

That Stinks! EEOC Sues on Behalf of Employee Denied Relief from Workplace Smells

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On July 12, 2017, the EEOC filed suit in the Middle District of North Carolina alleging that an employer violated the Americans with Disabilities Act (ADA) by refusing a request to telecommute from an employee with a sensitivity to workplace smells.

[In the lawsuit filed against Advanced Home Care, Inc.](#), the EEOC claims that the employee asked her supervisor on three separate occasions if she could work from home to avoid exposure to the fragrances and odors she encountered in the workplace, since those scents aggravated her asthma and COPD. However, the employee's supervisor allegedly ignored the requests to telecommute, even though the employee worked as a case manager for patients requiring home services and could have performed her essential duties from home. The EEOC asserts that the employer's rejection of the request to telecommute, without first conducting an individualized assessment of the requested accommodation, was a violation of the ADA.

The filing of this lawsuit should serve as a reminder on two fronts for employers. First, an employee's claim that he or she is allergic to certain scents or substances in the workplace should not be dismissed offhand. Frequently, the employee's sensitivity to such scents or substances is related to an underlying respiratory condition such as asthma, COPD, or allergic rhinitis. Such conditions often constitute a disability under the ADA since they typically impact the major life activity of breathing. Second, once an employee requests to telecommute as an accommodation for a disability, that request should never be ignored. In [EEOC v. Ford Motor Company](#), the seminal decision regarding telecommuting as an accommodation, the Sixth Circuit Court of Appeals recognized that both employers and employees must engage in a good faith "interactive process" to determine if the requested accommodation is reasonable or if it creates an [undue hardship](#) on the employer. If the employer ignores the request to telecommute and thus fails to engage in the required "interactive process" it runs a significant risk of liability for failure to accommodate. On the other hand, the employer who rejects the request to telecommute after engaging in a good faith interactive process with the employee will be in a much more defensible position should litigation result.

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