



The (Sometimes) Forgotten Element of the Accommodations Process

Melanie Payton & Chrissy Theiss
Tuesday, August 6

What is “Reassignment” Under the ADA?

“Reassignment to a vacant position” is a form of reasonable accommodation

When does it apply?

- An employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship
- Often referred to as the “accommodation of last resort”



Where Reassignment Fits Into the Process

- Reassignment may be an outcome of the interactive discussion
- If it's not feasible for the employee to remain in their current position, reassignment to an alternative, vacant position may be warranted

Request



Identify



Determine



Research



Accommodate



Definitions

Qualified

Reasonable
amount of
time



Equivalent
position

Vacant



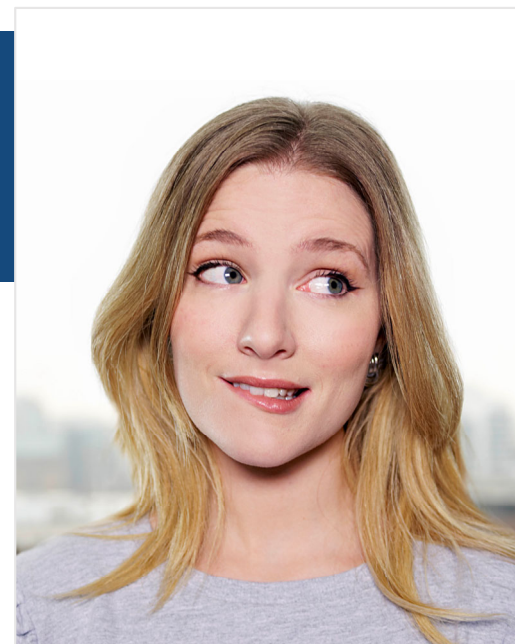
Applicants

Definition vs. Execution

“Reassignment” as a concept is well-defined in the ADA

Questions exist about “how” an employer should go about the reassignment process:

- Does the employer or the employee search for vacant positions?
- How long should the search for a vacant position last?
- Should the search encompass vacant positions outside of the employee's current department and/or location?



What is the Employer's Role in Searching for a Vacant Position?

Responsibilities:

- The employer is in the best position to know which jobs are vacant or will become vacant within a reasonable period of time
- The employer has an obligation to inform the employee
- The employer should incorporate questions about the employee's qualifications and interests during the interactive discussion
- The employer should assist in the search if they have access to information about vacant positions



Collaborative
process –
between the
employer and
employee

Timeframe:

- Not formally defined – it will vary
- The employer should avoid unnecessary delays
- Could range from a few days to a few weeks

Other Issues



Competing for a position

- Statute is silent
- EEOC guidance states process should be non-competitive
- Circuit Courts are split

Seniority systems and impact on reassignment

- Generally, it will be "unreasonable" to reassign an employee with a disability if doing so would violate the rules of a seniority system
- Special circumstances may apply

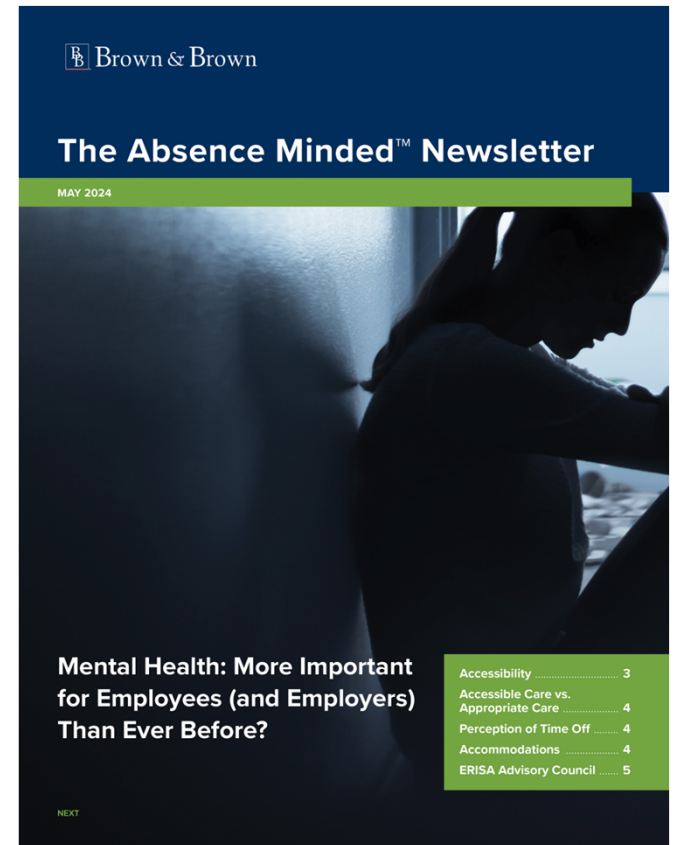
Case Law

- EEOC v. Citizen's Bank, N.A. (Nov 2023)
- EEOC v. Public Service Company of New Mexico and PNMR Services Co. (Oct 2023)
- EEOC v. Munster Medical Research Foundation, Inc., d/b/a Community Hospital (Oct 2023)
- EEOC v. Scottsdale Healthcare Hospitals d/b/a HonorHealth (Sept 2023)
- EEOC v. McLeod Health (Sept 2017)
- U.S. Airways, Inc. v. Barnett (2002)

Absence Minded Newsletter

Receive the latest information on leave and absence delivered complimentary to your email box once a quarter.

Scan the QR code below to sign up



Sources

- EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA
 - <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#reassignment>
- Job Accommodation Network – Accommodation and Compliance: Reassignment
 - <https://askjan.org/topics/Reassignment.cfm#:~:text=Reassignment%20to%20a%20vacant%20position,Reasonable%20Accommodation%20and%20Undue%20Hardship>