

## EEOC Files First COVID-19 ADA Accommodation Suit

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On September 7, 2021, the Equal Employment Opportunity Commission (“EEOC”) filed a first-of-its-kind lawsuit against an employer that allegedly denied accommodation for telework in violation of the Americans with Disabilities Act (the “ADA”). Currently, the case is the only lawsuit the EEOC has filed concerning a request for an ADA accommodation related to COVID-19. The suit is a challenge to the typical posture of courts that frequently consider working from home to be an unreasonable accommodation.

The EEOC filed suit in the U.S. District Court for the Northern District of Georgia (N.D. Ga., No. 1:21-CV-3708-SCJ-RDC) against ISS Facility Services, Inc. (“ISS”), a facility management services company, on behalf of an ISS employee, Ronisha Moncrief (“Moncrief”) who worked as a health and safety manager in Social Circle, Georgia. Due to the COVID-19 pandemic, ISS required all of its employees to work from home four days per week from March 2020 to June 2020, according to the Complaint. In June 2020, when ISS required all employees to return to work, Moncrief requested an accommodation to work remotely two days per week as well as frequent breaks while working on-site due to her disabilities; Moncrief has chronic obstructive lung disease and hypertension. The EEOC alleges that Moncrief claimed she needed the accommodation because her disabilities made her a high-risk for contracting COVID-19. Although ISS purportedly allowed other employees in Moncrief’s position to work from home, it denied her accommodation request and terminated her employment around two months later.

Although working from home has become increasingly less difficult from a technological perspective, courts have been reluctant to recognize requests for remote work as a required accommodation for a disability. For example, in *EEOC v. Ford Motor Co.*, the Sixth Circuit held that regular and predictable on-site job attendance was an essential function of the plaintiff’s job as a resale buyer. In so holding, the Court stated that “most jobs require the kind of teamwork, personal interaction, and supervision that simply cannot be had in a home office situation.” In *Samper v. Providence St. Vincent Medical Center*, the Ninth Circuit noted that one’s attendance at work is a “rather common-sense idea.” Despite these statements, after the pandemic, courts may be more willing to reconsider the necessity of employees’ daily in-person attendance at work.

### Implication for Employers

Given the prevalence of work from home policies over the last year and a half, remote work requests may become increasingly more common as employees begin to return to the workplace *en masse*. It remains to be seen whether courts will be more amenable to requiring remote work as a reasonable accommodation for disabilities. However, businesses' ability to require employees to work from home for months to over a year, as was demonstrated during the pandemic, may provide a basis for arguments that accommodations to work remotely for at least a few days per week are not unreasonable.

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National Law Review, Volume XI, Number 260

Source URL: <https://natlawreview.com/article/eeoc-files-first-covid-19-ada-accommodation-suit>