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The U.S. Equal Employment Opportunity Commission

ADA TECHNICAL ASSISTANCE MANUAL ADDENDUM

Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and becomes effective January 1, 2009. Because this law makes several significant changes, including changes to the definition of the term "disability," the EEOC will be evaluating the impact of these changes on this document and other publications. See the [list of specific changes to the ADA](#) made by the ADA Amendments Act.

Since *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act* was published, the Supreme Court has issued three rulings that necessitate changes in this document.

First, the Supreme Court has ruled that the determination of whether a person has an ADA "disability" must take into consideration whether the person is substantially limited in performing a major life activity when using a mitigating measure. This means that if a person has little or no difficulty performing any major life activity because s/he uses a mitigating measure, then that person will not meet the ADA's first definition of "disability." The Supreme Court's rulings were in *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999), and *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999).

As a result of these two Supreme Court cases, this document's guidance on mitigating measures, found at page II-2 and Appendix B, pages 7 and 10, section 1630.2(h) and (j), is superseded. Following the Supreme Court's ruling, whether a person has an ADA "disability" is determined by taking into account the positive and negative effects of mitigating measures used by the individual.

Second, the Supreme Court has ruled that an accommodation is "reasonable" if it "seems reasonable on its face, i.e., ordinarily or in the run of cases." *US Airways, Inc. v. Barnett*, 535 US ____, 122 S. Ct. 1516 (2002). The Court also ruled in *Barnett* that while it will generally be "unreasonable" for an employer to violate a seniority system in order to provide a reassignment, there may be "special circumstances" that would nevertheless make it "reasonable" to provide such an accommodation.

As a result of Barnett, this document's guidance regarding the meaning of "reasonable accommodation," has been superseded in part. This document's guidance on potential conflicts between reassignment and seniority systems has been superseded. In accordance with the Barnett decision, the following changes are made:

I. Section 3.4 Some Basic Principles of Reasonable Accommodation (page III-3)

Delete "A reasonable accommodation must be an effective accommodation." Substitute: "A modification or adjustment must be "reasonable" and effective."

II. Section 3.9 The Undue Hardship Limitation

The second example on page III-16, dealing with seniority and reassignment, is deleted.

III. Section 3.10 Examples of Reasonable Accommodations

5. Reassignment to a Vacant Position (page III-25)

The following paragraph becomes the final paragraph of this subsection:

Generally, it will be "unreasonable" for an employer to violate a seniority system in order to provide a reassignment. However, there may be "special circumstances" that undermine employee expectations about the uniform application of the seniority system, and thus it may be a "reasonable accommodation," absent undue hardship, to reassign an employee despite the existence of a seniority system. There is not an exhaustive list of what constitutes "special circumstances," but examples may include where a seniority system contains exceptions such that one more is unlikely to matter, or where an employer retains the right to alter unilaterally the seniority system and has done so fairly frequently.

IV. Section 7.11 Contractual or Other Relationships 7.11(a) Collective Bargaining Agreements

The example on page VII-12, dealing with seniority and reassignment, is deleted.

The Supreme Court's rulings in Sutton, Murphy, and Barnett do not change anything else in this document.

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Note: *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act* is not available on this web site. Print copies can be ordered from our [publications page](#).

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