

Midwest Employers in Indiana, Illinois and Wisconsin Must Now Accommodate an Employee's Transportation Issues Under the ADA??!!

Labor & Employment Law Update

By Kevin Kleine on September 21, 2023

Employers in Indiana, Illinois and Wisconsin must now accommodate an employee's work-schedule "if an employee's disability substantially interferes with his ability to travel to and from work ... if commuting to work is a prerequisite to an essential job function, including attendance in the workplace, and if the accommodation is reasonable under all the circumstances." *Equal Emp. Opportunity Commission v. Charter Communications, LLC*, 75 F.4th 729, 734 (7th Cir. 2023).

On July 28, 2023, the United States Court of Appeals for the Seventh Circuit ruled that the Americans with Disabilities Act (ADA) requires employers to modify, in certain cases, a qualified disabled employee's work-schedule to accommodate transportation issues. The court's decision to interpret the ADA to apply to employee work-schedule accommodations signals a split amongst the federal courts of appeals in how they apply the ADA with respect to an employer's obligation to reasonably accommodate an employee. In fact, the Seventh Circuit noted this split in its decision.

In *Charter Communications*, the Equal Employment Opportunity Commission (EEOC) filed a federal lawsuit against a Milwaukee employer that failed to accommodate an employee's request to extend their modified work schedule an extra 30-days. The employee at issue had cataracts, impairing their vision and making it difficult to drive home at nighttime when their shift ended at 9 pm. The employee requested to work an earlier shift to avoid driving home at night, which the employer granted—for 30 days only. The employer later denied a request for a 30-day extension of the employee's modified work schedule.

Although the Seventh Circuit noted in its decision "[w]e have no doubt that getting to and from work is in most cases the responsibility of an employee, not the employer" ... the court ultimately followed similar decisions reached by the

Second and Third Circuit Courts of Appeals and held that Congress intended the ADA to require employers to accommodate disabled employees, including so that they can commute to work. After reviewing the legislative history of the ADA, the court held that Congress explicitly intended the ADA to require employers to modify a disabled employee's work schedule in certain cases.

The Seventh Circuit recognized in its decision that other federal courts of appeals, like the Sixth and Tenth Circuit Courts of Appeals, do not agree that the ADA obligates employers to accommodate a qualified employee's transportation issues outside of work. *See Unrein v. PHC-Fort Morgan, Inc.*, 993 F.3d 873, 878–79 (10th Cir. 2021) (holding ADA did not require employer to allow unpredictably flexible schedule depending on blind employee's ability to obtain rides); *see also Regan v. Faurecia Automotive Seating, Inc.*, 679 F.3d 475, 479–80 (6th Cir. 2012) (finding ADA did not require accommodation for narcoleptic employee's commuting issues).

Importantly, despite the Seventh Circuit's decision in *Charter Communications*, a "qualified" employee's right to receive a modified work schedule accommodation under the ADA is not automatic simply because an employee requests one citing transportation issues. The Seventh Circuit clarified in its decision that an employee's needs must be balanced against the employer's, stating that "deciding whether a work-schedule accommodation of a disability that affects a commute is reasonable depends on a highly fact-specific inquiry that considers the needs of both employer and employee. The employee bears the burden to make a preliminary showing that his requested accommodation is reasonable on its face." The court also made clear that employers can deny a request to modify an employee's work schedule "on the grounds that no accommodations would be reasonable and/or that the proposed accommodations would impose an undue hardship on [the employer's] operations." *Id.*

The Seventh Circuit's decision is yet another reminder that employers must carefully follow federal laws as they are applied within the jurisdictions in which they operate—and tailor their employment practices and policies accordingly.

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