

Seventh Circuit Expands Employers' Obligations Under the ADA

The United States Court of Appeals for the Seventh Circuit recently expanded employers' obligations to accommodate disabled employees under the Americans with Disabilities Act (ADA). In *EEOC v. United Airlines, Inc.*, 693 F.3d 760 (7th Cir. 2012), the Seventh Circuit addressed whether the ADA requires employers to appoint employees who are losing their positions due to a disability to vacant positions for which they are qualified. The Seventh Circuit previously held that the ADA imposed no such requirement on employers. In *United Airlines*, the employer allowed employees who, because of disability, were no longer able to perform the essential functions of their current positions (with or without reasonable accommodations) to apply for vacant positions. These individuals were given some preference during the hiring process; for example, they would be hired for the job over other, equally qualified applicants. However, if another applicant was more qualified, then that applicant would be hired. The federal Equal Employment Opportunity Commission argued that, under the ADA, employers are required to appoint employees who are losing their current positions due to a disability to vacant positions for which they are qualified, regardless of the qualifications of other applicants.

Although the Seventh Circuit initially affirmed the District Court's ruling, it later issued this new opinion and adopted a different rule. Specifically, the Seventh Circuit reversed prior precedent and held that the ADA requires employers to appoint employees with disabilities to vacant positions for which they are qualified, even if a more qualified candidate has applied for the vacant position, unless such an accommodation would not be reasonable or would present an undue hardship.

As a result of this decision, employers in the Seventh Circuit must consider appointing employees who, because of disability, are no longer able to perform the essential functions of their current positions (with or without reasonable accommodation) to vacant positions as a reasonable accommodation. In addition, employers should examine their transfer policies to ensure that they do not conflict with the court's new interpretation of an employer's obligations under the ADA. Employers without a transfer policy should consider implementing such a policy to ensure the proper procedures are in place to address transfer requests by disabled employees.

POSTED:

Jan 6, 2013

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