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**Appeals Court Rejects EEOC's Challenge to Hospital's Policy of Selecting the
"Most Qualified Applicant"**

We are often confronted with the question of whether the ADA obligates an employer to reasonably accommodate an employee with a disability by placing the disabled employee in a vacant position even though there are better qualified candidates. A March 17th decision from the Fifth Circuit acknowledged that an employer is not obligated to select the less qualified employee as an ADA reasonable accommodation.

The EEOC sued Methodist Hospitals of Dallas ("the Hospital") contending that the Hospital's "policy of hiring the most qualified candidate violate[d] the ADA when a qualified disabled employee requests reassignment to a vacant role, even if he or she is not the most qualified applicant." In this case, a patient care technician was injured on the job and her injuries prevented her from returning to that role. She applied for an open role where her physical limitations could be accommodated, and her application was forwarded to the hiring manager. The hiring manager selected another candidate for the role who was deemed to be more qualified. Recognizing that there is a split amongst the circuits, the 5th Circuit (covers Louisiana, Mississippi, and Texas) joined the 8th Circuit (covers Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) and the 11th Circuit (covers Alabama, Florida, and Georgia) in holding that the Hospital's blanket "Most Qualified Applicant" policy did not violate the ADA.

The Court held that "competition with other applicants was sufficient to satisfy the ADA['s]" reasonable accommodation obligation where the Hospital "selects the most qualified applicant for every position." Although it seems readily apparent that any employer should be able to select the best qualified person for a position, that importance was enhanced in the Hospital matter as well as the earlier 11th Circuit decision because the lives of patients can depend on having the best qualified personnel.

Although the Court of Appeals approved of Methodist's "Most Qualified Applicant" policy on a global level, the Court's analysis required that Methodist take the additional step of assessing whether there were any special circumstances that warranted a deviation from the policy. The lower court had not made this assessment, so the case was remanded to the lower court for this assessment. Because the lower court had not made the assessment, it is unclear what might warrant such an exception in this case.

This case affirms an employer's right to place the most qualified candidate into a vacant position even where a minimally, but lesser qualified candidate could be placed into the position as a reasonable accommodation. It is important for employers to assess and document why the selected candidate was the most qualified and, of course, such an assessment cannot be predicated in any way on the lesser qualified candidate's disability. Further, although we think the burden is

minimal, the employer should also assess whether there should be an exception to its general “Most Qualified Applicant” policy for the particular position. It is also important that the possible reassignment assessment is only one component of the interactive process. Finally, because there is a circuit split and because this issue has been unsuccessfully challenged by the EEOC in both the 5th and 11th Circuits, we fully expect that this issue will be presented to the U.S. Supreme Court in the near term and employers should stay tuned for future developments.

The case is *EEOC v. Methodist Hosps. of Dallas*, 62 F.4th 938 (5th Cir. 2023).

If you have questions regarding this case, please contact [Michael Thompson](mailto:mthompson@lehrmiddlebrooks.com) at mthompson@lehrmiddlebrooks.com