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Does the ADA extend to issues in getting to and from work?

Employers seldom control where employees live, and in general are not responsible for challenges that lie outside the workplace. But if a disability covered by the Americans with Disabilities Act substantially limits an employee's ability to commute to work, and transportation is related to an essential job function, an employer may have to provide a modified work schedule as a reasonable accommodation.

In *Equal Employment Opportunity Commission v. Charter Comm. LLC*, 75 F.4th 729 (2023), the 7th U.S. Circuit Court of Appeals weighed into a clear split among the circuits on whether an employer must afford a reasonable accommodation, in terms of modified work schedules, to accommodate an employee's commuting challenges.

Plaintiff James Kimmons worked in a call center for defendant Charter Communications. Kimmons' cataracts blurred his vision and made nighttime driving unsafe. The issue in this case was whether an employee is entitled to a modified work schedule as an accommodation to make his commute safer.

The employer granted his first request for a 30-day change but denied his request to extend the schedule so that he might move closer to work. Kimmons sued Charter for allegedly failing to accommodate his schedule, pursuant to the ADA, so he would not have to drive at night.

The district court granted summary judgment to Charter, holding that the employer had

no obligation to accommodate Kimmons' commute because his disability did not affect his ability to perform any essential function of his job once he arrived at the workplace.

Split among the circuits

In similar cases, the 2nd and 3rd Circuits sided with the employee regarding accommodations during a commute to work that was compromised by a covered disability. However, the 6th and 10th Circuits have found no obligation on the part of employers to accommodate a disability that negatively impacts only an employee's commute to work.

The 7th Circuit, however, did not take sides but carefully analyzed the particular fact pattern for each holding. The court flatly declined "to adopt a bright-line rule" regarding whether an employer has a duty to reasonably accommodate how its employees with disabilities travel to work. The court reversed summary judgment for the employer Charter and remanded for further proceedings consistent with its analysis.

Whether a work schedule accommodation of a disability is *reasonable* hinges on a fact-specific inquiry that considers the needs of both employer and employee. The key difficulty of which accommodations are required pursuant to both the ADA and Title VII are complicated because they are *fact-specific*. Guidelines and doctrinal principles are in place of clear, bright-line rules.

If a qualified employee's disability interferes with the ability



EMPLOYMENT LAW

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to get to work, the employee may be entitled to a work-schedule accommodation if commuting to work is an essential function of the job — such as actual attendance in the workplace. Understanding the analysis becomes crucial as a return to physical attendance in the workplace becomes more important to certain professions.

Key observations

The 7th Circuit noted that where a disability makes it difficult for an employee to travel to and from work safely, the employer usually controls key

variables, such as where the employee lives and which mode of transportation to use. But the employer controls the work schedule, which can impact travel times and modes.

Under certain circumstances the ADA obliges an employer to accommodate an employee's disability-related difficulties in getting to work, if reasonable. For example, when the requested accommodation is entirely within an employer's control.

There is a temporal and logical progression from what is *required* by the ADA (and Title VII) to what is *reasonable* vis-à-vis accommodations under each statute. A deliberate and thoughtful response within the requisite *interactive* process is essential for successful risk and claims management. Now, an employer may also be liable for accommodating how and when an employee travels to work.

Because both Charter and the U.S. District Court *assumed* that no accommodation was required outside of the workplace, it is doubtful that whether a job at a "call center" can be performed at home was ever seriously considered. When an employer simply answers yes or no to a request for an accommodation, without further inquiry, the employer ignores the rigorous exploration at the heart of the interactive process. One of the reasons the 7th Circuit refused to fashion a bright-line rule is that both the employee and employer need to work out these issues through an actual dialogue.