

Where's Barnett? "Two-Step" Analysis Missing in ADA Telecommuting Accommodation Case - Americans with Disabilities Act

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The Sixth Circuit's decision in [EEOC v. Ford Motor Company](#) is so rich with **disability management** lessons that one post just does not do it justice. So here is my second post on that case. (The first is [here](#).) There will be more to come.

As we have discussed, the Supreme Court of the United States in its 2002 decision in [US Airways v. Barnett](#) held that there is a two step process to evaluate whether a requested accommodation is reasonable. The Court held that an employee has the burden of proving that a requested accommodation is reasonable "in the run of cases" by showing that the accommodation is "reasonable on its face" or, if it is not, that "special circumstances" make the accommodation reasonable in the specific situation (the first step). If the plaintiff meets this burden, the employer may argue that the proposed accommodation poses an undue hardship on its operation (the second step).

A significant issue in EEOC v. Ford Motor Company was whether a team member's request to work at home up to four days a week was a request for a reasonable accommodation. One would anticipate that the Barnett "two-step" would be the framework of analysis. But in Ford, there is no reference to Barnett, and no analysis of whether a team member's request to work up to four days per week at home is reasonable "in the run of cases" or reasonable "on its face" or whether special circumstances make it so. Not in the majority opinion and not in the dissent.

Instead, the court used the one-step approach advocated by the EEOC—a requested accommodation is reasonable unless the employer can establish that it is an undue hardship. As we have [posted previously](#), we refer to the approach of not applying the Barnett "two step" in favor of applying the "one step" as the "Barnett Slide."

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