

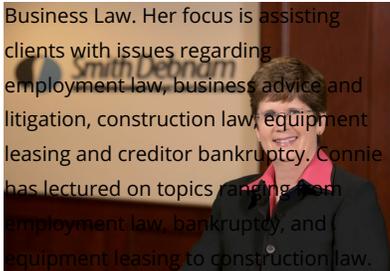
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ABOUT THE AUTHOR

[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in

Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.



Fourth Circuit Provides Helpful Guidance to Employers Regarding ADA Reassignment Obligations

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The Equal Employment Opportunity Commission (EEOC) has long taken the position that the Americans with Disabilities Act (ADA) requires employers to provide a disabled employee reassignment to an alternative position for which the employee is qualified if no other accommodation exists and the employee would otherwise lose their job due to the disability, even if there are better-qualified candidates for the alternative position who are not disabled. In the recent case of *Elledge v. Lowe's Home Centers LLC*, the EEOC articulated this reasoning in support of a plaintiff marketing director who sought but did not receive reassignment to one of two alternative director-level positions. Lowes Home Centers declined the employee's request, explaining that the disabled employee was not the highest qualified applicant for the positions under its succession planning and best-qualified hiring policies. In an opinion issued on November 18, 2020, the Fourth Circuit Court of Appeals, which presides over federal districts in North Carolina, South Carolina, and Virginia, disagreed with the EEOC's position and affirmed the employer's assertion that it was entitled to maintain a corporate succession system that selects the best-qualified applicant for the position, even if that decision results in a disabled employee being denied reassignment.

The plaintiff in *Elledge* worked in a demanding position that required him to maintain oversight over various stores. After multiple knee surgeries, the plaintiff's physician had imposed permanent restrictions on his driving, walking, and working time. Lowes Home Centers attempted several accommodations that the plaintiff did not accept and ultimately concluded that the plaintiff could not perform his position's essential functions with or without reasonable accommodation. The company offered the plaintiff reassignment to a less physically demanding but lower paying managerial position, which the plaintiff refused. Lowes Home Centers ultimately determined that the plaintiff was not the best qualified applicant for reassignment to either of two alternative positions for which the plaintiff applied and offered the plaintiff a severance package and early retirement, which the plaintiff accepted.

The plaintiff thereafter sued Lowes Home Centers, alleging that it violated the ADA by failing to recognize that he could perform the essential functions of his job and by

refusing to reassign him to either of the vacant managerial positions he sought. The United States District Court for the Western District of North Carolina granted summary judgment in favor of the employer, holding that an employer's competitive hiring policy "effectively trumps the ADA duty to reassign" a qualified disabled employee to a vacant comparable position.

The Fourth Circuit affirmed the district court's decision that Lowes Home Centers had appropriately engaged in reasonable accommodation negotiations with the plaintiff and that Lowes Home Centers had demonstrated that its policies enabled it to make hiring decisions based on succession needs and the relative qualifications of the applicants, opining that the ADA only requires that an employer provide the disabled employee with an equal opportunity to seek the alternative position, not to overrule otherwise neutral, business-based hiring policies. As the Court pointed out, the ADA requires that reasonable accommodations be made as necessary to provide disabled employees with the same opportunities as their non-disabled colleagues; it does not require employers to construct preferential accommodations that favor disabled employees over their more qualified colleagues. Employers are not required to create new positions, change the essential functions of an existing position, or require other employees to perform the disabled employee's essential job duties, nor are employees entitled to receive their preferred accommodation if a reasonable alternative is available.

The Fourth Circuit's decision provides much-needed flexibility to employers concerning the reasonable accommodation analysis parameters required under the ADA. It is critical to note, however, that this ruling hinges on the employer's demonstration that it maintained written, merit-based hiring policies explaining the business criteria for selecting applicants for these vacant positions which were disability-neutral on their face and which provided a "reasonable, orderly, and fundamentally fair way of directing employee advancement within the company." Absent such policies, it is by no means a foregone conclusion that an employer who declines to reassign a disabled employee utilized a bona fide selection system in making that decision. In light of the EEOC's position, it is recommended that employers adopt neutral, merit-based hiring policies that outline the criteria for selecting the best qualified applicants and strictly adhere to such policies when making hiring decisions.

If you have questions about this decision or any other employment-related matter, please call [Connie Carrigan](tel:9192502119) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609
Phone: 919.250.2000

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401
Phone: 843.714.2530

Fax: 919.250.2100

Fax: 843.714.2541