
Sixth Circuit Deals The EEOC A Major Loss In Years-Long Ford Motor Company Telecommuting Saga

By Paul A. Wilhelm / Apr 17, 2015

The United States Sixth Circuit Court of Appeals Holds Regular And Predictable On-Site Job Attendance Is An Essential Function Of Former Employee's Job With Ford.

Ford Motor Company employed Ms. Harris as a resale buyer of steel. She suffered from irritable bowel syndrome. She requested an accommodation allowing her to "work from home on an as-needed basis, up to four days per week."

After meeting with Harris, Ford determined her proposed accommodation was not reasonable, and did not grant it. Ford offered to move her work space closer to the restroom or to look for jobs "better suited for telecommuting." Harris refused each of these accommodations. Ford previously allowed Harris to telecommute on an as-needed basis on three different occasions. It also tried to develop plans to improve her attendance on three different occasions. All six efforts failed to improve her attendance.

After Harris filed an EEOC charge and her performance suffered further, Ford terminated her for poor performance. The EEOC sued Ford for disability discrimination and retaliation. Ford won dismissal of both counts before the district court. In a controversial decision, a three judge panel of the Sixth Circuit reversed the lower court's dismissal. One judge of the panel dissented.

The "full" Sixth Circuit granted an *en banc* review. On April 10, 2015, the Sixth Circuit affirmed summary judgment, 8-5 in favor of Ford. The Court found Harris's excessive absences "caused her to make mistakes and caused strife in those around her." The majority held that regularly attending work was essential to her job. Because she did not regularly attend her work, she was not qualified for her job. On Harris's retaliation claim, the Court found the EEOC failed to show sufficient evidence to overcome the well-documented poor performance and interpersonal issues, and the mere four months between her EEOC charge and her termination could not save the case from summary judgment.

This is an important case for employers in many respects. First, the case provides an excellent reminder of employers' duty to engage in the interactive process. The employer need not accept the employee's proposed accommodation if it is not reasonable under the circumstances. After Harris rejected Ford's two counteroffers (which Ford was not legally bound to offer her) Ford suggested that Harris identify another accommodation, which she never did. Ford successfully engaged in the interactive process by considering Harris's proposed accommodation and, after rejecting it, offering her two alternative accommodations.

Second, jobs requiring face-to-face interaction and coordination of work with other employees are less suitable for telecommuting and/or alternative schedules. For example, jobs that require employees to perform work during specific business hours, due to required interaction with live human beings, may be among those for which regular and predictable on-site attendance is essential to the job. Even where technological advances appear to allow home-based work, employers may require regular attendance if the job requires interaction with other employees, suppliers or customers.

Finally, while a reasonable accommodation may include job restructuring and part-time or modified work schedules, it "does not include removing an 'essential function' from the position..." In the Ford case, an essential function of her job required Ms. Harris's attendance at work so that she could interact with other employees and suppliers. An accommodation which removes this essential function is unreasonable as a matter of law.

If you have any questions about this case, your written job descriptions or telecommuting issues, please contact Paul A. Wilhelm at (313) 309-4269 or pwilhelm@clarkhill.com or a member of Clark Hill's Labor and Employment Practice Group.