

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

MARIA LOVELL and KIMBERLY
SULLIVAN,

Plaintiff-Intervenors

vs.

UNITED AIRLINES, INC.,

Defendants.

NO. C 06-01407 TSZ

COMPLAINT IN INTERVENTION;
JURY DEMAND

COMPLAINT IN INTERVENTION

For their complaint in intervention, Plaintiff-Intervenors MARIA LOVELL and
KIMBERLY SULLIVAN, hereby allege:

Complaint in Intervention
(C 06-01407 TSZ)

1

CARL M. VARADY
ASB Tower
1001 Bishop Street, Suite 2870
Honolulu, Hawai'i 96813
Telephone: 808 523-8447
Facsimile: 808 523-8448
e-mail: carl@varadyalaw.com

NATURE OF THE ACTION

This action arises under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991. This action seeks to correct prohibited discrimination on the basis of disability by Defendant UNITED AIRLINES, INC., (hereafter “UAL”). Plaintiff-Intervenors MARIA LOVELL and MBERLY SULLIVAN, hereafter collectively “Named Plaintiffs” or “Plaintiff-Intervenors”), are similarly situated with other UAL employees who were adversely affected by an unlawful and prohibited policy and practice, instituted by UAL beginning April 1, 2003, whereby UAL refused them reasonable accommodation in the form of modified work schedules of less than thirty (30) hours and five (5) days per week. On that date, UAL began implementing a policy and practice of requiring the Named Plaintiffs and all other similarly situated employees to work a minimum of thirty (30) hours and a minimum of five (5) days per week. UAL’s policy and practice resulted in UAL acting and refusing to act on grounds generally applicable to the all disabled employees who could not work thirty (30) hours and a minimum of five (5) days per week. UAL acted on grounds generally applicable to the all such employees through the implementation of its unlawful policy and practice. UAL refused to act on grounds generally applicable to these employees through its refusal to provide reasonable accommodation in the form of reduced work hours, which resulted in involuntary retirement, unpaid leave or otherwise adverse employment action for Lovell and Sullivan and other employees with disabilities subjected to UAL’s unlawful conduct.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1337, 1343 & 1345. This action is authorized by that Americans with Disabilities Act (“ADA”) 42 U.S.C. § 12117(a), which incorporates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e5(f)(1) & (3) and the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

Complaint in Intervention
(C 06-01407 TSZ)

2

CARL M. VARADY
ASB Tower
1001 Bishop Street, Suite 2870
Honolulu, Hawai‘i 96813
Telephone: 808 523-8447
Facsimile: 808 523-8448
e-mail: carl@varadyalaw.com

2. Venue in this district is appropriate, based on the existing action initiated by the Equal Employment Opportunity Commission, which alleges that unlawful employment policy and practice at issue occurred within the Western District of Washington.

PARTIES

3. Plaintiff MARIA LOVELL (hereafter “Lovell”) was employed by UAL as a reservation and sales representative at UAL’s reservation center located in Honolulu, Hawai‘i, where she currently resides.

4. Plaintiff KIMBERLY SULLIVAN (hereafter “Sullivan”) is employed by UAL as a reservation and sales representative at UAL’s reservation center located in Honolulu, Hawai‘i, where she currently resides.

5. Plaintiff EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (“EEOC”) is the agency of the United States of America charged with administering, interpreting and enforcing Title I of the ADA and initiated this action under its express statutory authority to do so.

6. UNITED AIRLINES, INC, (“UAL” or “Employer”), operates an airline business, including, without limitation, within the Western District of Washington, and has more than 15 employees.

7. At all times relevant to this Complaint in Intervention, UAL has continuously been engaged in an industry affecting commerce within the meaning of 42 U.S.C. §§ 12111(5) & 12111(7) of the ADA, of Title VII, which incorporates 42 U.S.C. §2000e(b), (g) and (h).

8. At all times relevant to this Complaint in Intervention, UAL has been a covered entity under 42 U.S.C. § 12111(2) of the ADA.

9. At all times relevant to this Complaint in Intervention, the acts taken by UAL’s agents, officers and employees described in this complaint were performed within the course and

scope of their employment and on behalf of UAL.

FACTUAL ALLEGATIONS

Plaintiff Lovell

10. Named Plaintiff Lovell was first employed by UAL on May 20, 1976, as a reservations, sales and service employee, who worked forty (40) hours per week at UAL's Honolulu offices. Ms. Lovell's work met or exceeded her employer UAL's expectations.

11. Lovell was diagnosed with myasthenia gravis in 1983, a disease that caused her to be limited in one or more of her major life activities.

12. Lovell requested and was provided a modified work schedule by UAL, as a reasonable accommodation for her disability. The modified work schedule called for her to work Monday, Tuesday, Thursday and Friday from 8:00a.m.-12:00 p.m.

