

# Charities in the Courtroom, Pt. 10: Disabilities Accommodation Rules

07.06.17 | Linda J. Rosenthal, JD



A recent federal court ruling in Texas is an important reminder that nonprofits must pay careful attention not only to the laws directly affecting their favored tax status, but to general laws as well like those that apply across the board to all employers. *EEOC v. Methodist Hospitals of Dallas*, No. 3:2015-cv-03104 (N.D. Tex. Mar. 9, 2017) involved a nonprofit institution covered under the [Americans with Disabilities Act](#) (“ADA”). While this time, the hospital won the case, an identical lawsuit brought in another part of the United States may have a different result. There is currently a split in the federal circuits on this particular ADA issue. It’s likely that the matter will eventually be taken up by the Supreme Court to resolve.

## *Employment Rights of Disabled People*

The plaintiff in *EEOC v. Methodist Hospitals of Dallas* was a patient care technician at the defendant-hospital when she sustained an on-the-job injury that prevented her from doing the required duties of lifting and moving patients around the facility.

Exercising the rights allowed her under the federal ADA, she [asked for an “accommodation.”](#) At that time, there were two vacant positions at the hospital for which she met the minimum qualifications. However, she was not chosen for either of these vacancies and was terminated.

The hospital’s position was that it was not required to place this disabled worker in either available spot, because there were other, more qualified, people seeking the jobs. The Equal Employment Opportunity Commission’s position was that the hospital “maintained an unlawful policy by requiring individuals with disabilities to compete for vacant positions where the individual was qualified for the position.

The judge ruled for the hospital, accepting the institution’s argument that there was no additional action mandated under the ADA under the particular circumstances here.

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*Central to the issue in this case, the ADA lists reassignment to a vacant position as a form of reasonable accommodation. 42 U.S.C. § 12111(9). The EEOC guidance on reasonable accommodation also states that an employee does not need to be the best qualified individual for the position in order to be reassigned to a vacant position.*

There is disagreement, though, among the federal appellate circuits “regarding whether an employer violates the ADA by requiring individuals with disabilities to compete with other candidates for reassignment to a vacant position.”

The Eleventh and Eighth Circuits have ruled that the “ADA does not require preferential treatment for reassignment and merely requires employers to allow individuals with disabilities to *compete equally* for vacant positions.” There is contrary precedent in the Tenth and D.C. Circuits.

In Texas, federal court appeals are made to the Fifth Circuit. While there is no case directly on point in the Fifth Circuit on this particular question, the district judge considered the available precedent on related matters, and concluded that it is likely the Fifth Circuit would side with the Eleventh and Eighth Circuits; that is, not require the employer to necessarily prefer the disabled worker over more qualified candidates for vacancies.

If a hypothetical nonprofit organization in California were faced with such a lawsuit, there is currently no clear-cut answer. There is no existing precedent directly on this point in the Ninth Circuit.

California does, however, have state laws regarding the rights of disabled persons. Both the federal Americans with Disabilities Act and the California Fair Employment and Housing Act [Govt C §§12926(k), (q), 12940(a), (d)] prohibit discrimination based on the disability of a job applicant.

## Conclusion

These complex rules regarding disabilities accommodation in the workplace are challenging, but cannot be ignored by any employer, either for-profit or nonprofit.

Two useful resources on ADA issues for California employers are “[10 Steps to Hiring Without Violating Disability Discrimination Laws](#)” and “[Disability Accommodation: The Big Picture](#).” Both are published by the blog of the CEB: California Continuing Education of the Bar.