

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,  
Plaintiff

CASE NO.

v.

THE UNIVERSITY OF MICHIGAN,  
Defendant.

---

**COMPLAINT AND  
DEMAND FOR A JURY TRIAL**

NOW COMES Plaintiff, United States of America, and respectfully alleges:

1. This action is brought by the United States (hereinafter Plaintiff), against the University of Michigan (hereinafter Defendant), to enforce the statutory and regulatory provisions of Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12111 *et seq.*, which incorporate, through 42 U.S.C. § 12117(a), the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), 42 U.S.C. §2000e-6, 28 U.S.C. §§ 1331 and 1345.

3. This Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to grant equitable relief and monetary damages pursuant to 42 U.S.C. § 12117(a).

4. Venue is appropriate pursuant to 28 U.S.C. § 1391.

5. Defendant is a public state university and has a workforce of approximately 35,360 employees. Defendant is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a).

6. Defendant is an employer within the meaning of 42 U.S.C. § 12111(5), and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2.

7. On June 7, 2010, Allissa Weber filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) alleging that Defendant discriminated against her in violation of the ADA by denying her a reasonable accommodation.

8. Pursuant to 42 U.S.C. § 2000e-5, incorporated by reference in 42 U.S.C. § 12117(a), the EEOC investigated Ms. Weber's charge and found reasonable cause to believe that Defendant discriminated against her in violation of the ADA. After attempting unsuccessfully to reach a voluntary resolution of the charge, the EEOC referred the matter to the United States Department of Justice.

9. Ms. Weber is an individual with a disability within the meaning of 42 U.S.C. § 12102 and 29 C.F.R. § 1630.2. Ms. Weber has a physical disability that substantially limits, at minimum, her major life activities of standing, lifting, and bending.

10. Ms. Weber began working for Defendant as a Fire Extinguisher & Emergency Systems Specialist in 2005. She remained in that position until she was involuntarily placed on unpaid medical leave in 2010.

11. Ms. Weber's job duties as a Fire Extinguisher & Emergency Systems Specialist included, but were not limited to, identifying, testing, rebuilding, and recharging fire extinguishers, fire suppression systems, and other safety equipment. In addition, she was responsible for installing, mounting, replacing, and relocating fire extinguishers, operating equipment, and maintaining the equipment. Other duties included administrative functions such as maintaining a data base and creating and maintaining a records log.

12. In September of 2009, Ms. Weber experienced an injury at work that aggravated a pre-existing back condition. She was diagnosed with degenerative disc disease and arthritis of the spine.

13. In October of 2009, Ms. Weber's physician imposed temporary medical restrictions, which included a 10-pound lifting restriction; the ability to sit or stand when needed; and limited bending and twisting at the waist.

14. In October of 2009, Defendant placed Ms. Weber in a temporary administrative position to accommodate her medical restrictions. Ms. Weber continued working in this administrative role until she was placed on unpaid medical leave on June 1, 2010.

15. In February of 2010, Ms. Weber notified Defendant that her physician modified her restrictions and made them permanent. Ms. Weber's restrictions were modified to a 25-pound lifting restriction; no repetitive lifting, bending, twisting, crawling, or climbing; and a requirement that she be able to change positions from sitting to standing frequently.

16. In March 2010, two Human Resource managers and two Plant Department managers met to discuss Ms. Weber's permanent work restrictions. At the meeting, they decided that Ms. Weber could no longer perform the work of a Fire Extinguisher & Emergency Systems Specialist and that she would have 60 days to secure a new position within the University, and would be placed on unpaid medical leave after the 60 days expired.

17. On April 1, 2010, Ms. Weber met with Valerie Palazzolo, the Defendant's Return to Work Coordinator, for assistance with finding a position to accommodate her permanent medical restrictions. Ms. Palazzolo informed Ms. Weber that there was no guarantee that she would find a job through the Return to Work program. Ms. Palazzolo advised Ms. Weber that she would have to apply

for positions within the University on her own and that she would have to compete for any new position just like any other applicant.

18. Ms. Weber began applying for jobs within the University's system that were posted on the University's job search website.

19. On April 12, 2010, Defendant notified Ms. Weber in writing of its decision that she had 60 days to secure a new position within the University, and she would be placed on unpaid medical leave status after the 60 days expired.

20. On April 14, 2010, Ms. Weber submitted a written request for a reasonable accommodation based on her permanent restrictions to her supervisor, John Hirsch.

