolinguistic community that primarily uses American Sign Language. The terms “deaf and hard of hearing” or “deaf” are used to refer to those with hearing levels or hearing loss that qualify as disabilities under the ADA. Deaf cultural identity is the shared values, behaviors, and experiences of deaf communities, including the importance of sign language as one of its key aspects.

² Subtitles and closed captions, which are pre-recorded, edited, and synchronized, offer improved accuracy and reliability compared to automated or AI-based captioning solutions, described *infra* note 10.

4. HireVue’s technology, which utilizes automated speech recognition (“ASR”) systems, is also likely to perform worse when evaluating non-white applicants—including speakers of Indigenous dialects of English, also known as Native American English, who may have different speech patterns, word choices, and accents—than for white applicants. One recent study found that several ASR systems perform ten times worse for the deaf and hard of hearing population, and that on average, every other word spoken by deaf and hard of hearing speakers is transcribed incorrectly.³
5. Intuit was well aware of the limitations of ASR systems because it also used automated performance monitoring and management processes that they knew had an adverse impact on deaf employees. While D.K. received high scores on performance measures during her time working at Intuit, she received lower scores on one particular metric based on an Intuit system that used automated technology to generate and assess transcripts of employees’ interactions with customers. D.K. and her manager realized that the technology was not accurately capturing her speech because she is Deaf. Rather than fix the problem with its technology, Intuit changed D.K.’s job duties so she would not speak directly with customers, even though she had received positive feedback from customers who spoke to her on the phone. D.K.’s inaccurate low performance metric may have impacted Intuit’s decision not to promote her to Seasonal Manager. It also shows that, years before D.K. applied for the promotion, Intuit was aware that ASR systems like the one used by HireVue may not work with her deaf accent.
6. Intuit and HireVue violated the CADA, the ADA, and Title VII when Intuit used HireVue’s technology that discriminated against D.K.—an otherwise qualified candidate—based on her disability and/or race. Intuit and HireVue illegally denied her an employment opportunity on the basis of race and/or disability; used selection criteria that screened her out—or tended to screen her out; failed to select and administer the HireVue interview in a way that accurately reflected her knowledge, skills, and abilities, and instead reflected that D.K. is Deaf; limited, segregated, or classified D.K. in a way that adversely affected her opportunity for promotion; used a form of employment application that expressed either directly or indirectly a limitation, specification, or discrimination on the basis of disability and/or race; failed to provide D.K. reasonable accommodations during the application process; and/or used standards, criteria, or methods of administration that discriminated against her—all because she is Pawnee and/or Deaf. HireVue also aided and abetted Intuit’s discriminatory conduct, in violation of the CADA.
7. This complaint is brought on behalf of D.K. Upon information and belief, Intuit uses HireVue’s technology to interview applicants for many job opportunities across the company, and Intuit’s use of HireVue continues to cause it to deny positions to other qualified disabled or non-white applicants.

³ See *infra* note 5.

CHARGING PARTY

8. D.K. is a Pawnee woman.
9. She is Deaf and communicates in English with a deaf accent and in American Sign Language (“ASL”).
10. She lives in [REDACTED], and worked for Intuit in Colorado.

RESPONDENTS

11. Intuit is a multinational business and financial technology company headquartered in Mountain View, California. It offers a variety of software and services for individuals, businesses, and accountants, including for tax preparation, marketing, and financial management. The company has over 18,000 employees worldwide and thousands of employees in the United States. Intuit is thus a covered employer under the CADA, the ADA, and Title VII.
12. HireVue is an artificial intelligence (“AI”) and human resources technology company headquartered in Sandy, Utah. HireVue designs, administers, and scores a variety of different assessments used to make hiring, promotion, and other job-related decisions, including video interviews, game-based assessments, technical assessments, and virtual job tryouts, and many of these tools incorporate AI or other automated systems and algorithms. The assessments purport to assess test-takers’ personality, job competency, cognitive ability, or other traits. HireVue has more than 200 employees in the United States.
13. HireVue is covered under the CADA, the ADA, and Title VII because it operates as an employment agency; it acts as an agent of employers because it performs functions that are traditionally exercised by an employer; and it is an indirect employer because it exerts significant control over applicants’ access to employment. HireVue also aided and abetted Intuit’s violation of the CADA.

FACTUAL BACKGROUND

HireVue’s Video Interview Tool and Its Likelihood to Discriminate Against Deaf and Non-White Applicants

14. One product that HireVue offers is an asynchronous remote video interviewing platform (“platform”), which presents applicants with interview questions, provides them a set amount of preparation time, and then allows them to record their answers. After submission, HireVue’s platform can automatically generate scores and create information reports for employers about the applicants’ performance. HireVue can also generate feedback reports that employers can choose to share with the applicant. Intuit uses HireVue’s platform.

