



Sixth Circuit Holds ‘Regular and Predictable On-Site Job Attendance’ To Be an Essential Job Function, Rejects Employee’s Demand to Telecommute Four Days a Week

In an important “win” for employers that has potentially widespread implications, the Sixth Circuit Court of Appeals, sitting en banc, reinstated summary judgment dismissing claims asserted by the Equal Employment Opportunity Commission (EEOC) that Ford Motor Company failed to accommodate a former employee’s request under the Americans with Disabilities Act (ADA) to telecommute up to four days per week. The Court reaffirmed the “general rule that, with few exceptions, ‘an employee who does not come to work cannot perform any of his job functions, essential or otherwise.’” Notably, the Court observed: “The [ADA] requires employers to reasonably accommodate their disabled employees; it does not endow all disabled persons with a job – or job schedule – of their choosing.”

The plaintiff in *EEOC v. Ford Motor Company*, Jane Harris, worked as a resale steel buyer, a position which “required teamwork, meetings with suppliers and stampers, and on site ‘availability to participate in face-to-face interactions,’ [which] necessitate[d]... regular and predictable attendance.” The Court stressed the position was “highly interactive” and required “good, old-fashioned interpersonal skills.”

Harris suffered from irritable bowel syndrome, and as a result “she repeatedly missed work[.]” In 2008, Harris missed 1.5 days of work per week and in 2009, she was absent more often than she was present. After Ford refused Harris’s request that she be permitted to telecommute “up to four days per week” and subsequently terminated her employment for excessive absenteeism, the EEOC brought suit on her behalf alleging Ford had failed to make a “reasonable accommodation” under the ADA.

Although a divided panel of the Sixth Circuit initially reversed summary judgment for the employer, the Court, sitting en banc, reinstated summary judgment dismissing the EEOC’s claim. The Court reasoned that “Harris cannot regularly and predictably attend the workplace – an essential function, and a prerequisite to other essential functions – even with the past reasonable accommodations of telecommuting trials and specialized plans to improve her attendance. And Harris’s proposed

unpredictable, *ad hoc* telecommuting schedule was not reasonable because it would have removed at least one essential function of her job [regular job attendance]. [Thus,] Harris is unqualified as a matter of law[.]”

While a significant employer victory, *Ford* is not a license for employers to disregard their obligation to engage in the interactive process and entertain potentially similar telecommuting options. Some jobs may allow for telecommuting. That said, this opinion is particularly instructive because it exhaustively analyzes nationwide case law and the EEOC’s own regulations respecting an employee’s attendance responsibilities, including a “sometimes – forgotten guide [] support[ing] the general rule: common sense.”

EEOC v. Ford thus reaffirms that even in today’s fast-paced world of video-conferences and smart phones with mobile access on a moment’s notice, the general rule remains unchanged: “Regularly attending work on-site is essential to most jobs, especially the interactive ones[.]”

Key Takeaway: The principle never grows stale: Employers must be diligent in crafting and maintaining accurate job descriptions (carefully detailing all essential job duties) and performance reviews as Harris’s job responsibilities and documented performance issues were critical to the Court’s reasoning in *Ford*. Employers, while engaging in the interactive process, should also consult their job descriptions and analyze employees’ individual job responsibilities on a case-by-case basis before determining whether telecommuting or other accommodations are reasonable under the circumstances.

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