21. On April 21, 2010, Ms. Weber met with Ms. Palazzolo a second time and submitted her resume. At that meeting, Ms. Palazzolo identified one vacant position to which Ms. Weber could apply. The position did not match her current pay or skill set.

22. Palazzolo never gave Ms. Weber priority for placement into a vacant position as a result of her medical restrictions and reasonable accommodation request.

23. On May 27, 2010, Ms. Weber received an e-mail from her supervisor, John Hirsch, in response to her April 14 reasonable accommodation request that stated, in part, that her request for a reasonable accommodation was not "consistent

with the essential functions of her job.” Mr. Hirsch attached the job description of a Fire Extinguisher & Emergency Systems Specialist. This e-mail further stated that it was “unclear” how Ms. Weber would perform her duties in that position with or without a reasonable accommodation.

24. On May 28, 2010, Defendant ordered Ms. Weber to turn in her work identification and keys. Four days later, on June 1, Defendant placed Ms. Weber on unpaid leave status.

25. Mr. Hirsch met with Ms. Weber again on June 15, 2010, at Ms. Weber’s request. Ms. Weber again asked if she could be reasonably accommodated. Mr. Hirsch did not provide Ms. Weber with any additional information or alternatives to the unpaid medical leave.

26. Upon information and belief, between April 12 and May 9, Ms. Weber applied for more than 80 positions with Defendant. Despite her qualifications, she was not interviewed or selected for any of them.

27. One position to which Ms. Weber applied during this period was a Customer Service Representative position at the Medical School.

28. The required qualifications were: a high school diploma with coursework and/or experience in basic bookkeeping or accounting; 1-2 years retail experience with customer contact; data entry experience; ability to work and

communicate in a team setting; and knowledge of Defendant's policies and procedures.

29. Ms. Weber's resume and work experience reflected that she met all of the qualifications for this position. Ms. Weber earned a high school diploma and had five years of accounting experience; five years of retail experience with customer contact; 10 years of computer experience, including data entry; successfully performed her job duties with Defendant in team settings; and, as a five-year employee, had extensive knowledge of Defendant's policies and procedures.

30. Defendant did not select Ms. Weber for this position or offer her an interview.

31. Defendant applies a "best qualified" standard to all employment applicants, including employees who seek transfer or reassignment. Defendant's Standard Practice Guide (SPG) 201.22 states that regular posted positions are filled "by the best qualified applicant."

32. Defendant also has a policy on the ADA and reasonable accommodations for employees with disabilities, which is encompassed in SPG 201.84, entitled "EEO Affirmative Action Policy for Individuals with Disabilities." According to Section III of SPG 201.84, Defendant must provide "...reasonable accommodation to employees with disabilities, if that is needed to enable them to

perform their job duties. Employees may request such an accommodation by contacting their immediate supervisor...”

33. Furthermore, Section IX of SPG 201.84 provides that: “In some cases, transfer of an employee with a disability into a vacant position for which he/she is qualified will constitute a reasonable accommodation. Reassignment may be made to a vacant position which is the same or lower pay grade as the position currently held by the employee. Whenever reassignment to a vacant position is the only way in which an employee with a disability can be reasonably accommodated, *the employee with a disability will be given priority for placement into that vacant position.*” (Emphasis added).

34. Defendant never offered Ms. Weber a transfer or reassignment as a reasonable accommodation, nor was Ms. Weber given priority for placement into any vacant position.

35. In practice, Defendant does not implement the reassignment policy in SPG 201.84 for employees with disabilities. Rather, Defendant follows SPG 201.22 and requires employees with disabilities to be the best qualified applicant in order to be reassigned.

36. Ms. Weber was on an unpaid leave status for more than two years until July of 2012. In July 2012, Defendant offered and Ms. Weber accepted a job with the University as a Training Assistant Associate in the Facilities and

Maintenance Unit with a lower salary than her previous position. This position required computer data entry experience, including Excel and Microsoft Office; receiving and making phone calls; and bookkeeping.

37. In December 2014, Ms. Weber began a new position as a Travel & Expense Processing Associate at the Shared Services Center and remains employed by Defendant.

### **CAUSE OF ACTION**

#### **Count I – Title I of the Americans with Disabilities Act (Individual Claim)**

38. The allegations of the foregoing paragraphs are hereby re-alleged and incorporated herein by reference.

39. Title I of the ADA, 42 U.S.C. § 12111, et seq., and its implementing regulation, 29 C.F.R. Part 1630, requires covered employers, such as Defendant, to provide reasonable accommodations to otherwise qualified employees with disabilities.

