

EEOC Scores Six Figure Settlement Against Univ. of Michigan - Policy That Limited Reassignment To The Most Well-Qualified Candidate Violated ADA

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Earlier this year, the Department of Justice (DOJ), which enforces the Americans with Disabilities Act (ADA) alongside the Equal Employment Opportunity Commission (EEOC), sued the University of Michigan regarding the school's policy that required a disabled employee (or any employee) to be the best qualified for a vacancy when seeking reassignment to accommodate the employee's disability. The DOJ's position is that such a policy is a per se violation of the ADA and that the ADA merely requires that a disabled employee who needs a reassignment be qualified, not the "best qualified." Phrased differently – and contrary to most employers' hiring practices – a qualified disabled employee must receive preference for a job opening for which they are qualified, *even if* there is a better qualified applicant, according to the EEOC and the DOJ. On July 22, 2015, the DOJ and the school settled the lawsuit for nearly \$215,000 and other equitable relief. This case serves as a reminder to employers to be familiar with the EEOC's Enforcement Guidance on reasonable accommodations, which explain and give examples of when reassignments and transfers may be reasonable accommodations (among answering other important ADA questions). Some courts - including the Seventh Circuit Court of Appeals in an ADA case brought by the EEOC against United Airlines - have accepted the EEOC's interpretation of the ADA on this point, while other appellate courts have to adopt the EEOC's position. Nevertheless, employers should be mindful of the EEOC's position on this issue when considering whether or not they are required to reassign a disabled employee to an open position.

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