

Persuasive Legal Brief

This writing sample is a persuasive legal brief written as part of my second-semester legal writing course. The brief was submitted on behalf of a hypothetical defendant in support of a motion for summary judgment and addresses whether the Americans with Disabilities Act (“ADA”) requires an employer to reassign a qualified employee with a disability to a vacant position over a more qualified applicant. The assignment required advocacy on behalf of the assigned client in a simulated case before the U.S. District Court for the District of Maine.

Context: The brief addresses a hypothetical employment discrimination action in which an employee who could no longer perform her existing position because of a disability sought reassignment to a vacant project manager position. The employer instead selected a more qualified applicant pursuant to its best-qualified-candidate hiring policy. The brief argues that the ADA does not require reassignment over a more qualified candidate, relying on statutory text and structure, legislative history, and the statute’s policy objectives.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

AMINA HASSAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CV No. 25-CRL-521
	)	
HERITAGE RESTORATION CO.,	)	
	)	
Defendant.	)	
	)	
	)	

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

PRELIMINARY STATEMENT

The Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101-12213, was enacted to protect employees from disability discrimination, not to dismantle disability-neutral hiring policies that preserve employer discretion and efficient business practices. Yet, Plaintiff Amina Hassan (“Hassan”) asks this Court to do exactly that, transforming the ADA from a shield against discrimination into a sword to compel guaranteed placement over a more qualified candidate.

The ADA’s use of the permissive term “may,” the foundation upon which the statute was enacted, and the Act’s principal policy objectives confirm that reassignment is discretionary.

Accordingly, Defendant Heritage Restoration Company (“Heritage”) seeks summary judgment under Rule 56 of the Federal Rules of Procedure on the grounds that employers are not required to reassign a disabled employee to a vacant position over a more qualified candidate.

STATEMENT OF FACTS

Hassan worked as a glazier for Heritage Restoration Company from 2012 until she was separated from the company in December 2024. Deposition of Amina Hassan (“Hassan Dep.”) 1:8-11, 5:3-7. On August 22, 2024, Hassan was injured on the job, which restricted her ability to raise her right arm above her shoulder and prevented her from continuing her work as a glazier. Hassan Dep. 1:18-20, 2:12-22, 3:8-11; Deposition of Semhar Kifle (“Kifle Dep.”) 1:14-18; Doctor’s Note. Heritage attempted to identify other positions for Hassan but there were no available roles that she could perform with limited dominant-arm mobility. Kifle Dep. 1:13-19; Deposition of Craig Thompson (“Thompson Dep.”) 2:11-16.

In November 2024, Hassan met with Heritage’s Human Resources Officer, Semhar Kifle, and requested reassignment to the vacant Project Manager position (“PMP”). Kifle Dep. 1:8-9; Hassan Dep. 3:12-18. The preferred qualifications for the PMP were prior project management experience and a graduate degree. Kifle Dep. 3:9-13; Exhibit A. Hassan did not possess a graduate degree, had never

served as a project manager, and had no formal managerial experience. Hassan Dep. 3:19-20, 4:6-12; Kifle Dep. 3:16-22; Thompson Dep. 3:19.

On December 4, 2024, Thompson informed Hassan that Heritage had selected another candidate, Micah Reddy, for the PMP pursuant to Heritage's longstanding best-qualified candidate hiring policy. Thompson Dep. 3:22, 4:1-3; Hassan Dep. 5:2-8. Reddy held a graduate degree in business and had prior project management experience. Kifle Dep. 1:21, 2:1-6; Thompson Dep. 3:7-10.

Plaintiff Hassan seeks summary judgment on the claim that reassignment under the ADA is mandatory. Pl.'s Cross-Mot. Summ. J. 1. Defendant Heritage also seeks summary judgment on the basis that reassignment is not required when a more qualified applicant is available. Def.'s Cross-Mot. Summ. J. 1. This Court has asked both parties to brief the issue whether the ADA's "reasonable accommodation" provision requires an employer to reassign a qualified disabled employee to a vacant position over a more qualified applicant. *See* Order at 1.

