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ADA Ruling Guides On Accommodating Telework Requests

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Although the threat of COVID-19 has not been completely eliminated, many employers are reopening their offices, or at least beginning to plan for employees to return to the office.

But not all employees may want to return, and some might request to work remotely due to ongoing concerns about COVID-19 in light of underlying health conditions or simply a fear of contracting the virus.

It remains to be seen how courts will address these issues under the Americans with Disabilities Act and state law, but an April decision from the U.S. Court of Appeals for the Tenth Circuit in Unrein v. PHC-Fort Morgan Inc. addressing a prepandemic accommodation issue, along with updated technical assistance from the U.S. Equal Employment Opportunity Commission, provide useful guidance.

The Facts

According to the Tenth Circuit's decision, Joan Unrein worked at the Colorado Plains Medical Center as a clinical dietitian.

At some point, Unrein became legally blind. The hospital accommodated Unrein's blindness at work with special magnifying equipment, but her transportation issues were more problematic.

Unrein, who lived about 60 miles from the hospital, could not drive herself to work or secure a ride service or public transportation, so she had to rely on friends and family. As a result, her ability to get to and from work was inconsistent, leading Unrein to request a flexible schedule.

The hospital accommodated Unrein's request, but it also implemented limits in an effort to mitigate any adverse impact on patient care and undue burdens on other employees.

After 15 months, the hospital concluded that Unrein's inability to be physically present at the hospital on a regular, predictable schedule was not working.

Unrein's performance declined, as did patient satisfaction scores. Consequently, the hospital ended the flexible schedule arrangement.

Unrein then asked the hospital to reinstate her accommodations, and later, to telecommute full time.

While these requests were pending, Unrein requested, and the hospital approved, a full-time medical leave for issues unrelated to her blindness.

After seven months, Unrein was approved for long-term disability and Social Security benefits. At that point, the hospital terminated her employment.

Unrein's Claims and the Tenth Circuit's Decision

Unrein sued the hospital, claiming (among other things) that the hospital violated the ADA by failing to accommodate her.

The ADA generally requires employers to engage in the interactive process with, and provide reasonable accommodations to, individuals with disabilities, subject to limited exceptions — i.e., an accommodation is not required if it poses an undue hardship on the employer.

In this case, the analysis turned on whether physical presence at the hospital on a set and predictable schedule was an essential job function of the clinical dietitian position. Employers need not eliminate an essential job function, as that is not considered a reasonable accommodation.

Ultimately, the Tenth Circuit agreed with the trial court's conclusion that being at work on a predictable schedule was an essential job function.

Employers bear the burden of establishing that certain job functions are essential. To do so, they must show the task or function is job-related, uniformly enforced and consistent with business necessity.

Unrein's duties involved close contact with patients, and the hospital's negative experience with Unrein's less predictable on-site schedule no doubt helped convince the court that being on-site on a set, predictable schedule was an essential job function.

The Tenth Circuit also noted that Unrein sought an accommodation due to her transportation barrier, yet transportation to and from work is not an essential function or a privilege of employment.

Indeed, the court noted that a nondisabled worker whose car broke down would be in no different position than Unrein, and that employee would have no greater rights to a flexible schedule.

Lessons Learned

This case reaffirms that employers who work with employees and attempt to accommodate them are often better able to defend against claims than those that summarily deny a request.

The Tenth Circuit's decision also reminds that employers do not have to eliminate essential job functions, which can include being physically present at work on a set, predictable schedule.

Still, this is not a blanket authorization for employers to mandate all employees return to the office, without exception, when the pandemic ends.

If an employee requests to work remotely and suggests it is due to a medical issue or impairment, then the employer should engage in the interactive process and determine whether physical presence at the office is essential.

The EEOC's recently updated COVID-19 technical assistance[1] confirms this point.

In that technical assistance, the EEOC reiterates that employers may ask employees for additional information to assess possible accommodations and provide temporary accommodations if necessary or appropriate.

It also identifies a variety of options to consider with respect to accommodating employees who are returning to the office, including providing additional or enhanced protective gowns, masks, gloves or other gear, erecting a barrier to separate coworkers and/or visitors, or temporarily modifying work schedules if doing so decreases contact with coworkers and/or the public when on duty or commuting.

As always, the interactive process must be individualized. Adopting a blanket approach to employees' requests for accommodation due to COVID-19 — such as denying all requests to work remotely — is an invitation for trouble, as an accommodation that works for one employee may not work for another.

Instead, it is better to analyze the particular request at issue, including the duties and responsibilities of the employee who made the request, when determining whether to grant or deny the request — or to provide some alternative accommodation.

Moreover, employers should avoid assumptions about how remote work or other accommodation requests might impact the workplace or the ability to perform work.

Instead, critically and objectively assess the impact to the organization when analyzing a requested accommodation.

The pandemic impacted how and where many of us work. While there is a desire to return to normal, remember to be patient and assess requests for accommodation carefully.

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[1] https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.

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