

# CLIENT ALERT

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## Employment & Labor

### Supreme Court: ADA Accommodation is Subject to Seniority

In another test of the scope of a "reasonable accommodation," the United States Supreme Court recently held in *US Airways, Inc. v. Barnett*, that if an employer has a well-established seniority policy, which is uniformly followed, seniority rights under such a policy will prevail over a conflicting request for a reasonable accommodation made pursuant to the Americans with Disabilities Act ("ADA").

#### The Conflict Between US Airways' Seniority Policy and Barnett's Requested Accommodation

Robert Barnett was an employee of US Airways whose duties included handling cargo. When he injured his back while working, Barnett exercised his seniority rights and transferred to a less physically demanding position in the mailroom that was subject to bumping under the company's employer-established seniority policy.

Barnett learned that two other, more senior employees intended to exercise their seniority rights and bump him from the mailroom position. As a result, he asked US Airways to make an exception to the seniority policy and allow him to remain in the position, which he claimed was a reasonable accommodation for his disability. The company ultimately rejected the request and Barnett was bumped pursuant to the seniority policy.

#### The ADA Provisions At Issue

The ADA prohibits an employer from discriminating against a "qualified

individual with a disability." A "qualified" individual includes someone who, "with or without reasonable accommodation, can perform the essential functions" of the job at issue. Under the ADA, employers are generally obligated to make a reasonable accommodation. The ADA expressly states that a "reasonable accommodation" may include "reassignment to a vacant position."

#### The Lower Courts' Decisions

Barnett claimed that he was an individual with a disability and that assigning him to the mailroom job was a "reasonable accommodation." Therefore, Barnett alleged that he was discriminated against when US Airways bumped him from the mailroom position. US Airways sought to dismiss the lawsuit on the ground that it was not obligated to assign Barnett to a position to which other employees were entitled under the company's well-established seniority policy.

The lower court granted US Airways' motion, holding that the ADA does not require an accommodation that would "impose an undue hardship on the operation of [its] business." The court explained that departing from the seniority system would impose an undue hardship on the company and its non-disabled employees, and noted that the seniority system had been in place for decades, governed 14,000 US Airways agents, and was common in the airline industry.

The U.S. Court of Appeals for the Ninth Circuit reversed that decision, holding that the mere existence of a

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conflicting seniority policy, by itself, does not render a reasonable accommodation an undue hardship. The Ninth Circuit explained that a case by case fact-intensive analysis was required to determine whether the requested accommodation caused undue hardship to the employer.

### **The Supreme Court's Decision**

On appeal to the U.S. Supreme Court, US Airways argued that an accommodation that would require an employer to make an exception to its seniority policy could not be a "reasonable" accommodation, because the ADA only requires equal, not preferential, treatment of disabled employees. The Court explained, however, that a reasonable accommodation is preferential treatment, which the ADA requires so that those with disabilities may have the same workplace opportunities as other employees.

US Airways also argued that it was not required to keep Barnett in the mailroom position because that position was not vacant. The Court rejected this argument because the position was only occupied by Barnett and, in any event, the position was considered open under the company's seniority bumping policy.

Barnett argued that the requirement that an accommodation be "reasonable" only relates to whether it effectively meets the disabled employee's needs. He asserted that a conflict between an employer's seniority plan and the ADA, therefore, would not render an

accommodation unreasonable, but would simply bolster an employer's argument that the accommodation would cause undue hardship. The Court rejected Barnett's argument that reasonableness means effectiveness.

The Court explained that in the absence of US Airways' seniority policy, the request for an assignment to the mailroom would have been a reasonable accommodation. Where there is a conflicting seniority policy, however, such an assignment "will ordinarily be unreasonable."

In reaching this conclusion, the Court noted that courts have not interfered with seniority systems in analogous circumstances. For instance, in Title VII cases, employers are not required to make reasonable accommodations for employee worship schedules where doing so would conflict with other employees' seniority rights. Likewise, seniority rights trump reasonable accommodation requirements under the Rehabilitation Act.

The Court also emphasized the importance of seniority policies in employee-management relations, explaining that they provide "important employee benefits by creating, and fulfilling, employee expectations of fair, uniform treatment." The Court stated that there is no indication that Congress intended the ADA to undermine seniority policies.

Nonetheless, the Court stated that an employee may demonstrate "special circumstances" that warrant a finding that the accommodation is reasonable despite its conflict

with a seniority policy. For example, an employee may demonstrate that the employer has retained the right to make exceptions to the seniority policy and has exercised that right to the point that one more departure from the policy would not likely affect employee expectations that the policy will be followed. The Supreme Court remanded the case in order to allow the District Court to determine whether Barnett could demonstrate "special circumstances" that warrant a finding that the required accommodation was reasonable despite its conflict with the company's seniority policy.

### **Implications For Employers**

As *US Airways v. Barnett* makes clear, an employer is ordinarily not required to deviate from an established seniority policy in order to accommodate an employee under the ADA. In order to ensure that that general rule protects them, however, employers must avoid making exceptions to their employer-established seniority policies. Employers who make such exceptions will find it difficult to convince a court that a disabled employee's request for an assignment is unreasonable because it requires them to make an exception to their seniority policy.

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