SUMMARY JUDGMENT STANDARD

The Court must grant summary judgment when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In instances of cross-motions for summary judgment, the Court "must view each motion, separately, in the light most favorable to the non-moving party, and draw all reasonable inferences in that party's favor."

OneBeacon Am. Ins. Co. v. Com. Union Assur. Co., 684 F.3d 237, 241 (1st Cir.

2012). Here, Heritage is entitled to summary judgment because reassignment is not mandatory under the ADA.

ARGUMENT

Congress enacted the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213, upon its express finding that continued discrimination denies people with disabilities “the opportunity to compete on an equal basis.” 42 U.S.C. § 12101. The ADA prohibits discrimination against a qualified individual based on disability, which includes a failure to provide reasonable accommodation. 42 U.S.C. § 12112(a), (b)(5)(A). A reasonable accommodation “may include . . . reassignment to a vacant position.” 42 U.S.C. § 12111(9). To establish a failure to accommodate claim, the plaintiff must show she is disabled, qualified to perform the job’s essential functions with or without accommodation, the position desired was vacant, and the employer failed to provide reasonable accommodation. *Audette v. Town of Plymouth*, 858 F.3d 13, 20 (1st Cir. 2017). It is undisputed that Hassan is disabled under the ADA, Hassan could perform the job’s essential functions, and that the position was vacant.

This Court has asked the parties to brief whether the ADA’s reasonable accommodation provision requires reassignment to a vacant position over a more qualified applicant. *See Order at 1.*

In *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 401 (2002), the Supreme Court set forth a two-step framework for determining whether reassignment is

required when it conflicts with a disability-neutral work policy. To survive summary judgment, the plaintiff must prove that the accommodation is “reasonable on its face, i.e., ordinary in the run of cases.” If it is not, the plaintiff must show that special circumstances permit an exception. *Id.* at 404-05.

Several circuits have held that reassignment violating merit-based hiring policies is neither reasonable nor mandatory absent special circumstances. *See Elledge v. Lowe’s Home Ctrs., LLC*, 979 F.3d 1004, 1013-14 (4th Cir. 2020); *EEOC v. Methodist Hosps. of Dall.*, 62 F.4th 938, 948-49 (5th Cir. 2023); *Huber v. Wal-Mart Stores, Inc.*, 486 F.3d 480, 483 (8th Cir. 2007); *EEOC v. St. Joseph’s Hosp., Inc.*, 842 F.3d 1333, 1346-47 (11th Cir. 2016). Other circuits have reached the opposite conclusion. *See Shapiro v. Twp. of Lakewood*, 292 F.3d 356, 361-62 (3d Cir. 2002); *EEOC v. United Airlines, Inc.*, 693 F.3d 760, 763-64 (7th Cir. 2012); *Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1164-67 (10th Cir. 1999); *Aka v. Wash. Hosp. Ctr.*, 156 F.3d 1284, 1304-05 (D.C. Cir. 1998). There is no binding First Circuit authority resolving this issue.

This Court should adopt the reasoning of the Fourth, Fifth, Eighth, and Eleventh Circuits and hold that the ADA does not require reassignment to a vacant position over a more qualified candidate. Congress’s permissive language confirms reassignment is not mandatory.

I. Heritage is entitled to summary judgment because, as a matter of law, reassignment to a vacant position is not mandatory under the ADA.

The first step of statutory interpretation is to determine whether the language at issue “has a plain and unambiguous meaning.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). If it does, the inquiry ends. *Id.* Plainness and ambiguity are determined by looking at “the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* Under *Barnett*, reassignment is required only if it is “reasonable on its face, i.e., ordinary in the run of cases.” *Barnett*, 535 U.S. at 401.

Congress’s use of permissive statutory language confirms reassignment is not mandatory. The ADA’s legislative history confirms equal opportunity to compete rather than preferential placement. Finally, reassignment would frustrate the statute’s underlying purpose. Employing these interpretive tools confirms reassignment is not required under the ADA.

