

# Helpful Guidance in Determining a Position's Essential Functions under the ADA

## Labor & Employment Law Update

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A recent decision from the U.S. District Court for the Northern District of Illinois sheds light on how to determine what job tasks are properly considered essential functions of a position under the Americans with Disabilities Act (ADA). A plaintiff alleging that her employer denied her a reasonable accommodation for her disability must prove that she is a qualified individual, which requires showing that she can perform all the essential functions of the job with or without an accommodation.

In the recent decision, the court dismissed a police officer's failure to accommodate claim because the police officer could not perform certain functions deemed essential to her position. Specifically, she could not ambulate independently or handle a firearm. The police officer claimed these duties were not essential because she was on limited duty indefinitely and spent most of her days working at a desk.

The court delved into federal regulations and case law to determine whether a particular job duty should be deemed essential. Written job descriptions and other indications of an employer's judgment about a position's essential functions provide convincing – but not controlling – evidence.

Courts will also consider other evidence regarding whether a task is essential, including the amount of time the employee typically spends on the function, the consequence of not requiring the employee to perform the function, terms of any collective bargaining agreement, and the work experience of prior employees or other current employees in that same position.

Courts may also make additional inquiries, more likely determining that a function is essential if any of the following are true: (i) the position exists to perform the function, (ii) there are a limited number of employees among whom the function can be distributed; (iii) the function is highly specialized and/or the employee was employed specifically for her expertise or ability to perform that function.

The court also provided helpful analysis in determining essential functions where an employee is responsible for multiple tasks on a rotating basis. A court will likely find that each of the multiple duties are essential functions, even where the employee completes some of the duties only rarely, if the employer can justify why it requires each employee in that position to be able to complete all duties. An employer may satisfy this burden by showing, for example, that the workforce is too small to justify hiring specialists for each separate task or that there are unexpected surges in demand for a particular task.

The court found that even here where the plaintiff did not generally handle a firearm in her limited duty position, the police force could require all officers to be able to handle a firearm regardless of their day-to-day duties because being able to arrest someone is a central purpose of the police force.

Employers should analyze each position in the workforce to understand the position's essential duties *before* an issue arises. Being able to differentiate between essential functions and marginal functions will assist an employer in determining its obligations when an employee requests a reasonable accommodation.

While an employer may be required to excuse an employee from completing marginal functions, the ADA does not require it to excuse an employee from performing essential functions. However, it may need to provide accommodations to enable the employee to perform those essential functions.

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