

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

**Plaintiff,
v.**

UNITED AIR LINES, INC.,

Defendant.

CIVIL ACTION NO. 1:10-cv-01699 HDL

**SECOND AMENDED COMPLAINT-
CIVIL RIGHTS EMPLOYMENT
DISCRIMINATION
42 U.S.C. §§ 12117(a)**

JURY TRIAL DEMAND

Plaintiff Equal Employment Opportunity Commission files this Second Amended Complaint pursuant to the Court direction on October 21, 2010.

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to charging parties Joel Boswell, Margaret Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga and similarly-situated disabled employees of defendant United Air Lines, Inc. who were adversely affected by such practices. Defendant unlawfully denied the charging parties and similarly-situated disabled employees the reasonable accommodation of reassignment to a vacant position for which they were qualified, and which they needed in order to accommodate their respective disabilities.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §2000e-5(f)(1) and (3) and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were and are now being committed within the state of Illinois, which is within the jurisdiction of this court. Similar alleged unlawful employment practices were committed by Defendant throughout the United States.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (EEOC), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant United Airlines, Inc. (UAL) has continuously been a Delaware Corporation, doing business in the State of Illinois and has continuously had at least fifteen employees.

5. At all relevant times, Defendant UAL has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

6. At all relevant times, Defendant UAL has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, charging parties Joel Boswell, Margaret Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga filed charges with the EEOC alleging violations of Title I of the ADA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least June of 2003, Defendant UAL has engaged in unlawful employment practices at its facilities located nationwide in violation of Section 102(a) and (b)(5)(A) of the ADA, 42 U.S.C. Sec. 12112(a) and (b)(5)(A). Specifically, in June of 2003, Defendant implemented a written policy entitled "United Airlines Reasonable Accommodation Process Guidelines for Managers" which provides, in pertinent part, procedures in situations where "an accommodation within the employee's current job cannot be accomplished." [Exhibit A, page 8 to 9, section d. "Identifying Possible Accommodations Outside the Current Job Classification."] These guidelines require qualified employees with disabilities to compete for vacant positions which are needed as a reasonable accommodation. Specifically, the guidelines require a disabled employee to be the best qualified individual, or tied in qualifications with the best qualified individual, to receive priority consideration for placement in a vacant position needed as an accommodation.

9. The effect of the practices complained of in paragraph 8, above, has been to deprive charging parties Joel Boswell, Margaret Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga and similarly-situated disabled employees of equal employment opportunities and

otherwise to adversely affect their status as employees because of their respective disabilities.

10. The unlawful employment practices complained of in paragraph 8, above, were and are intentional.

12. The unlawful employment practices complained of in paragraph 8, above, were and are done with malice and/or reckless indifference to the federally protected rights of charging parties Joel Boswell, Margaret Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga and similarly-situated disabled employees.

PRAYER FOR RELIEF

WHEREFORE, the EEOC respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant UAL, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in the conduct described in paragraph 8 above and any employment practice which discriminates on the basis of disability.

B. Order Defendant UAL to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant UAL to make whole charging parties Joel Boswell, Margaret Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga and similarly-situated disabled employees, by providing appropriate lost income with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including rightful-place hiring and/or reinstatement.

D. Order Defendant UAL to make whole charging parties Joel Boswell, Margaret

Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga and similarly-situated disabled employees by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including medical expenses, with interest, in amounts to be determined at trial.

E. Order Defendant UAL to make whole charging parties Joel Boswell, Margaret Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga and similarly-situated disabled employees by providing compensation for past and future non-pecuniary losses resulting from the above unlawful employment practices, including pain and suffering, emotional distress, indignity, loss of enjoyment of life, loss of self-esteem, and humiliation, in amounts to be determined at trial.

F. Order Defendant UAL to pay charging parties Joel Boswell, Margaret Bucaro, Patricia Hernandez, Mary Price, Rosemary Verga and similarly-situated disabled employees punitive damages for its malicious and reckless conduct described above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the EEOC its costs in this action.

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JURY TRIAL DEMAND

The EEOC requests a jury trial on all questions of fact raised by its complaint.

P. DAVID LOPEZ
General Counsel

JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

U. S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

October 26, 2010

//s// William R. Tamayo
WILLIAM R. TAMAYO
Regional Attorney

//s// Jonathan T. Peck
JONATHAN T. PECK
Supervisory Trial Attorney

//s// Linda Ordonio-Dixon
LINDA ORDONIO-DIXON
Senior Trial Attorney

Attorneys for Plaintiff EEOC

U. S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
San Francisco District Office
350 The Embarcadero, Suite 500
San Francisco, California 94105-1260
(415) 625-5654