

U.S. Equal Employment Opportunity Commission (“EEOC”) Convinces Court to Adopt New Definition of Workplace When Considering Telecommuting as a “Reasonable Accommodation” Under the Americans with Disabilities Act (“ADA”)

A mid-western Appeals Court recently expanded the definition of the term “workplace” for ADA purposes. According to the Court, a “workplace” is “anywhere an employee can perform her job duties.” The Court rejected the employer’s (Ford Motors’) argument that the term “workplace” should be defined by a “bricks and mortar” structure.

The Court’s analysis affects whether an employee’s request to telecommute qualifies as a “reasonable accommodation” under the ADA. If other courts adopt this position, they will focus more sharply on how, rather than where, employees perform the core functions of their jobs. For example, courts will look to see if employees typically conduct job-related communications through teleconference and email as opposed to in-person meetings. Courts will also evaluate whether the employer has a preexisting telecommuting policy. While employers have always had to consider these factors (i.e., Am I treating an employee with a disability the same as other employees? Am I considering only essential job functions?), this decision broadens the accommodations that employers may have to grant.

Notably, the Court explicitly rejected Ford’s argument that its employee needed to be physically present “on-site” so that she could respond to unexpected work-related emergencies and/ or participate in impromptu meetings. The Court found that the employee’s request to telecommute from home on an “as needed basis” was a reasonable accommodation under the ADA because the evidence before the Court showed that the employee in question primarily communicated by teleconference and email and that Ford already had a telecommuting policy in place. As long as the employee was available via telephone or email during core business hours, the employee could adequately address these unexpected contingencies. The employee, who suffered from gastrointestinal problems, had been offered other accommodations such as a relocation of her work station closer to bathroom facilities.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

Susan J. Baronoff

Michael Colgan Harrington

Lauren Filiberto Hopwood

William J. Keenan, Jr.

Hugh F. Murray, III

Lissa J. Paris

Rachel Faye Smith

Barry J. Waters

Jennifer A. Corvo

Stella Szantova Giordano

Colleen O’Neill

Monica P. Snyder

Kristen L. Zaehring

The Court found that technology has revolutionized the workplace. It declared that the crucial inquiry in analyzing the reasonableness of a telecommuting request is to determine whether the employee in question truly needs to interact personally with equipment or people at the employer's offices to perform the core functions of her job. Ford has asked the full Court of Appeals (the decision was by three Judges) to review the decision. Although not binding on courts in New England, the decision may well be influential.

The decision serves as a reminder that before acting on a reasonable accommodation request, all employers must:

- look carefully at the employee's request for accommodation;
- analyze the essential functions of the job; and
- review treatment of similarly situated workers.

Please contact Susan J. Baronoff at 617.457.4031, sbaronoff@murthalaw.com or Michael C. Harrington at 860.240.6049, mharrington@murthalaw.com if you have any questions concerning the issues discussed in this article.