

EEOC Suffers Another Setback – ADA Does Not Require Automatic Reassignment of Disabled Employee to Open Position

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As we have previously reported, under the Obama administration, the Equal Employment Opportunity Commission (EEOC) has aggressively sought to expand the breadth of the agency's authority to [collect employee pay data](#) and other [private company information](#). Similarly, the EEOC has sought to expand the scope of federal civil rights laws in a number of areas, such as enforcing protections for [transgender employees](#) and applying Title VII to [sexual orientation-based harassment](#).

However, as we have also reported, several of the EEOC's efforts to expand the agency's power have been challenged in the courts, and [at least a few times](#) the EEOC [has lost](#). Earlier this month, the United States Court of Appeals of the Eleventh Circuit (covering Alabama, Florida, and Georgia) handed the EEOC another loss.

In the case before the court, the EEOC brought suit on behalf of a former nurse who worked in a hospital psychiatric ward, alleging violations of the Americans with Disabilities Act (ADA). The nurse had suffered an injury requiring her to use a cane to walk, which qualified her as disabled under the ADA. The hospital determined that the cane presented a safety hazard in the psychiatric ward because it could be used as a weapon. Therefore, the hospital determined that the nurse could not continue working in the psychiatric ward. The hospital gave the nurse 30 days to apply for other open positions, but she had to compete with other applicants for those positions. Furthermore, if the nurse was in consideration for a position at the end of the 30-day period, the hospital would grant additional time to complete the selection process. The nurse applied for several open positions, but the hospital filled the positions with other more qualified candidates, and the nurse was terminated at the end of the 30-day period.

The EEOC argued that the ADA requires employers to appoint employees who are losing their current positions due to disability to a vacant position for which they are qualified without having to compete with other applicants. Under the EEOC's position, as long as the nurse was qualified for one of the open positions, the hospital was required to transfer her to one of those jobs — even if other applicants were better qualified. The appeals court rejected the EEOC's position, however, and concluded that the hospital did not violate the ADA by requiring the disabled nurse to compete for open positions in accordance with the employer's best-applicant policy.

The court explained that the ADA does not require disabled employees be treated more favorably than non-disabled employees. Therefore, according to the court, the EEOC's position of requiring reassignment of a disabled employee to an open position without competition, when the hospital has a best-applicant policy, would indeed treat disabled employees more favorably. The court also determined that the 30-day period to be hired into another position was reasonable.

In sum, employers in the Eleventh Circuit (Alabama, Florida, and Georgia) clearly have options in determining how they want to handle the issue of job position transfers as reasonable accommodations under the ADA. However, the issue of whether competition for open jobs is permitted under the ADA in the context of a transfer or reassignment is not settled across all the federal circuits. Accordingly, employers, especially those that operate in several different regions or nationally, should exercise caution, including possibly seeking labor and employment counsel, when encountering the issue of transfers/reassignments as a reasonable accommodation.

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