A. The ADA’s use of permissive language, the canon against surplusage, and the statute’s enacted purpose confirms that reassignment is not required.

Statutory interpretation begins with the plain text of the statute. *See Perrin v. United States*, 444 U.S. 311, 314 (1979). Courts assume Congress intended for undefined words to take their ordinary definition, determined by referencing dictionary definitions. *See Perrin*, 444 U.S. at 314; *Taniguchi v. Kan Pac. Saipan*,

Ltd., 566 U.S. 560, 564 (2012). Courts apply the canon against surplusage, which requires that statutes be interpreted so that “no clause, sentence, or word shall be superfluous.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Mandatory language imposes a duty, whereas permissive language grants discretion. *See* Kevin Tobia, Brian G. Slocum & Victoria Nourse, *Statutory Interpretation from the Outside*, 122 Colum. L. Rev. 213, 234 (2022). When Congress includes language in one provision but omits it in another, courts presume this was intentional. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).

1. The use of “may” indicates that reassignment is optional, not required.

The ADA provides that “a reasonable accommodation may include . . . reassignment to a vacant position.” 42 U.S.C. § 12111(9). Congress’s use of “may” indicates discretion, not a duty. *See St. Joseph's Hosp.*, 842 F.3d at 1345. It is interchangeable with “might” or “can.” *See id.* Interpreting “may” as “must” would rewrite the statute, thereby violating the canon against surplusage. *See United States v. Woody*, 220 F. Supp. 3d 682, 690 (E.D. Va. 2016). Accordingly, “may” signals that reassignment “will be reasonable in some circumstances but not in others.” *St. Joseph's Hosp.*, 842 F.3d at 1345.

Congress used mandatory language elsewhere in the ADA but chose permissive language in the reasonable accommodation provision. The medical examinations provision states that “a covered entity shall not conduct a medical

examination... unless such examination or inquiry is shown to be job-related and consistent with business necessity.” 42 U.S.C. § 12112(d)(2)(A). The construction provision similarly uses “unless” to impose mandatory obligations. 42 U.S.C. § 12112(b)(6).

Congress’s deliberate choice to use “may” in the reasonable accommodations provision, rather than mandatory language, signals that reassignment is permissive.

2. The meaning of “reasonable” indicates that reassignment is not required in all circumstances.

A requested accommodation is only mandatory if it is “reasonable on its face.” *Barnett*, 535 U.S. at 401. “Reasonable” means “no more than ‘effective.’” *Id.* at 400-01. Requiring reassignment in all circumstances would substitute “reasonable” with “necessary,” violating the canon against surplusage. *Id.*

The argument that a nonmandatory reading renders reassignment superfluous misapplies the canon against surplusage. *See Woody*, 220 F. Supp. 3d at 690. Interpreting reassignment as something less than always mandatory “does not render it redundant with the obligation not to discriminate.” *Id.* Reassignment is an accommodation of “last resort,” only required when no other effective accommodations would enable the employee to perform the essential functions of the employee’s current position. *See* 29 C.F.R. pt. 1630 app. § 1630.2(o) (2025).

Without the reassignment provision, employers could terminate employees without first attempting reassignment. *See Woody*, 220 F. Supp. 3d at 690.

3. The ADA's enacted purpose confirms that the statute guarantees equal opportunity to compete, not automatic reassignment.

The enacted purposes canon instructs that courts “cannot interpret federal statutes to negate their own stated purposes.” *King v. Burwell*, 576 U.S. 473, 492 (2015) (quoting *N.Y. State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973)). Statutes must be read to “fit, if possible, all parts into a harmonious whole.” *Dublino*, 413 U.S. at 419-20.

The ADA's enacted purpose confirms the statute was designed to address “continued discrimination denies disabled individuals the opportunity to compete on an equal basis.” 42 U.S.C. § 12101(a)(8). Interpreting the reassignment provision to require reassignment over more qualified applicants would negate this enacted purpose, whereas a permissive interpretation “fits . . . all parts into the whole” of the statute. *See Dublino*, 413 U.S. at 419-20. Accordingly, Congress intended only to provide disabled individuals equal opportunity to compete for vacant positions, not to mandate reassignment. *See Terrell v. USAir*, 132 F.3d 621, 627 (11th Cir. 1998).

