

En Banc Sixth Circuit Decision Holds that Telecommuting Was Not a Reasonable Accommodation Under the Americans with Disabilities Act for Ford Employee

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Last Friday, the ***Sixth Circuit Court of Appeals*** sitting ***en banc*** held that telecommuting up to four days a week was not a reasonable accommodation under the ADA for a disabled Ford Motor Co. employee. The decision, ***EEOC v. Ford Motor Co.***, provided a win for employers (and a setback for the EEOC) by reversing an earlier decision issued by a divided panel of three Sixth Circuit judges, which had held that telecommuting was a reasonable accommodation for this particular employee.

Background

The plaintiff in the case was a steel resale buyer for Ford – a position that required her to work on a team and have a significant amount of personal interactions with others. The plaintiff suffered from a disability that caused her to miss work repeatedly and threw her schedule in flux. In response, Ford offered her several accommodations, including working an alternative schedule and telecommuting as needed on a trial basis. When the plaintiff still failed to meet Ford's performance objectives despite these accommodations, she requested that Ford permit her to telecommute up to four days per week. Ford denied her request as unreasonable.

The Sixth Circuit Finds that Ford Did Not Violate the ADA By Failing To Grant the Employee's Request to Telecommute

Initially, a divided panel of three Sixth Circuit judges said that the case should proceed back to the district court because a genuine dispute of material fact existed regarding whether the plaintiff could perform all of her job duties from a remote location. But the full Sixth Circuit agreed to hear the case and ultimately agreed with Ford. At the heart of the Court's decision was the fact that the plaintiff's highly-interactive position was not amenable to extensive telecommuting: at least eight of her ten job responsibilities could not be performed effectively from home, and though Ford allowed employees with certain positions to telecommute on a more regular basis, it had always limited telecommuting opportunities for resale buyers.

While the ADA requires companies to make reasonable accommodations to qualifying employees with disabilities, companies must only do so if the employee is able to perform the “essential functions” of the job with that reasonable accommodation in place. Here, regular and predictable on-site job attendance was an essential function of the plaintiff’s position, especially because resale buyers routinely worked in teams, met with suppliers and stampers, and had on-site face-to-face interactions. The Court found that the plaintiff’s request to telecommute up to four days per week removed this essential function from her job, and was therefore unreasonable. Moreover, the Court reasoned, allowing resale buyers to regularly telecommute would require Ford to lower its production standards, which the ADA does not require of employers under the reasonable accommodation standard.

Takeaways

On one hand, several aspects of this decision are a boon for employers. The Court used broad language to state the significance of in-person attendance at many workplaces, noting that “in-person attendance is an essential function – and a prerequisite to essential functions – of most jobs,” and most jobs would be “*fundamentally altered* if regular and predictable on-site attendance” was not required. The Court further reasoned that “non-lawyers would readily understand that regular on-site attendance is required for interactive jobs” and that they may “view it as the basic, most fundamental activity of their job.” Such common-sense understandings, the Court added, are an important guide in this area. This language suggests that extensive telecommuting would not be a reasonable accommodation for employees in most highly-interactive positions.

The Court also emphasized that the definition of an “essential function” of a job is not meant to require employers to lower their production standards or to second-guess an employer’s business judgment with respect to such standards. The Court, again, expansively stated that many employers would be required to lower their standards if regular, in-person attendance was not required.

While such declarations provide reason for employers to celebrate this decision, the decision is not without its limitations. For one, the Court emphasized that technology could, for some jobs, render extensive, or even exclusive telecommuting, a reasonable accommodation. In this case, the Court stated that there was no evidence in the record indicating that technology had advanced far enough to make the plaintiff’s job (i.e., a highly interactive resale buying position for Ford) one that could be effectively performed from home. This leaves open the possibility, however, that technology may have already advanced far enough to make extensive telecommuting reasonable for other jobs.

The Court’s reasoning in this case is also limited in part by the fact that regularly attending work was an essential part of the plaintiff’s job; telecommuting could be a reasonable accommodation in jobs where regularly working on-site is incidental to an employee’s duties.

Additionally, this was one Circuit court’s interpretation of the ADA’s reasonable accommodation requirement, and it does not mean that the EEOC will stop suing employers on the grounds that they have discriminated by not providing telecommuting opportunities to disabled employees. As such, employers should continue to evaluate requests for accommodations on a case-by-case basis.

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