13. After notifying Lovell and other similarly situated UAL employees in writing in March 2003 that it would do so, on April 1, 2003, UAL began enforcing a formal policy and practice that required all part-time employees to work least thirty (30) hours and five (5) days per week and all full-time employees to work at least 40 hours per week. The formal policy and practice was applied to Lovell and other disabled employees in the same manner by UAL. Through the formal policy and practice UAL acted on grounds generally applicable to all disabled UAL employees.

14. Although Lovell's work met or exceeded expectations, on or about April 1, 2008, UAL demanded that she work a minimum of thirty (30) hours and five (5) days per week, pursuant to its policy and practice. When she indicated she could not do so because of her disability, Lovell was forced to select between early involuntary retirement and unpaid leave, in the form referred to by UAL as Extended Illness Status ("EIS").

15. Lovell selected involuntary retirement in lieu of EIS.

1 16. April 3, 2003, was Lovell's last day of work for UAL.

2 17. If offered a modified work schedule that accommodated her disability after April
3 3, 2003, Lovell would have continued working for UAL.

4 18. Granting Lovell's request for modified work schedule of less than thirty (30)
5 hours and five (5) days per week would not have caused UAL significant difficulty or expense,
6 when considered in light of UAL's size, financial resources and the nature and structure of its
7 operation.

8 19. Lovell has filed a charge alleging disability discrimination with the EEOC office
9 in Honolulu, Hawai'i, been issued a right to sue and has otherwise satisfied all jurisdictional
10 requisites to suit in this Court.

11 20. More than two years after being forced to take involuntary retirement and filing
12 her charges of disability discrimination with the EEOC, which are the subject of this lawsuit,
13 UAL offered to reinstate Lovell to active employment, on or about August 3, 2005, and to
14 accommodate her disability by allowing her to work twenty (20) hours per week. However, UAL
15 refused to rescind its policy and practice of demanding a thirty (30) hour five (5) day work week,
16 which Lovell understood was still in effect and being applied to hundreds of other disabled UAL
17 employees like herself.

18 21. As Lovell's primary objective in filing the EEOC charges was to obtain agreement
19 from UAL to rescind this policy, she rejected UAL's offer, because it did nothing to alleviate the
20 effects of UAL's continued discrimination against Lovell's disabled co-workers. In addition, the
21 compensation offered by UAL was insufficient to compensate Lovell for the consequences of
22 UAL's unlawful disability discrimination directed to her as a result of its policy and practice.

23 22. The Hawai'i Civil Rights Commission is a Fair Employment Practices "agency
24 with subject matter jurisdiction over the charges" initiated by Lovell with the EEOC, as defined

1 in 29 C.F.R. § 1601.13.

2 23. Lovell's timely filing with the EEOC, receipt of the right to sue and participation
3 as a plaintiff in this matter provide a jurisdictional basis for all other similarly situated employees
4 to participate in the present action, insofar as their claims arose no more than 300 days prior to the
5 date of Lovell's charge.

6 Plaintiff Sullivan

7 24. Named Plaintiff Sullivan was first employed by UAL on January 14, 1991, and
8 worked forty (40) hours per week at UAL's Honolulu offices. Ms. Sullivan's work met or
9 exceeded her employer UAL's expectations.

10 25. Sullivan injured her back on September 18, 2000, causing her to be limited in one
11 or more of her major life activities.

12 26. Sullivan requested a modified work schedule by UAL of not more than twenty (20
13 hours) per week, as a reasonable accommodation for her disability, and was permitted for a
14 period of time to work such a modified schedule.

15 27. Although Sullivan's work met or exceeded expectations, UAL demanded that she
16 work a minimum of thirty (30) hours and five (5) days per week pursuant to its policy and
17 practice. When she indicated she could not do so, Sullivan was forced by UAL to leave work on
18 involuntary EIS.

19 28. March 17, 2005, was Plaintiff Sullivan's last day of work before she was
20 involuntarily forced to take EIS.

21 29. On March 25, 2008, UAL informed Sullivan by letter that she would be
22 terminated from work on May 26, 2008, due to her inability to comply with UAL's mandatory
23 30- hour 5-day per week policy and practice, and the expiration of her three-year EIS period.

24 30. If offered a modified work schedule that accommodated her disability by

1 permitting her to work no more than twenty (20) hours per week, Sullivan would be able to
2 continue working for UAL.

3 31. Granting Sullivan's request for modified work schedule would not have caused
4 UAL significant difficulty or expense when considered in light of UAL's size, financial
5 resources, and the nature and structure of its operation.

6 32. Sullivan has filed a charge alleging disability discrimination with the EEOC, and,
7 based on Named Plaintiff Lovell's charge, has satisfied all jurisdictional requisites to suit in this
8 Court.

