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Employer's 'Take It or Leave It' Offer of Remote Work as Reasonable Accommodation Is a Jury Question, D.C. Circuit Rules

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On August 9, 2024, the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court's grant of summary judgment in favor of the U.S. Environmental Protection Agency (EPA) on an employee's failure-to-accommodate claims under the federal Rehabilitation Act of 1973.

Quick Hits

- The D.C. Circuit reversed the district court's grant of summary judgment for the EPA, finding that an employee's blanket refusal to accept remote work as the only offered accommodation did not cause a breakdown in the interactive process, because the EPA did not ask the employee why the accommodation was not reasonable and the Rehabilitation Act does not obligate employees to volunteer information not requested.
- Whether the EPA's offer of remote work was reasonable under the specific facts was an issue to be resolved by the factfinder, not as a matter of law, the court ruled.
- While the Rehabilitation Act does not require an interactive process, employers that forego the interactive process and offer only one accommodation risk a jury's finding that the offered accommodation was not reasonable under the circumstances.

In *Ali v. Regan*, No. 22-5124 (D.C. Cir. 2024), the D.C. Circuit reversed the district court's entry of summary judgment in favor of the EPA (the district court's decision had been based on the employee's alleged failure to cooperate during the interactive process), finding that the employee had no obligation to volunteer information that his employer, the EPA, did not request. Instead, the D.C. Circuit concluded that the only issue was whether the EPA's take-it-or-leave-it accommodation offer of remote work was reasonable, which was a jury question under the case's specific facts.

Background

Ghulam Ali works as an economist for the EPA and suffers from severe allergies to airborne allergens, such as fragrances, paint, petroleum, and printer fumes. By way of background, after having worked for ten years in a private office at the EPA, the agency moved Ali to a cubicle, which he complained exacerbated his allergies. The EPA allowed Ali to work from home for six months, but when the EPA asked him to return to the office, Ali sued the EPA seeking continued remote work as

a reasonable accommodation for his disability. In 2007, after the EPA prevailed in that litigation, Ali returned to working from his cubicle with no issues until 2011.

In 2011, the EPA assigned a coworker known for wearing pungent cologne to the cubicle next to Ali's. Ali asked to be moved to a private office, as the cologne triggered his allergies, and the EPA offered to move him to a new cubicle. Ali claimed the new cubicle was also "very perfumy," and other available cubicles were too near printers that emitted fumes. After the EPA did not respond to Ali's repeated demands for a private office, he made a formal accommodation request under the Rehabilitation Act. The EPA responded to the accommodation request by asking Ali to meet with his supervisor to identify potential accommodations. However, on the same day, his supervisor offered work from home as the sole accommodation without meeting with Ali.

In his written response to the EPA's remote work offer, Ali declined remote work as an accommodation and stated nothing more than it was "not a good option." Thereafter, Ali filed a formal complaint with the EPA's Office of Civil Rights (OCR), where the EPA argued Ali had caused a breakdown in the interactive process by his failure to explain why remote work was not a viable option—particularly in light of his past work from home. The OCR administrative law judge (ALJ) ruled in the EPA's favor, and Ali appealed to the U.S. Equal Employment Opportunity Commission (EEOC), which upheld the ALJ's decision. Ali then filed a civil suit under the Rehabilitation Act, alleging, among other claims, the EPA had failed to accommodate his disability.

During the administrative hearings, Ali finally answered the question of why remote work was not a good option, and explained he did not have a suitable workspace at home, he was unable to print due to printer fumes, and he could not become a team leader unless he worked in the office. Ali's supervisor testified no open offices were available in her division, but she had offered remote work support (including purchase of a printer) and consideration of hybrid options. The supervisor also explained that an air quality test had not shown any appreciable difference between air quality in private offices and cubicles, and she had offered an air purifier for his cubicle.

The district court granted summary judgment in favor of the EPA as to all claims, finding Ali had caused a breakdown in the interactive process by declining the offer of remote work without providing reasons why remote work was not a reasonable accommodation. On appeal, the EPA moved for summary affirmance of the district court's ruling. The D.C. Circuit affirmed summary judgment as to all claims, except for the Rehabilitation Act failure-to-accommodate claim.

The Circuit Court's Decision

The court first addressed the district court's finding that Ali had caused a breakdown in the interactive process. Ali had provided all the information that the EPA had requested, and the court noted that it had never "affirmed summary judgment for the employer on interactive-process grounds where an employee failed to *volunteer* information, rather than provide requested information." (Emphasis in the original.) The EPA never asked *why* remote work was not a reasonable accommodation after it received Ali's response that remote work was "not a good option," and he had no duty to volunteer the information.

The court determined the real issue was whether the EPA's proposed accommodation was reasonable under the particular facts of the case. Even though the EPA had no obligation "to engage in an interactive process with Ali to the extent it was able to offer a reasonable accommodation without doing so," the court concluded that it was up to the jury to decide whether the offered accommodation was, in fact, reasonable. While "[a]n employer is not required to provide an

employee th[e] accommodation he requests or prefers," the court stated, the EPA's "take-it-or-leave-it offer" came with a risk a jury would find the offer unreasonable.

The court's decision focused on whether the reasonableness of the EPA's offered accommodation could be determined as a matter of law. Because reasonableness is a context-based inquiry, the court noted "the same accommodation might be appropriate for one disability and inappropriate for another." The court reiterated the employer's statutory obligation not to discriminate against a qualified individual with a disability, which includes refraining from limiting or segregating employees in a way that adversely affects opportunities or status. During his testimony, Ali explained that his job required him to interact with coworkers, and he was concerned about being a team leader if he were excluded from working in the office. "Not all persons with disabilities need—or want—to work from home," the court stated. "Offering a willing employee a remote-work option is very different from forcing remote work on an unwilling employee as the sole option for accommodating that employee's disability."

The court acknowledged that remote work might be a reasonable accommodation in many cases, and the EPA might be able to convince a jury that 100 percent telework was a reasonable accommodation. But, the court held, the reasonableness of the accommodation offered "turns on a quintessential factual dispute that needs to be resolved by a jury," not by a court as a matter of law.

Key Takeaways

The circuit court's decision underscores the fact-intensive nature of accommodation requests and inquiries related to whether an accommodation is "reasonable." While not required by the Rehabilitation Act or the Americans with Disabilities Act, the interactive process provides an opportunity for employers to explore available accommodations and the reasonableness of each option. Because employees have no obligation to volunteer information during the interactive process, employers may need to follow up with employees to inquire *why* an offered accommodation is not reasonable. Employers that opt out of the interactive process, risk a jury finding that the offered accommodation was not reasonable under the particular facts and circumstances.

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