

Man with disability should file a lawsuit against airline

Written by ANTONIO C. CAMPO
Thursday, 03 November 2011 20:16



JOE P., an associate in the Makati office many years ago, claimed to suffer a disability under the Americans with Disabilities Act of 1990.

Before I write on the nitty gritty of his alleged disability it is appropriate that I write about the law known as the Americans with Disabilities Act of 1990.

Americans with Disabilities Act of 1990

Americans with Disabilities Act of 1990 (ADA) is a law that was enacted by the U.S. Congress in 1990.

It was signed into law on July 26, 1990 by President George H.W. Bush, and later amended with changes effective Jan. 1, 2009.

The ADA is a wide-ranging civil rights law that prohibits, under certain circumstances,

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discrimination based on disability.

It affords similar protections against discrimination to Americans with disabilities as the Civil Rights Act of 1964, which made discrimination based on race, religion, sex, national origin and other characteristics illegal.

Disability is defined by the ADA as a physical or mental impairment that substantially limits a major life activity.

The determination of whether any particular condition is considered a disability is made on a case to case basis.

Certain specific conditions are excluded as disabilities, such as current substance abuse and visual impairment which is correctable by prescription lenses.

The original intent of the law was to create civil rights law protections for people with disabilities that would be permanent, would not be able to be reversed or weakened, and would prohibit all discrimination.

It was intended to be a flexible set of laws that could only be strengthened, not weakened, by future case law.

Definition of major life activities

The ADA defines a covered disability as a physical or mental impairment that substantially limits a major life activity.

Examples of major life activities includes but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working, as well as the operation

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of several specified major bodily functions.

Foreign airlines subject to ADA

Spector vs. Norwegian Cruise Line Ltd. - This was a case that was decided by the United States Supreme Court in 2005.

The defendant argued that as a vessel flying the flag of a foreign nation was exempt from the requirements of the ADA.

This argument was accepted by a federal court in Florida and, subsequently, the Fifth Circuit Court of Appeals.

The U.S. Supreme Court reversed the ruling of the lower courts on the basis that Norwegian Cruise Lines was a business headquartered in the U.S. whose clients were predominantly Americans and, more importantly, operated out of port facilities throughout the United States. (From Wikipedia)

Based on the above decision of the Supreme Court, Asiana Airlines and other foreign airlines operating in the United States are subject to the requirements of ADA.

Sept. 16, 2008 flight to Manila via Asiana Airlines

Below is an excerpt of Joe P's letter to the Customer Service Manager of Asiana Airlines:

I am pretty close to the end of the road.

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At 77 with life-threatening illnesses that include diabetes, hypertension, history of two cancer-related surgeries, prostate cancer; the beginning of asthma and injuries sustained in a vehicular accident.

I presented a medical certificate from my doctor when I took the fateful flight on Sept. 16, 2008.

Regrettably, it was ignored by the ground and cabin staff of Asiana Airlines.

When I found my self hurting and in need to use the bathroom, I called for help from one of the flight attendants and requested that I be allowed to use the bathroom that had no line, but I was denied my request and was told was reserved for business class passengers.

She did not even read the letter I showed her or my plea that I could no longer hold my bladder!

The irony is that one of those entitled to the use of the toilet was a young Korean national who was upgraded to business class because he was erroneously issued the same seat that I was issued.

He was quickly ushered to the business class.

I suspect he was on the wait list because he was one of the last to board the plane.

I developed a fear of flying and gave up the idea of ever taking a plane ride after the humiliating experience with your ground and cabin staff.

My experience, the humiliation and indignities I suffered during the 13-hour flight from JFK-Korea will forever remain etched in my memory.

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On the other hand, when I took a flight with jetBlue to Florida, I was given ready access to the lavatory and treated with the care and compassion due a 77-year-old senior citizen.

I have taken three-and-a-half round trips to and from Ft. Lauderdale, Florida and was accorded the exact same courtesies which included the use of wheelchairs up to the door of the airplane.

Author's comment

Undoubtedly, Joe P. is an American with disability under ADA.

His recourse is to file a lawsuit against Asiana Airlines for violation of the law on Americans with Disability Act of 1990.

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