WHY AMERICAN AIRLINES AND APA PILOT'S CBA VIOLATES THE AMERICAN'S WITH DISABILITIES ACT (ADA) AS AMENDED 2008

Position Paper of:
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I. The 5 year Maximum Sick/Disability Leave Policy Violates the ADA's Strict Prohibition of "No-Leave" Automatic Termination Policies:

American Airlines (AA) 5 year maximum sick leave policy contained in its Pilot's CBA, clearly violates the American's with Disabilities Act (ADA) strict prohibition of "No-leave" polices. Language in the EEOC enforcement manuals "Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the ADA", and " EEOC Enforcement Guidance on the American with Disabilities Act and Psychiatric Disabilities" (Exhibit 1 and 2)), plainly provides that an *"Employer must modify its no-leave policy, and provide additional leave...for treatment or recovery related to a disability."* , and that an, *"Employer must hold open an employee's job [i.e. pilot seniority number] if granted leave as a Reasonable Accommodation."* and further that, *"Court's recognize leave, as a Reasonable Accommodation."*
Unfortunately for Meadows, American violated federal law, when they revoked his seniority number, and failed to grant his request for assignment to another position within his bargain unit. Meadows was qualified and was able to perform essential job functions, save for the exception of an FAA Airman's Medical Certificate; he could have been assigned a job as a simulator only X-Type Check Airman (evaluation/training other pilots), to a pilot management position in the Flight Department, or in Flight Ops Technical in the Flight Academy. Alternatively, Meadows requested additional medical leave as a Reasonable Accommodation. Thereby, at a minimum American deprived Meadows of the accommodation of additional medical leave; which he needed until such time that he could either obtain FAA airman medical certification, get an FAA special issuance medical, or benefit from a favorable regulatory change, whereby he could eventually return his original job as a pilot, and position based on his relative seniority.

Specifically, American violates federal ADA law, by rigidly enforcing its 5 year maximum sick leave policy ("No-leave" Policy), contained in Section 11 d.1 of its Pilot's CBA (Exhibit 3); this contract language is relic of the past, and has never been updated to comply with recent case law, nor enforcement actions by the EEOC of the ADA, and ADAAA. Moreover, Federal law always supersedes the language of a CBA, to allow otherwise would be unlawful. As a matter of fact, the EEOC is actively enforcing provisions of the ADA retrospectively, and seeking over turn many previous Supreme Court case decisions. During past few years the EEOC has engaged in a concerted effort to bar "*No-Leave"* policies from the workplace as they are unlawful under the ADA. Additionally, the *"EEOC is "Cracking Down on Automatic Terminations following Medical Leave"* (Exhibit 4), and the "EEOC has continued to target maximum leave policies. Further, many employers have been put on notice by counsel, that the

"ADA and Inflexible Leave Policies are a Recipe for Disaster" (Exhibit 5). Moreover the EEOC has been very successful extracting multi-million dollar consent decrees from companies who rigidly enforce their "No-Leave" policies; most notably Verizon was forced to pay the EEOC $20M (Exhibit 6), Sears paid $6.2M, and Interstate Distributors paid $4.85M. (Exhibit 7). The EEOC sued United Airlines (UAL) in 2009 for its failures to Reasonably Accommodate its disabled employees (Exhibit 8). UAL, just as American does now, forced it disabled employees to apply for, and compete for positions with outsiders, giving them no hiring preference whatsoever. Just recently, UAL received a harsh adverse ruling in (EEOC v. United, 7th ct., Sep 2012), due to its failures to reasonably accommodate its employees in accordance with the ADA; see "7th Circuit Reverses Course...Leaving United Airlines Grounded" (Exhibit 9). Specifically, the 7th Circuit held that, *"the reassignment of a disabled but qualified employee to a vacant position is mandatory absent an undue hardship."* Essentially, UAL was punished for improperly denying its employees reasonable accommodations, the very same misconduct that AA still currently engages in. Not coincidentally, right on the heels of the 7th Circuit ruling, the new UAL Pilot's Contract ratified in December 2012, eliminated United's previous 6 year maximum sick leave policy that was very similar to the one AA now currently enforces. More specifically UAL's new ADA compliant, pilot leave policy contained in Section 6-D-2 of the CBA, states that pilots on LTD or those that would otherwise be qualified for LTD, are not subject to the time limitations that would result in their removal from the seniority list (Exhibit 10).

