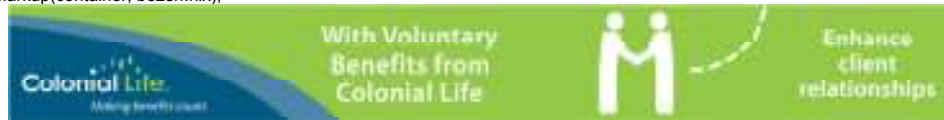


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Job Reassignment Was Required by ADA

10/1/2012

By Ilana Pearlman

The Americans with Disabilities Act (ADA) requires employers to appoint employees with disabilities to vacant positions for which they are qualified, provided such accommodation does not present an undue hardship to the employer, according to the 7th U.S. Circuit Court of Appeals.

The ADA requires employers to provide “reasonable accommodation” to disabled employees to enable them to work and includes “reassignment to a vacant position” as a possible “reasonable accommodation” for disabled workers.

In 2003, to comply with the ADA, United Airlines established internal policies for employees who could no longer perform the essential functions of their current jobs due to their disabilities. These reasonable accommodation guidelines provided that such employees would not be transferred to vacant positions automatically. Instead, transfers were competitive. Disabled employees could apply for an unlimited number of positions for which they met the basic qualifications and would be guaranteed interviews; however, they were guaranteed to be offered the position only if the other applicants had equal or lesser qualifications.

The U.S. Equal Employee Opportunity Commission (EEOC) sued United Airlines, contending that this policy of competitive, rather than automatic transfer, violated the ADA’s requirement that employers provide reassignment to a vacant position as a possible reasonable accommodation.

The trial court dismissed the case, because United Airlines’ policy was in line with prior 7th Circuit precedent; in *EEOC v. Humiston-Keeling*, the 7th Circuit had held that the ADA did not require an employer to appoint a disabled employee to a position in preference to a more qualified applicant, provided the employer had a consistent policy of hiring the best applicant for each job.

In this case, after the EEOC appealed the dismissal, the 7th Circuit expressly overruled *EEOC v. Humiston-Keeling* based on its conclusion that the United States Supreme Court had found previously that accommodation through appointment to a vacant position might be reasonable, even if other qualified candidates exist.

Specifically, the appellate court held that in cases of disputes regarding automatic appointment to vacant positions, the trial court should engage in a two-step inquiry. In the first step, the trial court must consider if mandatory reassignment is ordinarily, “in the run of cases,” a reasonable accommodation. The appellate court suggested that mandatory reassignment would be a reasonable accommodation in most cases, and that, even when it is not, plaintiffs may still prevail by showing that special factors make mandatory reassignment reasonable in their cases. In the second step, the trial court must determine if there are fact-specific considerations particular to the employer’s employment system that would create an undue hardship and render mandatory reassignment unreasonable.

Essentially, the appellate court held that, absent a showing of case-specific undue hardship, the ADA requires employers to reassign disabled workers to open positions for which they are qualified, even if the disabled workers are not the most qualified candidates. Further, the court held that in determining the reasonableness of an accommodation, a policy of hiring the most qualified candidate should not be granted the same deference as a seniority policy.

EEOC v. United Airlines Inc., 7th Cir., No. 11-1774 (Sept. 7, 2012).

Professional Pointer: With this decision, the 7th Circuit joined the 10th and D.C. circuits in holding that the ADA will sometimes require mandatory reassignment of disabled employees to vacant positions.

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