Sixth Circuit Court of Appeals Affirms EEOC's Long-Held Position That Telecommuting Can Be a Reasonable Accommodation Under the ADA

By Dave Robinson on May 30, 2014

In **EEOC v. Ford Motor Co**., the Sixth Circuit recently found that an employee request to telecommute "as needed" could be a reasonable accommodation under the Americans with Disability Act (ADA). This is not a new concept under the ADA. Since as early as 2005, the U.S. Equal Employment Opportunity Commission (EEOC) has **cautioned** employers that requests to telecommute "may fall under the ADA's reasonable accommodation requirement to modify workplace policies, even if the employer does not allow other employees to telework." The EEOC concluded that the determination as to whether telecommuting was reasonable "should be made through a flexible 'interactive process' between the employer and the individual."

In Ford, the Sixth Circuit came to a similar conclusion, overturning the lower court's grant of summary judgment to Ford on the employee's failure to accommodate claim. In this case, Ford terminated an employee with severe IBS (an illness that causes incontinence), which previously required the employee to take intermittent FMLA leave whenever she suffered symptoms of IBS. Prior to termination, the employee requested that Ford allow her to telecommute on an "as needed" basis when her IBS symptoms flared up. Ford rejected the request, and later terminated her based on her poor performance, which in part was caused by her poor attendance.

At its core, the Sixth Circuit's decision centered on its finding that Ford did not provide undisputed evidence (which is required to prevail on summary judgment for this type of claim) that being present in the workplace (as opposed to telecommuting) was an essential function of the employee's position as a resale buyer. The court determined that evidence of Ford allowing other resale buyers to work from home, and resale buyers communicating primarily by conference calls and email, undercut Ford's position that the employee's presence in the work place was an essential function of the position. Accordingly, the court determined that it was up to a jury to decide whether the request for accommodation was in fact reasonable.

What can we learn from Ford? In order to defend an anti-telecommuting policy, employers should assess and detail in its job descriptions the realistic need for the employee to be present in the office. Make sure to document all of the reasons of why telecommuting is not permitted and be prepared to substantiate these claims if the policy is challenged. Additionally, when dealing with a request for accommodation, employers should avoid blanket prohibitions in considering whether a request (telecommuting or otherwise) is reasonable.

Despite the Sixth Circuit's pronouncement in Ford, telecommuting as a reasonable accommodation still largely remains the exception. In many situations, a request to

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telecommute will not be considered a reasonable accommodation because there is an obvious need for the employee to be present in the workplace. In others, the employer can provide an alternative accommodation that is acceptable to both parties. It is clear, however, that employers simply cannot reject a request to telecommute as an across the board unreasonable accommodation, even where company policy prohibits working from home. As with all requests for accommodation, the employer must engage in an interactive process with the employee and, at a minimum, offer reasonable alternatives.

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