

6th Circuit Provides Road Map for ADA Accommodation Cases

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A recent Sixth Circuit Court of Appeals case provides employers with a great example of how to evaluate accommodation requests under the Americans with Disabilities Act (ADA).

In *EEOC v. Ford Motor Co.*, a case which involved an employee's request to telecommute up to four days per week due to her irritable bowel syndrome, the court rejected the employee's failure-to-accommodate claim after considering a number of factors:

1. **The essential functions of the employee's job:** In determining the essential functions, the Court relied heavily on the duties performed by other employees in the same position and the employer's own documents. The Court noted that the job required almost constant interaction with others, which could most effectively be done face-to-face, often with only a few minutes' notice. The Company had a telecommuting policy but notably required that comparable employees work a set schedule with on-site days clearly defined, be off-site no more than two days per week, and be able to come on-site when necessary, even if not so scheduled. In practice, everyone in a comparable position who telecommuted was scheduled to stay home no more than one day per week.
2. **Plaintiff's attendance:** Plaintiff's attendance was abysmal. In one year, she was absent more often than she was present. But more importantly, Plaintiff's attendance was unreliable and unpredictable over an extended period of time. The Court clearly distinguished between this and a case where an employee requires scheduled time off.
3. **Plaintiff's ability to perform the essential functions of the job from home:** Critical to the Court's decision was Plaintiff's admission that, of the ten job functions outlined, she could not do four of them from home at all. The employer argued that she could not effectively perform another four, leaving only two that could clearly be performed from home. The Court did not need to make a factual determination about the four the employer did not think Plaintiff could perform, since Plaintiff admitted she could not perform four others, and elimination of essential functions is *per se* unreasonable.
4. **The employer's attempts to allow Plaintiff to telecommute:** On at least three occasions involving several supervisors, the employer allowed the plaintiff to telecommute pursuant to its policy. Each attempt failed, with Plaintiff unable to work steady hours, even from home, and unable to perform the essential functions of her position.
5. **The employer's refusal to engage in the interactive process:** The employer offered two alternative accommodations. First, it offered to move Plaintiff's desk so that she would be closer to the restroom. Second, it offered to look for vacancies in positions that could more easily accommodate telecommuting. Plaintiff rejected both and did not offer any alternatives.

EEOC v. Ford Motor Co. does **not** stand for the proposition that an employer never needs to modify its attendance policies or allow an employee to work from home as an accommodation. But, it provides a good guide for employers to conduct business in a way that makes accommodation claims defensible:

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- Have established policies regarding attendance and telecommuting;
- Make sure the actual practices support the employer's articulation of the essential functions of the job;
- Give the employee multiple opportunities to improve attendance; attempt the accommodation before concluding that it cannot work; and,
- Continue to engage in the interactive process to identify potential alternative accommodations.

Ford Motor Company did all of those things, and as a result gave the Court numerous bases on which to reject the employee's claim.

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