



Appellate Court Holds that ADA Does Not Require Reassignment Without Competition

Prepared by:
Tasos C. Paindiris and Paul Patten
Jackson Lewis P.C.



January 2017

Appellate Court Holds that ADA Does Not Require Reassignment Without Competition, ©2017 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 700 available
- ☑ Slide Decks - More than 1700 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

Appellate Court Holds that ADA Does Not Require Reassignment Without Competition

By Tasos C. Paindiris and Paul Patten on December 16, 2016

The Equal Employment Opportunity Commission (EEOC) suffered a setback in its attempt to establish that the Americans With Disabilities Act (ADA) requires an employer to reassign an employee to an available position without having to compete with other candidates for that position. In *EEOC v. St. Joseph's Hospital*, the Eleventh Circuit Court of Appeals held that a Florida District Court correctly interpreted the ADA when it held that there is no mandate for noncompetitive reassignment as an accommodation.

The case involved a disabled nurse who sought accommodation under the ADA because she required the use of a cane. The plaintiff could not continue working in her existing position while using a cane because it was a safety hazard and she therefore sought reassignment to another unit in the Hospital. She was given the opportunity to apply for other jobs in the Hospital but she had to compete with other candidates for them. The plaintiff did not meet the Hospital's requirement for internal candidates to have been in their position for 6 months and to have no final written warnings. The Hospital agreed to waive these requirements as an accommodation. The nurse applied for seven positions and the EEOC argued that she was qualified for three of them. For various reasons the Hospital determined that other candidates were better qualified and the plaintiff was not selected. When she did not obtain another position, the Hospital terminated her employment. The EEOC filed suit claiming the Hospital

violated the ADA by not reassigning the plaintiff to a vacant position without requiring her to compete with other applicants for those jobs.

The court found that plaintiff was disabled and that she was qualified with respect to the jobs she was seeking. However, the court concluded that “the ADA does not require reassignment without competition for, or preferential treatment of, the disabled.” The court acknowledged that reassignment to a vacant position is a potential accommodation that may be reasonable in some circumstances. The court compared the Hospital’s policy to hire the best-qualified applicant to seniority systems. Previous cases have held that it would be unreasonable to require an employer to reassign disabled workers in contravention of its seniority system. Similarly, the court stated that “passing over the best-qualified job applicants in favor of less-qualified ones is not a reasonable way to promote efficiency or good performance.” As such, the Hospital should not be required to undermine its policy requiring the best qualified candidate to be selected for a position.

The ruling is good news for employers with employees in the Eleventh Circuit who have a desire to fill positions with the most qualified candidate. An employee whose disability prevents him or her from continuing to work in his/her original position will not need to be automatically reassigned to a vacant position just by showing minimum qualifications. However, employers will be wise to approach such situations carefully, and not simply as “business as usual.” The Eleventh Circuit’s ruling contemplated that there might be situations (“special circumstances”) where a non-competitive reassignment would be required as a reasonable accommodation. Indeed, while the lower court here found that the Hospital was not required to reassign the nurse without competition as a matter of law, the court went ahead and held a jury trial on the issue. Moreover, other courts of appeal have ruled differently and, given the split in the circuits, this issue may

eventually make its way to the Supreme Court. We also believe that the EEOC will continue to expect reassignment be based only on minimal qualifications. In short, the dynamics of reassignment continue to be challenging and it is best to work with legal counsel with ADA expertise to navigate these choppy waters.