15. HireVue’s platform is likely to discriminate against deaf applicants in several ways.
16. First, HireVue’s platform does not automatically subtitle all of its audible content, such as instructions and questions, so without further accommodations, deaf applicants who can read English are not given the benefit of knowing with certainty what instructions are being given and what questions are being asked.
17. HireVue also incorporates AI to process and score applicants’ video responses, which is likely to adversely impact deaf applicants in at least two ways. First, AI can be used to transcribe applicants’ spoken responses, turning their speech from the video recordings into text using ASR technology. Second, another type of AI system can be used to interpret the meaning of the text spoken by applicants based on the transcripts. The outputs of this AI system are fed into a system that uses machine learning to score applicants’ responses against various job competencies.
18. HireVue’s platform and its use of AI can present serious potential for discrimination. Independent research over the last several years indicates that several popular ASR systems perform significantly worse at transcribing the speech of speakers with accents, speech disabilities, and/or other disabilities, and can be largely dysfunctional when processing deaf and hard of hearing speech.⁴
19. One recent study found that several ASR systems perform ten times worse for the deaf and hard of hearing population, and that on average, every other word spoken by deaf and hard of hearing speakers is transcribed incorrectly.⁵
20. Independent research has also found that popular commercial ASR systems also perform significantly worse at transcribing the speech of non-white speakers compared to white speakers, including Black, Latine, and Indigenous speakers of English.⁶
21. As a result, the transcripts of applicants’ video responses produced by HireVue—which may be subsequently analyzed and scored using AI—are likely very inaccurate for

⁴ See, e.g., Abraham Glasser, *Automatic Speech Recognition Services: Deaf and Hard-of-Hearing Usability* in EXTENDED ABSTRACTS OF THE 2019 CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS (2019), <https://dl.acm.org/doi/pdf/10.1145/3290607.3308461>; Abraham Glasser et al., *Deaf, Hard of Hearing, and Hearing perspectives on using Automatic Speech Recognition in Conversation* in PROCEEDINGS OF THE 19TH INTERNATIONAL ACM SIGACCESS CONFERENCE ON COMPUTERS AND ACCESSIBILITY (2017), <https://arxiv.org/pdf/1909.01176>.

⁵ Robin Zhao et al., *Quantification of Automatic Speech Recognition System Performance on d/Deaf and Hard of Hearing Speech*, 135 THE LARYNGOSCOPE 191 (2024), https://koenecke.infosci.cornell.edu/files/Laryngoscope_Zhao2024.pdf.

⁶ See Allison Koenecke et al., *Racial disparities in automated speech recognition*, 117 PROC. OF THE NAT’L ACAD. OF SCI. 7684 (2020), <https://www.pnas.org/doi/epdf/10.1073/pnas.1915768117>; Alicia Beckford Wassink et al., *Uneven success: automatic speech recognition and ethnicity-related dialects*, 140 SPEECH COMM’N 50 (2022), <https://www.sciencedirect.com/science/article/abs/pii/S0167639322000486>.

accented speakers and speakers with speech disabilities, and significantly less accurate for these speakers and for non-white speakers.

22. The use of another AI system to understand assessment-takers' responses based on these transcripts compounds this risk of discrimination. Independent research has also shown that versions of the AI model HireVue uses and customizes to attempt to evaluate the meaning of candidates' responses can produce outputs that exhibit implicit and explicit racial bias and biases towards people with disabilities or about disabilities.⁷
23. The biases at each stage of this process can be compounding, heightening the risk of discrimination. For deaf applicants in particular, the significant barriers created through the use of the HireVue platform are compounded further when used without the provision of proper accommodations.
24. Scientific studies have long evidenced the deficiencies in ASR and the discriminatory outputs of the types of AI models used by HireVue, with some research dating back to as early as 2017.⁸ Thus, HireVue knew or should have known that its platform is likely to discriminate on the basis of disability and/or race.

