

## ADA Requires Reasonable Accommodation, Not Employee's Preferred Accommodation

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With the EEOC presently pushing an enforcement agenda focusing, in part, on claims under the Americans with Disabilities Act (ADA), it is important to keep in mind an often-underutilized legal principle when facing a failure-to-accommodate claim: the law requires only a reasonable accommodation, which is not necessarily the accommodation requested or preferred by the employee. In the recent 7<sup>th</sup> Circuit decision in *Bunn v. Khoury Enters, Inc.*, a legally blind Dairy Queen employee sued his employer for allegedly failing to accommodate his visual impairment under the ADA. While hourly employees typically rotated among various duty stations, the employee's vision prevented him from performing several duties, for example, which required reading small print on ingredient labels or monitors displaying orders. As a result, the store manager placed the employee on permanent "Expo" duty, which entailed delivering food to dine-in customers and keeping the store and dining area clean. Later, the employee resigned and sued his employer after being suspended for insubordination and his hours decreased during the winter months. The court defined "reasonable accommodation" as "[m]odifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable [a qualified] individual with a disability ... to perform the essential functions of that position[.]" The Circuit ruled that by exclusively scheduling the employee in the Expo department (as opposed to the typical rotating duties), Dairy Queen had changed its customary procedure to enable the employee to enjoy equal employment opportunities. "In short, it was exactly the kind of accommodation envisioned by the regulations applicable to the ADA." That the employer had refused the employee's request for additional or different accommodations was irrelevant (strangely, the court did not elaborate as to what the employee had requested). The court noted that (at least in the Seventh Circuit), there was no separate cause of action for failure of the interactive process. "In this area of the law, we are primarily concerned with the ends, not the means." A plaintiff's displeasure with the employer's chosen course of action is immaterial, as long as the accommodation is reasonable.

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