

6th Cir.: Telecommuting as an Accommodation Has Limits

By Robert N. Dare 5/7/2015

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The entire 6th U.S. Circuit Court of Appeals reversed a 2014 decision by a three-member panel of judges and held that an employee's request for an accommodation to telecommute up to four days a week was unreasonable.

Jane Harris, the plaintiff, was a resale buyer at Ford who served as an intermediary between steel suppliers and companies that use steel to manufacture parts for Ford. Her role required her to meet regularly with the suppliers at their sites and with Ford employees at its site. In addition, she was required to meet with suppliers or Ford colleagues on short notice. Therefore, according to Ford, Harris' job was "highly interactive" and her "regular and predictable attendance in the workplace ... was essential to being a fully functioning member of the resale team."



Throughout her tenure at Ford, Harris had suffered from irritable bowel syndrome, and her incontinence and related stress resulted in frequent absences and tardiness. Her performance progressively declined, and she was ranked in the bottom 10 percent of her peers for two consecutive years. Ford offered a number of accommodations; when all of them failed to improve her performance, Harris proposed that she work up to four days per week from home. After determining that the majority of her job responsibilities could not be performed at home, Ford concluded that telecommuting could work only if there was a set schedule and only if Harris agreed to commute to Ford's worksite on an as-needed basis on telecommuting days. Harris rejected Ford's proposal, but Ford continued to offer additional accommodations, such as moving her workstation closer the bathroom and transitioning her to a job more conducive to telecommuting. Harris again rejected the accommodations, and she filed a charge with the Equal Employment Opportunity Commission (EEOC). Her performance continued to decline, and she was ultimately terminated. The EEOC sued Ford, claiming it failed to accommodate Harris' disability and retaliated against her for filing a charge with the EEOC.

A federal district court granted summary judgment in favor of Ford, and a divided 6th Circuit panel reversed. The 6th Circuit agreed to hear the case *en banc*.

First, the court emphasized that an accommodation that requires removing an "essential function" of the job "is *per se* unreasonable." The court concluded that "[a]n employee who does not come to work cannot perform any of his job functions, essential or otherwise." Indeed, "most jobs require the kind of teamwork, personal interaction, and supervision that simply cannot be had in a home office situation." Therefore, according to the court, "regular, in-person attendance is an essential function—and a prerequisite to essential functions—of most jobs, especially the interactive ones." Accordingly, the court held that Harris' proposed accommodation was unreasonable.

The 6th Circuit rejected the EEOC's argument that allowing scheduled telecommuting one day per week for some employees means other employees, like Harris, can demand to telecommute 80 percent of the week according to their own schedule, noting that if that were the rule, companies would no longer accommodate one day per week telecommuting to avoid that precedent. The court also rejected the EEOC's contention that advances in technology called for a re-evaluation with respect to onsite attendance as an essential job function. The panel observed that teleconferencing and limited videoconferencing were just as available during the plethora of decisions from 1994 through 2012 holding that personal presence is usually an essential function.

EEOC v. Ford Motor Co., 6th Cir., No. 12-2484 (April 10, 2015).

Professional Pointer: Job descriptions for interactive jobs should be reviewed and revised to describe regular, in-person attendance as an essential function. While telecommuting can be a reasonable and effective accommodation in some situations, it seems to be more of an exception than the rule. Nevertheless, employers still must consider telecommuting as an accommodation on a case-by-case basis through the interactive process.

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