Court Rules Telecommuting a 'Reasonable' ADA Accommodation

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So, employers, what do you want first… the good news, or the bad news regarding reasonable accommodations?

The good news is that in a recent Sixth Circuit Court of Appeals decision regarding the Americans with Disabilities Act (ADA), *EEOC v Ford Motor Co*, the court provided employer's with a helpful analysis to assist them through reasonable accommodation issues. The bad news is the court also found that for most jobs, telecommuting is a reasonable accommodation, given today's technology.

In 2003, Jane Harris began her employment with Ford Motor Company as a resale buyer, responsible for ensuring there is no gap in steel supply to manufacturers of parts. Because the job's focus was on problem solving, Ford believed it was essential for a buyer to be assessable to other members of the re-sale team, suppliers and others when issues arose, preferably through face-to-face contact.

Throughout her employment, Harris suffered from irritable bowel syndrome. Over time, her symptoms worsened and so did her fecal incontinence. On bad days, Harris was unable to drive to work or even stand up at her desk without becoming soiled. Therefore, she began taking intermittent Family and Medical Leave (FMLA).

In 2005, her supervisor tried to respond to Harris' perceived attention issues by allowing her to work on a flex time telecommuting schedule. That trial failed when Harris was unable to establish a consistent work schedule.

However, although Ford no longer allowed her to work from home, Harris worked from home after core hours and on weekends in an effort to keep up with her workload. Ford viewed this as "casual overtime" expected of salaried workers and not an acceptable substitute for work during regular hours because it did not promote team problem solving or access for suppliers. And, since Harris was not permitted to work from home, it was difficult to mitigate her unscheduled absences, and Ford had to shift much of her work to team members and her supervisor.

In February 2009, Harris formally requested that she be permitted to work from home on an as needed basis as an accommodation for her irritable bowel syndrome. In fact, Ford utilized a telecommuting policy that authorized employees to work up to four days per week from a telecommuting site. However, despite Ford's policy and the fact that several other buyers were permitted to telecommute one day a week, Harris was not allowed, because she needed to be available for suppliers.

Ford suggested other accommodations such as moving Harris' work station closer to the restroom or seeking another position for Harris more suitable for telecommuting. Harris declined and in April 2009, she filed an EEOC charge. Subsequently, in a meeting held to discuss how to best allocate her workload, she became emotional and left the room. By July, Harris was placed on workplace guidelines with weekly meetings to discuss her performance and a few weeks later she was given a performance improvement plan. When Harris failed to meet objectives in 30 days, she was terminated.

Following the administrative charge, the EEOC filed a complaint in the U.S. District Court for the Eastern District of Michigan, alleging, among other things, that Ford failed to accommodate Harris' disability. The court dismissed the lawsuit and the EEOC appealed.

The Sixth Circuit Court of Appeals began its analysis by noting that "[a]n employer 'discriminates' under the ADA if it does not make 'reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an … employee, unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the business."

When analyzing such cases, the employee must show that he is disabled, and is otherwise qualified for the position despite the disability: (a) without accommodation; (b) with an "alleged" essential job requirement eliminated, or (c) with a reasonable accommodation. Following such proof, the employer must show either that the challenged job requirement is essential and a business necessity, or that the proposed accommodation would cause an undue hardship on it.

Because the EEOC could show that Harris was qualified if her physical attendance in the workplace was not considered, Ford had to demonstrate that this was an essential function. Although early case law recognized that regular predictable attendance in the workplace was generally an essential requirement, today the focus is on the "workplace" which is wherever an employee can perform his or her essential job functions.

Moreover, because advance technology has made in-person contact less important to group conversations, the appellate court was not persuaded that positions requiring extensive teamwork were inherently unsuitable to telecommuting. With the exception of site visits, Ford failed to offer proof that Harris would be less effective performing the resale buyer position from home than at a Ford facility.

Alternatively, the EEOC demonstrated that Harris was qualified to perform the resale buyer position with a reasonable accommodation, telecommuting. Ford argued that resale buyers must be able to interact on a regular basis during core business hours. However, that argument confused "flex time" with telecommuting.

In this case, Harris asked to work from home during regular business hours when she needed to, not work alternate hours. Harris' job did not require her to interact "in-person with equipment or people to

perform the core functions of her job." And, the shifting of work to co-workers and her supervisor did not result from her physical absence from the facility but from Ford not allowing her to work from home during core hours. Similarly, Harris' pricing mistakes were the result of Ford not allowing her to work remotely during core business hours when she could contact suppliers for accurate information.

The Sixth Circuit recognized that "given the state of modern technology, it is no longer the case that jobs suitable for telecommuting are 'extraordinary' or 'unusual'." Today "it is no longer an 'unusual case where an employee can effectively perform all work-related duties from home.'"

If Ford found Harris' request to work four days from home was unreasonable, it had a duty to engage in the interactive process to discuss other accommodations, such as working from home on fewer days. The other accommodations proposed by Ford failed to adequately address her needs. For example, moving closer to the restroom would not prevent Harris from becoming soiled since she could soil herself when she stood up at her desk. And, reassigning an employee to another position should only be considered when accommodating the disability in the current position would cause an undue hardship, which Ford failed to demonstrate.

The court emphasized that any accommodation will entail some hardship. However, an "undue" hardship is greater and requires showing more than a bothersome disruption. Factors to consider include "(1) 'the nature and cost of the accommodation,' (2) the financial and personnel resources of the affected facility, (3) the resources of the employer as an entity, and (4) the structure and functions of the employer's workplace." In this situation, Ford has significant financial resources, a large workforce and a policy pledging a commitment to permitting telecommuting. Consequently, Ford failed to meet its burden and the ADA claim was reinstated.

This case demonstrates the lengths to which an employer should go to address an employee's need for a reasonable accommodation. When the employer has significant financial and labor resources, like Ford, winning on an "undue hardship" argument may be very difficult. Employers should consider all options and consult with the Job Accommodation Helpline at 1-800-ADA-WORK.

If you have any questions about the ADA, contact the author at 313-983-4863 or your Plunkett Cooney labor/employment attorney.