D.K.'s Strong Record of Employment at Intuit

25. D.K. worked seasonally for Intuit beginning in late 2019, first as a Tax Associate during the 2019 and 2020 tax seasons, and then as a Tax Expert Lead during the 2021, 2022, and 2023 tax seasons.
26. As a Tax Associate, D.K. worked directly with customers who had questions while using Intuit's TurboTax tax preparation software.
27. Because she is Deaf, D.K. requested human-generated captioning, known as CART,⁹ to understand what customers were saying. Intuit denied this accommodation and D.K. instead relied on automated captioning,¹⁰ responding to customers verbally. She also

⁷ See, e.g., Katelyn Mei et al., *Bias Against 93 Stigmatized Groups in Masked Language Models and Downstream Sentiment Classification Tasks* in PROCEEDINGS OF THE 2023 ACM CONFERENCE ON FAIRNESS, ACCOUNTABILITY, AND TRANSPARENCY (2023), <https://dl.acm.org/doi/pdf/10.1145/3593013.3594109>; Valentin Hofmann et al., *Dialect prejudice predicts AI decisions about people's character, employability, and criminality*, ALLEN INST. FOR AI, UNIV. OF OXFORD, LMU MUNICH, STANFORD UNIV., UNIV. OF CHICAGO 1 (2024), <https://arxiv.org/pdf/2403.00742>.

⁸ See e.g., Glasser et al., *Deaf, Hard of Hearing, and Hearing perspectives on using Automatic Speech Recognition in Conversation*, *supra* note 3; Yinhan Liu et al., *RoBERTa: A Robustly Optimized BERT Pretraining Approach*, UNIV. OF WASH. & FACEBOOK AI (2019), <https://arxiv.org/abs/1907.11692>.

⁹ Human-generated captioning services, known as Communication Access Realtime Translation ("CART"), involve professionally trained captioners who provide context-aware, real-time transcription with substantially higher accuracy.

¹⁰ Automated or AI-generated captions, like the ones available through browsers such as Chrome, rely on the same kinds of problematic ASR systems that HireVue and Intuit use in their technology. Automated captions frequently fall short of providing effective communication due to inherent inaccuracies; they commonly fail to accurately

communicated with her managers and other team members using Slack, a text messaging app, or by meeting with them remotely through Zoom using automated captioning provided through the application. D.K. had concerns that the automated captioning was not sufficiently accurate.

28. Nevertheless, in her role as Tax Associate, D.K.'s performance was excellent. She routinely got positive ratings from customers, and she was effective at resolving their questions and concerns.
29. Given her positive customer feedback and good performance, D.K. was surprised to learn during her first year as a Tax Associate that there was one Key Performance Indicator where her scores were not as high as they should have been. The indicator at issue used Intuit's AI software to measure how closely D.K. followed scripts given to her for interactions with customers. After a meeting with her manager about her performance, she learned that, because of her deaf accent, the software was not accurately recognizing all the words she was saying, and so it reported she was deviating from the script, even though she wasn't. This indicates that Intuit's AI software relies on a discriminatory ASR system similar to the system underlying HireVue's technology.
30. D.K. raised this issue with her supervisors but was told there was nothing that could be done to more accurately measure her performance on that indicator. Instead, Intuit reassigned D.K. so that she no longer answered customer phone calls, responding only to those customers who asked questions through a chat application. This change, along with her strong scores on other metrics—like customer satisfaction—resulted in D.K. earning strong overall performance scores despite that one artificially low indicator. As a result of her great performance, D.K. received bonuses every year as a Tax Associate.
31. In 2021, D.K. was promoted to Tax Expert Lead. In that position, she served as the next level of assistance when the Tax Associates could not answer a question or resolve an issue. There were about 400 Tax Associates on her team, which required exemplary communication skills to excel in the position. In this role, Tax Associates would reach out to her via Slack to ask questions or get advice and she sometimes met with them on Zoom to talk through an issue or provide guidance. Additionally, she would join and help lead team Zoom meetings. This position required her to both be knowledgeable about tax preparation and to have strong customer service and managerial skills.
32. Her performance as a Tax Expert Lead was quite strong. Over her three seasons in that position, she always scored very well in her performance metrics, which measured things

transcribe speech—particularly in circumstances involving multiple speakers, background noise, accents, or specialized terminology—resulting in misinterpretations, omissions, or misleading information.

like how many cases she successfully resolved, and how quickly she responded to issues from the Tax Associates. Based on these high performance metrics, D.K. received a bonus each year.