II. Disabled Pilots Are Entitled To A Reasonable Accommodation In The Pilot's Bargaining Unit:

Significantly, on May 28th, 2013, the U.S. Supreme Court, denied United Airlines petition for certiorari review, and let stand the 7th Circuit's *En Banc* decision in *EEOC v. United (7th Cir. Sep 7, 2012)*; which held that, "*The ADA does indeed mandate that an employer appoint employees with disabilities to vacant positions for which they are qualified...or another option, such as providing an accommodation which allows the employee to remain in his or her current position."* (Exhibit 11). Additionally, the Obama administration, on behalf of the EEOC and in the interest of public policy, also urged the justices to let the Chicago based appellate panel's ruling stand (Exhibit 12). Further, the EEOC Enforcement Guidance Under the ADA (915:002, Para.39) defines a *"Qualified individual"* with a disability, as one who can perform *"essential job functions"* with or without a reasonable accommodation. An FAA Medical Certificate is not listed as an *essential Job function* on AA's published "*Essential Job Functions of Pilot*" (Exhibit 13). Instead it simply listed but instead as a job requirement, because it only relates to professional licensure. To my knowledge there are at least four jobs within the pilots' bargain unit, which an LTD pilot such as myself, could perform without an FAA medical certificate; to include X-Type Check Airman (simulator only), Management Pilot, Flt. Ops Technical, or 777 Fleet Specialist.

In particular, there exists both a contractual, regulatory, statutory basis, to reasonably accommodated me within the bargaining unit in the position of X-Type Check Airman (simulator only) for the following reason; 1) The CBA Sec 12.B.10., provides that a Check Airman placed on disabled status, will be given the choice of remaining as a Check Airman, and that the company has the ability to address special situations on an ad hoc basis (CBA Sec. 12.B.10)), 2) FAA regulation 61.23(b)(7), provides that a medical certificate is not required, "*When serving as an Examiner or check airman and administering a practical test or proficiency check for an airman certificate, rating, or authorization conducted in a glider, balloon, flight simulator, or flight training device"* (Exhibit 14)), and 3) Under EEOC reasonable accommodation practices, which include job restructuring or job sharing, AA could modify an X-type's annual Line Rotation requirement to fly 73 hours under the CBA Sec. 12.B.9.d.(1), allowing disabled Check Airman to exchange their flight hours with another Check Airman's simulator hours. Not to mention AA's and APA's the past practice, of allowing certain pilots, who were otherwise unable to hold FAA Medical Certificate, to be reassigned to positions within APA, or AA's Flight Department Management or Training. With full pay and benefits commensurate with their seniority and bid status.

Why is it that the TWU has a Reasonable Accommodation Review Board (ARB) that meets twice monthly, yet APA doesn't even have one. TWU's ARB is Chaired by an AA accommodation analyst, AA attorney, AA Senior Employee Relations Person, AA HR manager, AA area physician, plus two union officers from the TWU. (Exhibit 15). Recently the APA Director of Legal, sent a letter stating that APA has no role to play in reasonable accommodations of its pilots. (Exhibit 16). As a result, the APA lets the Company "direct-deal" with its members on accommodation issues. That is outrageous, and in fact unlawful under the ADA. APA would likely say they don't have an ARB, because APA only has one class and craft, but that is a disingenuous argument, especially given its past practice of accommodating certain pilots. Even if that was true then why not work on accommodations outside of APA? Our members deserve to be accommodated as is their right under the ADA.

Additionally, APA is a covered entity under the EEOC laws, to include the ADA. As such APA has a duty to ensure all of its employees and members are provided with all of their statutory protections under it and all other all Federal Acts. American's disabled pilots should not be deprived of their ADA rights, and should be ensured of their right to return to their former job in the cockpit of an AA aircraft, upon receiving FAA medical certification. Additionally, the EEOC's enforcement actions should not be lost upon the APA, because as union, and a co-signer to the CBA, it could potentially be just as liable for any violations of the ADA. Thus, APA should be on leading edge of amending its CBA with American to ensure it is ADA compliant, and aggressively seek immediate elimination of the current 5 year maximum sick heave policy in Section 11 of the CBA, Supp-F 5.d, and reinstate to the seniority list all of those pilots that

have been adversely affected by it. Righting this wrong would confer a benefit not just the pilots on Long Term Disability (LTD), but also each and every member of the APA.

Conclusion:

In closing, there is no legitimate reason that American shouldn't amend its CBA accordingly, and afford its disabled pilots the federally mandated ADA protections to which they are entitled; the very same protections that UAL now provides to its pilots. If any American pilot suffers the misfortune of becoming disabled, and subsequently loses his FAA Airman's Medical Certificate; he should be afforded the peace of mind, knowing that his contract complies with the ADA, and ensures retention of his seniority number until such time that he can return to the cockpit, dies, or reaches normal retirement age. Depending on the severity of an illness, it can take many years before a disabled pilot may receive FAA airman medical re-certification, as they wait for either condition to improve or be treated into remission, obtain a special issuance medical, or benefit from favorable regulatory changes. To do otherwise would be absolutely unlawful, unethical, and is punitive by its very nature. Elimination of its 5 year maximum sick leave policy, amounts to a no cost item for AA; save for the minuscule cost of some additional ink and paper to keep these pilots names on the AA Pilot System Seniority List. It is certainly, not an undue hardship for the company, for its not as if they are being forced to leave a seat empty in the cockpit of an aircraft somewhere. This form of accommodation is simply serves as a paper "place holder" , and merely enables a disabled pilots reassume their relative position on the Pilot System Seniority List, and further grants them the right to return to their former job as an AA pilot if medically certified to do so. Thereby, preserving the career expectations of a disabled pilot, whose condition is may not be permanently grounding.