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What Did The Fifth Circuit Say About Reasonable Accommodations?

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Gavel

In order to be covered under the Americans with Disabilities Act, an employee must be a “qualified individual with a disability.” A “qualified individual,” in turn, must be able to perform the essential functions of his or her job with or without an accommodation. Based on these simple premises, most employers understand that they must provide reasonable accommodations to help their employees perform those essential functions (and, indeed, this is the type of accommodation that employees generally request). Accordingly, many employers would likely agree with the analysis of the Eastern District of Louisiana when it recently nixed a former assistant attorney general’s accommodation request for free on-site parking because the employee could not explain how the request assisted her in the performance of her essential functions.

Not so fast, ruled the Fifth Circuit in an opinion that can be found here (*Feist v. Louisiana*).

In what many are calling a surprise opinion from the usually conservative-leaning Fifth Circuit, the appeals court vacated the district court’s opinion regarding reasonable accommodations, holding that such “*need not relate to the performance of essential job functions*.” To support its view, the court focused on an implementing regulation discussing accommodations that allow an employee with a disability “to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.”

The obvious question we are left with, then, is where to draw the line? How far must employers go to accommodate a disability? If not anchored to the performance of essential functions, is anything that makes life easier and does not present an undue hardship reasonable? The answer, while currently unknown (at least in the Fifth Circuit), would almost certainly relate to the disability involved (here, osteoarthritis).

I find it somewhat curious that the court in this case honed in on the “equal benefits and privileges” regulation, as there was no claim that other employees were given the requested on-site parking. In any event, this opinion deserves the attention of employers, as it will surely be latched upon by the plaintiffs’ bar and an aggressive EEOC.

Stay tuned.

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