



Employment Practices **ALERT**

7th Circuit: ADA Requires Employer to Reassign Disabled Employee to Vacant Position

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On September 7, 2012, in [*Equal Employment Opportunity Commission v. United Airlines, Inc., No. 1101774 \(Sept. 7, 2012\)*](#), the U.S. Court of Appeals for the Seventh Circuit adopted a new standard for determining when a disabled employee must be reassigned to a vacant position pursuant to the Americans with Disabilities Act (ADA).

In this case, the employer adopted Reasonable Accommodation Guidelines, which provided that while a transfer to an equivalent or lower-level vacant position might be a reasonable accommodation, employees who sought an accommodation were still required to participate in a competitive process for the position. The employer's policy also provided that disabled employees seeking accommodation would receive some preferential treatment in the process, but that the best-qualified candidate would ultimately be selected. The U.S. Equal Employment Opportunity Commission challenged this policy as violating the ADA. In defense, the employer argued that it was not required to grant a requested accommodation that would violate a disability-neutral rule.

The district court upheld the employer's policy based upon the Seventh Circuit's decision *EEOC v. Humiston-Keeling*, 227 F.3d 1024 (7th Cir. 2000). There, the Seventh Circuit found that the ADA did not require an employer to reassign a disabled employee to a job for which there is a better applicant, provided it is the employer's consistent and honest policy to hire the best applicant for the particular job in question.

In *United Airlines*, the Seventh Circuit reversed its prior stance. Relying on the U.S. Supreme Court's decision in *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002), the Seventh Circuit outlined the test to determine whether a disabled employee should be reassigned to a position over a more qualified applicant. The initial inquiry is whether the mandatory reassignment is ordinarily reasonable. If it is reasonable, then the second step is to determine if there are fact-specific considerations particular to the employer's operations that would create an undue hardship and render mandatory reassignment unreasonable.

The court ultimately reversed the district court's ruling, holding that: ". . . the ADA does indeed mandate that an employer appoint employees with disabilities to vacant positions for which they are qualified, provided that such accommodations would be ordinarily reasonable and would not present an undue hardship to that employer."



Providing reasonable accommodations for disabled employees is required under federal law, and, in fact, under many state-specific statutes. Employers must ensure that their written policies as well as their employment practices and processes are compliant with these laws.

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