

ADA Speed Bump Ahead: Steer Clear of Eliminating Essential Functions

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When is driving an essential function of a job? What if the employee drives herself to customers' homes to provide services and now wants to use alternative modes of transportation? What if the employee's request is because of a disability? A recently filed case, [*EEOC v. Alternate Solutions Health Network, et al.*](#), tees up that very question.

The Facts According to the Complaint

The charging party has epilepsy and a brain tumor. In June 2019, defendant healthcare company hired her to work as an occupational therapist providing in-home occupational therapy to patients in Michigan. As part of her job, she drove herself to patients' homes.

About two years later, in February 2021, the charging party suffered a seizure and was restricted from driving for six months. According to the EEOC, she asked for a reasonable accommodation — instead of driving herself to patients' homes, she would take a Lyft or Uber or have a family member drive her. The employer denied the request and terminated her employment in May 2021 (again, according to the complaint).

The charging party filed an EEOC charge alleging violations of the Americans with Disabilities Act. The EEOC later filed this lawsuit, alleging that the defendants unlawfully refused to provide a reasonable accommodation and later terminated the charging party because of her disability.

Back to Basics

The ADA prohibits discrimination against a “qualified individual” on the basis of disability. The law defines “qualified individual” as

An individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

Discrimination includes not making a reasonable accommodation of a known disability. We all know that, in determining what is a reasonable accommodation, you have to engage in an interactive process with the employee (and maybe the employee's doctor), and the employee does not always get the preferred accommodation. Instead, the employer must offer an accommodation that will enable the employee to perform the essential functions of the job. If the employee cannot perform all of the essential functions, he or she is not "qualified." The EEOC's complaint serves as a good reminder to all of us to review the elements of a "failure to accommodate" claim.

If you get into a lawsuit, the plaintiff has to make out a *prima facie* case for failure to accommodate. While the specifics of that *prima facie* case can vary depending on your jurisdiction, in a recent [Eleventh Circuit opinion](#), the court explained that the plaintiff has to show (1) he is disabled, (2) he was qualified (i.e., he could perform the essential functions of the job with or without a *reasonable* accommodation), and (3) his employer failed to accommodate him. That same opinion notes that an accommodation is *reasonable* only if it enables the employee to perform the essential functions of the job.

So, what are the essential functions of a position? This is critical because an employer does not have to remove any essential functions of a job (because that would not be reasonable). The ADA says that an employer's written job description (prepared before advertising or interviews) is evidence of the essential functions. The [federal regulations provide other relevant factors](#), including time spent performing the function and the work experience of past and current incumbents.

In the EEOC's case, a key issue will be whether driving is an essential function of the in-home occupational therapist's job. If it is, the request to be excused from driving (and instead have someone else drive her) is less likely to be reasonable, as it would remove an essential function. On the other hand, if driving is not an essential function of that job, the employer may have some explaining to do as to why her requested accommodation was not reasonable.

Takeaways

Obviously, we don't know all of the facts in this matter; we only know the EEOC has filed a lawsuit about it. If you are confronted with such a situation, to the extent possible you want to avoid litigation. So:

- Talk to the employee about any restrictions and the requested accommodation.
- Consider whether the requested accommodation is reasonable for your business and, if not, why.
- Offer alternative accommodations, if possible (which could include a transfer to a vacant position in which you can accommodate the employee's restrictions or some amount of leave).
- Get ideas from the employee's doctor or the Job Accommodation Network ([JAN – Job Accommodation Network \(askjan.org\)](#)) to show that you are really looking for alternative accommodations.
- Get legal advice before you terminate (to make sure you are ready for litigation).

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