

Universally Applied Seniority-Based Bidding System Trumps ADA Accommodation Says Seventh Circuit – Though Dissenter Disagrees

Labor & Employment Law Update

on December 9, 2015

On December 3, the Federal Court of Appeals for the Seventh Circuit (Illinois, Indiana and Wisconsin) affirmed dismissal of a failure to accommodate claim brought by an employee bumped from a job assignment that accommodated his disability after his employer opened that assignment to seniority-based bidding pursuant to the terms of the collective bargaining agreement (CBA).

After a series of injuries and several extended leaves of absence, the employee was released to return to work with permanent restrictions that prevented him from performing many of the physically demanding essential functions of his position. The employer accommodated his restrictions by placing him into the fairly sedentary “Matrix position.” The CBA allowed employees to bid on their desired work assignments and required the employer place them in their selections according to seniority. The Matrix assignment, however, was reserved for employees with permanent restrictions and was not subject to seniority-based bidding.

The employee had held the Matrix position for years when the employer decided the position should be included in the seniority-based competitive bidding scheme. The employee did not have enough seniority to hold the position. He inquired about several no-bid positions, but none were available at the time. Ultimately he was placed on extended leave and sued.

The employee claimed his employer failed to accommodate his disability by refusing to allow him to remain in the Matrix position and by failing to place him in a no-bid position. Relying on U.S. Supreme Court precedent, the Court held that the employer was not required to violate a uniformly enforced seniority system in order to accommodate an employee’s disability. The employee’s argument with respect to the no-bid positions failed because he could not show a vacancy existed at the relevant time, reaffirming that the Americans with Disabilities Act (ADA) does not require an employer to create a vacancy or “bump” other employees in order to provide an accommodation.

Notably, however, a dissent was filed. The dissenting judge pointed out that the prior precedent on which the majority relied, specifically allowed that “special circumstances” can warrant a finding that the requested accommodation is reasonable under the particular facts despite the existence of a seniority system. He concluded that evidence that the employer excluded the Matrix position from the seniority system for years could warrant such a finding. Whether the employee will ask the United States Supreme Court to review the decision remains to be seen.

Bottom line: Although this decision is a win for the employer and welcomed guidance for employers who regularly find themselves balancing individual employee's ADA rights and its obligations under a CBA, the dissent highlights the fact that, as with all things ADA, there are no clear answers. Careful analysis of all accommodation options and a review of available positions must be conducted on a case by case basis.

Universally
Applied
Seniority-
Based
Bidding
System
Trumps ADA
Accommod-
ation Says
Seventh
Circuit –
Though
Dissenter
Disagrees