

## ***SENIORITY SYSTEM ORDINARILY TRUMPS AN ACCOMMODATION REQUEST UNDER THE AMERICANS WITH DISABILITIES ACT***

In *U.S. Airways, Inc. v. Barnett*, the United States Supreme Court held that an employer is not ordinarily required to violate a seniority system in order to accommodate the request of a disabled employee. Ordinarily, a requested accommodation that is contrary to an employer's seniority system will be deemed unreasonable. However, the door remains open for an employee to show special circumstances that make an exception to the seniority rule reasonable in a specific case.

### **Barnett Requests an Exception to the Seniority System**

Robert Barnett injured his back while working in a cargo-handling position at U.S. Airways. Barnett invoked seniority rights and transferred to a less physically demanding position in the mailroom. The mailroom position later became open to seniority-based employee bidding, and Barnett learned that employees senior to him intended to bid on the position. Barnett requested an accommodation from U.S. Airways that would create an exception to the seniority system so that he could stay in the mailroom position. When U.S. Airways rejected Barnett's request, he lost his job.

### **Barnett Files Suit**

Barnett filed suit under the Americans with Disabilities Act of 1990 ("ADA"), which prohibits an employer from discriminating against "an individual with a disability" who with "reasonable accommodation" can perform a job's essential functions, unless the employer "can demonstrate that the accommodation would impose an undue hardship on the operation of [its] business." 42 U.S.C. §§12112(a) and (b). The ADA's list of possible accommodations includes "reassignment to a vacant position." 42 U.S.C. § 12111(9)(b). The trial court dismissed Barnett's case on a motion for summary judgment. On appeal, the Ninth Circuit reversed, ruling that reassignment might be a reasonable accommodation, and that a seniority system was merely "a factor" in determining whether the accommodation was reasonable. The United States Supreme Court accepted review to decide whether an employer is required to reassign a disabled employee to a position as an accommodation, even though another employee is entitled to that position under the employer's seniority system.

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

Justice Breyer stated that a disabled employee must propose an accommodation that is "reasonable on its face." If the accommodation involves a conflict with a seniority system, it will ordinarily be an unreasonable request. In reaching its conclusion that such requests are generally unreasonable, the Supreme Court recognized the importance of seniority systems to employee-management relations, including "important employee benefits" such as "creating, and fulfilling, employee expectations of fair, uniform treatment." Accordingly, "the seniority system will prevail in the run of cases."

While the Supreme Court established a presumption in favor of seniority systems, it did not make that presumption conclusive. The employee remains free to show special circumstances that might make the requested accommodation “reasonable.” The Court provided two possible examples of “special circumstances” that could “trump” the seniority system: (1) a seniority system where the employer makes frequent, unilateral changes such that employees are left with reduced expectations that the system will be followed; and (2) a system that already contains so many exceptions that “one further exception is unlikely to matter.”

### **What This Means for Employers**

A bona fide seniority system will ordinarily trump a request for accommodation under the ADA. Thus, employers need not assign a disabled employee to a position to accommodate his or her protected disability if other non-disabled employees are entitled to the position by virtue of the seniority system.

If an employer regularly makes changes or exceptions to its seniority system, a disabled employee may be successful in proving “special circumstances” justifying deviation from the seniority system.

This ruling applies to both union and non-union work environments. In this case, the U.S. Airways’ seniority system was devised by management and was not part of a union’s collective bargaining agreement. However, the Supreme Court noted unanimous lower court decisions, which held that collectively bargained agreements trump reasonable accommodation requests under the similar Rehabilitation Act. Further, the Supreme Court focused on the importance of seniority systems to positive employee-management relations.

Oregon employers should note that Oregon state disability law tends to follow the ADA case law.

Washington employers should note that Washington’s Law Against Discrimination differs from the ADA, so this decision does not necessarily affect claims brought under Washington law for failure to provide a reasonable accommodation.

*Because of the changing nature of this area of the law and the importance of individual facts, this information is not meant to provide legal opinions and is not a substitute for the advice of legal counsel.*

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