33. Her supervisors at Intuit also provided her with feedback noting that her communication was great and that she was motivated and encouraging with customers and team members.
34. D.K. also went above and beyond by joining Intuit's Accessibility Team in 2023. The Team was designed to address barriers to accessibility in Intuit's services. For example, because D.K. is fluent in ASL, she was assigned to help resolve problems for customers who communicated in ASL. And she would give other employees guidance regarding how to respond to calls made by deaf or hard of hearing customers via a Video Relay Service.
35. As part of her work on the Accessibility Team, she also raised suggestions about how to make Intuit's internal processes accessible to deaf people, such as using ASL interpreters that had familiarity with tax concepts.
36. At the end of the 2023 tax season, she also specifically raised with the Chair of the Accessibility Team concerns about Intuit's hiring process and its use of HireVue's platform to record and assess video interviews with applicants, which she was concerned might exclude disabled applicants. The Chair of the Accessibility Team said they would look into it, but D.K. never heard about any actions Intuit took to improve this aspect of the application process for deaf or hard of hearing applicants.
37. After the 2023 tax season, D.K. was encouraged by her manager, who was on the hiring team, to apply for a Seasonal Manager position.
38. Seasonal Manager was the next level position after Tax Expert Lead, and Tax Expert Leads were trained to have the skills they needed to take on the Seasonal Manager position, with many being promoted each year.
39. D.K. applied for the Seasonal Manager position through the Intuit employee dashboard in the spring of 2024.
40. Having served as a Tax Expert Lead for three years, D.K. was well-qualified for the position.
41. The position required at least two years of managing and leading a remote customer-facing team and/or at least two years of managing a team of tax preparation professionals,

and, as Tax Expert Lead, D.K. had been leading a large team of tax preparation professionals (and a remote customer-facing team) for three years.

42. The position also required prior experience preparing individual tax returns, and D.K. had five years of experience working in tax preparation at Intuit and several years of experience as a tax preparer before that.
43. Additionally, the position required being able to effectively communicate with people who had multiple skill levels and personalities. D.K. had demonstrated that ability through her work with both customers and her team members at Intuit, receiving consistently positive feedback on her management style and communication skills. Moreover, she had the added benefit of being fluent in ASL, so she could help expand Intuit's ability to serve customers and employees who were deaf or hard of hearing and relied on ASL for communication.
44. Intuit apparently agreed that D.K. was qualified for the position because, on June 21, 2024, it responded with an email asking her to move to the next step in the application process, which was to complete a video interview through the HireVue software.
45. Despite D.K. specifically raising concerns about HireVue's potential discriminatory impact on deaf applicants, Intuit nonetheless proceeded to use this very system in evaluating her promotion application, showing that it intentionally ignored known accessibility issues.
46. The only explanation of the video interview provided in the email D.K. received was: "The interview may have a combination of video, essay and multiple choice questions depending on the position. Questions are timed to help us evaluate your ability to find the correct answer under a time constraint – similar to the expectations of the role."
47. The email offering the video interview did not provide any information about accommodations for disabled people, and it provided only an Intuit email address to contact about "technical support," not accommodations.
48. D.K. knew that HireVue's platform did not provide subtitles for all the video interviewer's script and that there would be audible instructions and/or questions that would be inaccessible to her. Therefore, because D.K. was familiar with the process for asking for accommodations at Intuit based on her past experience working at the company, she was able to email and ask for the accommodation of CART captioning during the video interview. She did not request ASL interpretation because, in her experience, the interpreters Intuit provided were not able to interpret the complex tax concepts that she expected to be asked about in the interview. And she was afraid to ask

to waive the HireVue interview altogether because that had never been offered and she feared it would hurt her chances of a promotion.

49. Intuit responded to her accommodation request and instead of agreeing to provide CART, told her that the HireVue software included subtitling that she could turn on when she started the video interview.
50. But, when D.K. went to start the video interview, there was no option to turn on subtitles in the HireVue software.
51. Instead, she had to use automated captioning provided by Google Chrome. That captioning was less accurate than if HireVue had provided subtitles. The Google Chrome software merely transcribed D.K.'s computer audio and therefore contained more mistakes, particularly when the interviewer used complicated words. Because of the lack of proper captioning, it was harder for D.K. to know exactly what the interviewer was saying.
52. HireVue's failure to incorporate basic accessibility features into its platform, and Intuit's failure to provide effective CART captioning as an accommodation, constitute a direct violation of the ADA's requirement to provide reasonable accommodations during the application process.
53. The majority of the assessment for the Seasonal Manager position was the video interview portion, with about a dozen video questions. The whole assessment—including the multiple choice, essay, and video portions—took her about three hours.
54. The video interview questions mostly focused on how D.K. would respond to different management scenarios, like how she would address an employee who showed up late or how she would resolve conflicts, with only a few asking about her knowledge of substantive tax law.
55. D.K. felt confident during the video interview that she knew the answers to the questions and could draw on her experience at Intuit to describe how she would respond to different scenarios.

Intuit Rejects D.K.'s Application for Promotion to Seasonal Manager After She Completes a HireVue Interview

56. On August 13, 2024, D.K. received an automated rejection stating that Intuit had "decided to move forward with other candidates."