9 **FIRST CLAIM FOR RELIEF**
10 (Title I of the ADA:42 U.S.C. § 12112(a))

11 33. Plaintiff-Intervenors incorporate by reference all allegations set forth in this
12 complaint.

13 34. By its policy and practice, UAL has engaged in unlawful conduct in violation of
14 Title I of the ADA, 42 U.S.C. § 12112(a).

15 35. UAL's policy and practice includes, but is not limited to, failure to provide
16 reasonable accommodation to Plaintiff-Intervenors and similarly situated individuals in the form
17 of reduced work schedules of less than thirty (30) hours and five (5) days per week.

18 36. UAL's policy and practice have resulted in adverse employment action toward
19 Plaintiff-Intervenors, including without limitation, termination of Plaintiff-Intervenors'
20 employment relationship with UAL. These employment practices also include, without
21 limitation, UAL's rescission of work schedules of less than thirty (30) hours and five (5) days per
22 week, which had previously been provided to Plaintiff-Intervenors and/or could have been
23 provided to Plaintiff-Intervenors as reasonable accommodation of their disabilities. UAL's
24 employment practices also include, without limitation, forcing Plaintiff-Intervenors to take

1 involuntary unpaid leave in the form of EIS, at the end of which Plaintiff-Intervenors are forced
 2 involuntarily to return to a work schedule of at least thirty (30) hours and five (5) days per week
 3 or are terminated from employment.

4 37. UAL's policy and practice has deprived Plaintiff-Intervenors of equal employment
 5 opportunities and otherwise adversely affects their status as employees because of their
 6 disabilities.

7 38. UAL's unlawful policy and practice was intentional.

8 39. UAL adopted its unlawful policy and practice with malice or with reckless
 9 indifference to the federally protected rights of Plaintiff-Intervenors and has caused and
 10 continues to cause Plaintiff-Intervenors irreparable harm.

11 **RELIEF ALLEGATIONS**

12 40. Plaintiff-Intervenors incorporate by reference all allegations set forth in this
 13 complaint.

14 41. Plaintiff-Intervenors have no plain, adequate or complete remedy at law to redress
 15 the wrongs alleged herein, and can only secure complete and adequate relief through the
 16 injunctive relief, declaratory relief and other equitable relief sought in this action. Plaintiff-
 17 Intervenors and have suffered and will continue to suffer irreparable injury from UAL's unlawful
 18 policy and practice.

19 42. UAL's unlawful policy and practice has caused and continues to cause Plaintiff-
 20 Intervenors substantial losses in earnings, promotional opportunities and other employment
 21 benefits, in an amount to be determined at trial.

22 43. Defendant acted or failed to act as herein alleged with malice or reckless
 23 indifference to the federally protected rights of Plaintiff-Intervenors. Plaintiff-Intervenors are
 24 thus entitled to recover punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenors request relief as follows:

1. A preliminary and permanent injunction against UAL and its directors, officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policy and practice set forth herein;
2. A declaratory judgment that the policy and practice complained of in this complaint in intervention are unlawful and violate Title I of the ADA, 42 U.S.C. § 12112(a);
3. An assignment of Plaintiff-Intervenors to those jobs they would now occupy but for UAL's unlawful policy and practice;
4. An adjustment of the wage rates and benefits for Plaintiff-Intervenors to that level which Plaintiff-Intervenors would be enjoying but for UAL's unlawful policy and practice;
6. Equitable relief in the form of back-pay, front-pay and benefits the Plaintiff-Intervenors otherwise would have earned but for UAL's unlawful policy and practice;
7. In addition to the injunctive, declaratory and equitable relief requested, all damages that individual Plaintiff-Intervenors have sustained as a result of UAL's unlawful policy and practice, including general and special damages resulting from UAL's unlawful policy and practice;
8. Exemplary and punitive damages in an amount commensurate with UAL's ability to pay and to deter future conduct;

9. Costs incurred, including reasonable attorneys' fees, to the extent allowable by law;
10. Pre-Judgment and Post-Judgment interest, as provided by law; and
11. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. Pro. 38(b), Plaintiffs hereby demand a jury trial of the issues triable by a jury in this matter.

Signed in Honolulu, Hawai'i, this 4th day of June 2009.

/s/ Carl M. Varady
Carl M. Varady
Thomas R. Grande
Attorneys for Plaintiffs
Admitted *Pro Hac Vice*

Local Counsel:

/s/ Melton L. Crawford
Melton L. Crawford, WSBA #22930
Katrín E. Frank, WSBA #14786
Joseph Shaeffer, WSBA #33273
MacDonald, Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, Washington 98104
Tel. 206.622.1604
Fax 206.343.3961
melc@mhb.com, maryf@mhb.com