40. Reasonable accommodations include, but are not limited to, reassignment to a vacant position within the employer's organization when an employee with a disability can no longer perform the essential functions of the employee's position and a vacant position for which the employee is qualified is available.

41. Ms. Weber is an otherwise qualified individual with a disability who, in 2010, could no longer perform the essential functions of her position as Fire Extinguisher and Emergency Systems Specialist.

42. Defendant failed to provide Ms. Weber a reasonable accommodation, including but not limited to a reassignment to a vacant position within the Defendant's organization where such an accommodation was available. . 42 U.S.C. §§ 12112(a) and (b); 29 C.F.R. § 1630.9.

43. Defendant's conduct as described in this Complaint constitutes discrimination on the basis of disability in violation of Title I of ADA, 42 U.S.C. § 12111, *et seq.*, and its implementing regulation, 29 C.F.R. Part 1630.

44. As a result of Defendant's discriminatory conduct, Ms. Weber suffered and continues to suffer damages.

**Count II – Title I of the Americans with Disabilities Act**  
**(Pattern or Practice Claim)**

45. The allegations of the foregoing paragraphs are hereby re-alleged and incorporated herein by reference.

46. Defendant's policy that employees with disabilities must be best qualified for a vacant position when reassignment is a necessary accommodation as described in this Complaint constitutes a pattern or practice of discrimination on the basis of disability in violation of 42 U.S.C. §§ 12112(a) and

(b). *See* 42 U.S.C. § 12117(a), which incorporates by reference Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-6.

47. Unless restrained by order of this Court, Defendant will continue to pursue this policy as alleged in this Complaint.

**PRAYER FOR RELIEF**

WHEREFORE, the United States prays that this Court:

- (a) Grant judgment in favor of the United States and declare that Defendant has violated Title I of the ADA, 42 U.S.C. § 12111 *et seq.*, and its accompanying regulation;
- (b) Require Defendant to modify its policies, practices, and procedures so as to bring its employment practices into compliance with Title I of the ADA and its accompanying regulation, including but not limited to:
  - (i) eliminating the application of the “best qualified” standard when considering reassignments as a reasonable accommodation; and
  - (ii) implementing a policy to reassign employees with disabilities to vacant positions for which they are qualified without competition for the position, when no accommodation is available in the current job.
- (c) Order Defendant to train its supervisors and human resource staff regarding the requirements of the ADA;

- (d) Enjoin Defendant from failing or refusing to take other appropriate measures to overcome the effects of its discriminatory policies and practices;
- (e) Award Ms. Weber, and other affected individuals, where applicable:
  - (i) back pay with interest;
  - (ii) front pay;
  - (iii) out of pocket medical expenses;
  - (iv) back benefits, including matching contributions and adjusted retirement dates with all associated rights and benefits;
  - (v) restoration of leave;
  - (vi) compensatory damages, including damages for pain and suffering, for injuries suffered as a result of Defendant's failure to comply with the requirements of Title I of the ADA pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; and
- (f) Order such other appropriate relief as the interests of justice require.

**JURY DEMAND**

Plaintiff United States requests a trial by jury as to all counts.

Respectfully submitted,

LORETTA E. LYNCH  
Attorney General of the United States

JENNIFER GORLAND  
Acting United States Attorney  
Eastern District of Michigan

/s/ Susan K. DeClercq  
SUSAN K. DeCLERCQ  
Assistant United States Attorney  
211 W. Fort Street, Ste. 2001  
Detroit, MI 48226

/s/ Vanita Gupta  
VANITA GUPTA  
Principal Deputy Assistant Attorney  
General

EVE L. HILL  
Deputy Assistant Attorney General  
Civil Rights Division

/s/ Rebecca B. Bond  
REBECCA B. BOND  
Chief  
SHEILA M. FORAN  
Special Litigation Counsel  
AMANDA MAISELS  
Deputy Chief

/s/ Rachel M. Smith  
RACHEL M. SMITH  
Trial Attorney  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., NW-NYA  
Washington, D.C. 20530  
Telephone: (202) 305-1613  
Facsimile: (202) 305-9775  
rachel.smith@usdoj.gov

Dated: July 22, 2015