57. Upon information and belief, the candidates who were hired for the position were not deaf and/or Indigenous.
58. D.K. later received an email on September 25, 2024 with feedback about how to “improve [her] application and interview approach.” Based on the return email address and the generic language of the email, D.K. believed that the feedback was generated by the HireVue automated analysis of D.K.’s interview.
59. To “[b]uild[] expertise” in the skill area of “[e]ffective [c]ommunication,” the email stated that D.K. should “focus[] on providing more concise and direct answers to interview questions, showcasing your ability to articulate complex tax concepts in a clear and understandable manner, and demonstrating flexibility in adapting your communication style to different audiences.”
60. The email also recommended that she “[p]ractice active listening,” and that she “[f]ocus on projecting confidence in [her] expertise and effectively communicating [her] knowledge to others.”
61. As an “[e]nhancement opportunit[y]” related to her “expertise in tax matters[,]” the email suggested that she “practice explaining tax concepts in a clear and concise manner.”
62. These recommendations directly relate to D.K.’s status as Deaf and demonstrate that her communication style, which is directly related to her disability, was an inappropriate factor in the hiring decision. It also reflects the inability of the technology to work at all with deaf applicants.
63. On October 31, 2024, D.K. requested a copy of her personnel file in accordance with Colorado law. As of the time of this filing, Intuit has only shared minimal personnel file documents with D.K.

INTUIT AND HIREVUE VIOLATED THE ADA, TITLE VII, AND COLORADO ANTI-DISCRIMINATION LAWS

64. D.K. is a qualified, Indigenous individual with a disability who applied for a position for which she met the hiring requirements. She was not hired for that position after participating in an online HireVue interview, and upon information and belief, the individuals hired for the position were not deaf and/or Indigenous. Intuit utilized the HireVue interview platform for its hiring process, a tool that is likely to discriminate against applicants who are deaf and non-white and therefore likely discriminated against D.K. Intuit used this tool notwithstanding D.K.’s reported concerns about the HireVue platform to the Intuit Accessibility Team that it was likely to function poorly for deaf

applicants. During the application process, Intuit also failed to provide D.K. with a reasonable accommodation for the HireVue interview process.

65. Given the ways that tools like HireVue's platform fail to properly measure the abilities of deaf and hard of hearing and non-white individuals, as described above, it is likely that D.K. received a lower score or performance evaluation on the HireVue platform because she is both Indigenous and Deaf, representing intersectional discrimination on multiple protected grounds. As a result, Intuit improperly denied D.K. the promotion for Seasonal Manager.
66. As described above, D.K. also received a lower score on a performance metric in 2020 while serving as a Tax Associate, likely due to the automated monitoring technology that failed to accurately capture her speech because she is Deaf. This artificially low performance metric may have also been considered in the denial of her promotion for Seasonal Manager, and it put Intuit on notice that HireVue's use of similar technology does not work for deaf applicants.
67. Intuit may have otherwise denied D.K.'s promotion to Seasonal Manager because she is Indigenous and Deaf.
68. Intuit and HireVue violated the CADA by refusing to hire or promote on the basis of a disability and/or race; and by using a form of employment application that expresses, either directly or indirectly, a limitation, specification, or discrimination on the basis of disability and/or race. HireVue also violated the CADA by failing to list and properly classify D.K. for employment, and by refusing to refer D.K. for employment because of her disability. Furthermore, HireVue aided and abetted Intuit's discriminatory conduct by providing Intuit with its platform despite its knowledge that its technology discriminates against deaf and hard of hearing and/or non-white applicants.
69. Intuit and HireVue violated the ADA by denying employment opportunities to an otherwise qualified individual with a disability; using qualification standards, employment tests or other selection criteria that screen out or tend to screen out a person or people who are deaf; failing to select and administer tests concerning employment in the most effective manner to ensure that it accurately reflected D.K.'s knowledge, skills, and abilities rather than reflecting that D.K. is Deaf; limiting, segregating, or classifying a job applicant or employee in a way that adversely affects their opportunities or status because of the disability; failing to provide D.K. reasonable accommodations during the application process; and/or utilizing standards, criteria or methods of administration that have the effect of discrimination on the basis of disability.
70. Intuit and HireVue also violated Title VII because, upon information and belief, HireVue's technology described herein has a disparate impact on the basis of race.

71. WHEREFORE: Complainant, D.K., prays that the Colorado Civil Rights Division grants such relief as may exist within the Division's power and which the Division may deem necessary and proper.