In an eagerly awaited decision testing the scope of what is a "reasonable accommodation," the U.S. Supreme Court ruled an employer ordinarily will not be required to violate a seniority system to comply with the Americans with Disabilities Act. In US Airways, Inc. v. Barnett U.S., No. 00-1250 [PDF file/519 KB/38 pgs.], the Court ruled that preferring a disabled employee over two, more senior employees in an assignment request was not "reasonable in the run of cases" and, absent a showing of "special circumstances" to justify such a preference, courts should find such accommodations "unreasonable."

In its ruling, the Supreme Court held that, in most cases, the ADA does not require an employer to violate a bona fide seniority system as a reasonable accommodation. The Court rejected the positions of both parties and forged a new standard, essentially adopting a middle ground between the two. Essentially, the ruling establishes a burden shifting approach to analyzing requests for accommodations under the ADA. At the outset, an employee carries the burden of proving that an accommodation is "reasonable." An employee can do this by showing that the accommodation is "reasonable on its face" or, assuming it is not, that there are "special circumstances" that make the accommodation "reasonable" in the specific situation at hand. Once this is established, the burden then shifts to the employer to prove the proposed accommodation poses an undue hardship on the operation of the business.

The Court held that violating a seniority system "would not be reasonable in the run of cases" unless the employee can show some additional facts, i.e., special circumstances, that make a violation of the seniority system reasonable in his particular situation. For example, the Court said the employee may be able to show that the employer already had made exceptions to the seniority system in its policy or practices. If so, the burden would then shift to the employer to show that violating the seniority system would pose an undue hardship on its operations.

Since the Barnett case involved a unilaterally adopted seniority system, both union and nonunion employers now must determine what the impact will be on their seniority systems. Even more challenging, employers must assess how the analysis in Barnett applies to requests for accommodations involving other kinds of employer policies and practices.

From a preventive perspective, Barnett continues to support the view that there are few "per se" rules under the ADA and the key to compliance lies with "individualized assessment." However, the decision seems to suggest that employers seeking to minimize the need to make "reasonable accommodation" exceptions to "disability-neutral" policies, such as seniority policies, should consider limiting exceptions made in other circumstances. A blanket "no exceptions" approach obviously runs counter to the concept of "individualized assessment."

For more information on the Barnett decision and its implications for both unionized and nonunion health care employers, please visit our website.
‘Safe Time’ Amendments to New York City Paid Sick Leave Effective May 5, 2018

Amendments to the New York City “Earned Safe and Sick Time Act” (ESTA) went into effect on May 5, 2018. Eligible employees under the ESTA will be able to use paid time off for circumstances resulting from the employee or a covered family member of the employee being the victim of family offense matters, sexual offenses, stalking, or...

New Jersey Enacts Paid Sick Leave Act and Springs Forward with Legislative Agenda

Expanding employee protections in New Jersey is on the agenda for the overwhelming party-majorities in the Senate and the Assembly in the Legislature and for Governor Phil Murphy. In the latest development, Governor Murphy signed The New Jersey Paid Sick Leave Act on May 2, 2018. The bill passed by 2-1 margins in both houses. The...

Iowa Amends Tough Drug Testing Law to Lower Standard for Positive Alcohol Tests

Beginning July 1, 2018, private employers in Iowa may take action based on an employee’s alcohol test result of .02 grams of alcohol per two hundred ten liters of breath. The lower standard was enacted under a 2018 amendment to the Iowa drug testing law (Iowa Code Section 730.5). Prior to the amendment, employers could not take action...

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