B. Legislative history and *in pari materia* interpretation confirm the ADA guarantees equal opportunity to compete, not mandatory reassignment.

If the statutory language of a statute remains unclear after analyzing the plain text, courts may consult legislative history to “confirm and strengthen their understanding of Congress’s intent.” *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 171 (2018). Committee Reports are an “authoritative source for finding the Legislature’s intent.” *Garcia v. United States*, 469 U.S. 70, 76 (1984). Courts also interpret statutes *in pari materia* by applying the intent of earlier statutes to later statutes. *See United States v. Freeman*, 44 U.S. (3 How.) 556, 564 (1845).

The Senate Report confirms that reassignment is available only to employees who are “otherwise qualified,” meaning they meet all job-related selection criteria. S. Rep. No. 101-116, at 34 (1989). It explains that the ADA was not intended to “undermine an employer’s ability to choose and maintain qualified workers.” *Id.*

The ADA expressly builds on the Rehabilitation Act of 1973 and Title VII, incorporating their enforcement procedures and preventing conflicting standards. 42 U.S.C. § 12117(a), (b). The aim of the Rehabilitation Act was to afford disabled individuals “equal opportunity to obtain the same result,” not to “produce the identical result or level of achievement” for disabled and nondisabled persons. *Alexander v. Choate*, 469 U.S. 287, 305 (1985). Similarly, Title VII does not “guarantee a job to every person regardless of qualifications,”

or “command that any person be hired simply because . . . he is a member of a minority group.” *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971). Because the ADA incorporates the framework and principles of the Rehabilitation Act and Title VII, it likewise guarantees equal opportunity to compete for vacant positions rather than mandatory reassignment.

Therefore, the ADA’s legislative history and the foundational cases it was built upon confirm that Congress intended to guarantee equal opportunity to compete for a vacant position, not mandatory reassignment.

C. Mandatory reassignment would undermine the ADA’s underlying policy purposes.

Courts adopt the literal meaning of a statute when that interpretation “appears to be consonant with the purposes of the Act as declared by Congress.” *Helvering v. Hammel*, 311 U.S. 504, 510-11 (1940). However, courts reject interpretations that would “lead to absurd results” or “frustrate the policy that Congress sought to implement.” *Hammel*, 311 U.S. at 510-11; *Fed. Election Comm’n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981).

The ADA balances the interests of the employer, the disabled employee, and other employees. *See Elledge*, 979 F.3d at 1014. Overriding a best-qualified hiring policy would disrupt that balance by restricting employer discretion, which preserves “an employer’s freedom to run its business in an economically viable

way.” *See id.* Best-qualified hiring policies promote “efficiency and good performance.” *See St. Joseph’s Hosp.*, 842 F.3d at 1346.

The ADA also promotes “equality of opportunity” not preferential treatment. *See Elledge*, 979 F.3d at 1014. Requiring employers to select a less qualified candidate solely because of disability would transform a nondiscrimination statute into a “mandatory preference statute,” which is inconsistent with the ADA’s aims. *Huber*, 486 F.3d at 483. This interpretation would also destabilize employee expectations. *Elledge*, 979 F.3d at 1014. Honoring employee expectations “bolsters the confidence of other employees that the misfortune of a colleague will not unfairly deprive them of opportunities.” *Id.*

Mandatory reassignment would subvert the ADA’s underlying policy aims. Therefore, courts should reject automatic reassignment that conflicts with an employer’s best-qualified hiring policy.

CONCLUSION

Because the ADA’s text, structure, legislative history, and policy confirm that reassignment is discretionary rather than mandatory, Heritage’s best-qualified hiring policy does not violate the statute. This Court should therefore deny Hassan’s motion for summary judgment and grant Heritage’s cross-motion.

AUTHORITIES

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