



Seventh Circuit Holds ADA Does Not Necessarily Require Remote Work Arrangement

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Mark Wallin
Partner

A divided panel of the U.S. Court of Appeals for the Seventh Circuit recently held that an employer could rescind a work-from-home arrangement and require an employee to be physically present without running afoul of the Americans with Disabilities Act (ADA). The court explained that due to changes in responsibilities for the position, the employer was within its rights to determine that an employee's physical presence had become an essential job function. Thus, under the ADA, a Chicago resident employee whose disability prevented her from being present at the employer's site in Texas was not a "qualified individual" for the particular role.

In *Bilinsky v. American Airlines, Inc.*, the Seventh Circuit affirmed the district court's summary judgment ruling in favor of the defendant employer. The plaintiff, a former communications specialist, had been diagnosed with multiple sclerosis (MS). The employee's department was located in the Dallas, but for several years, she had been permitted to work remotely from Chicago, usually traveling to Texas on a weekly basis.

In 2013, after a merger with another airline increased the department's workload, the department vice president required all department employees to be physically present in Dallas. However, the plaintiff's MS symptoms were aggravated by excessive heat, and she was thus unable to relocate to Texas. The defendant employer unsuccessfully explored accommodating the plaintiff's heat sensitivity on-site, and tried to find alternate positions for the

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plaintiff, but the plaintiff was either not interested in or not qualified for the alternate positions. The defendant permitted the plaintiff to continue working remotely until early 2015, at which time it informed her that she would be terminated if she did not relocate to Texas. The plaintiff was terminated May 1, 2015.

After filing a Charge of Discrimination and receiving a Right to Sue letter from the Equal Employment Opportunity Commission, the plaintiff brought her ADA suit, alleging failure to accommodate and retaliation under the ADA and the Illinois Human Rights Act.

The U.S. District Court for the Northern District of Illinois granted summary judgment for the employer, finding that due to her inability to relocate to Texas to work full-time at the employer's Dallas offices, the plaintiff was not a "qualified individual." On appeal, the Seventh Circuit affirmed.

Although the plaintiff was qualified to do her job before the 2013 merger while working remotely, under the circumstances, the court agreed with the district court's determination that after the merger, physical presence eventually became an essential function of the plaintiff's job. Because the plaintiff could not be physically present in Texas, the court determined that she was not a "qualified individual" for the role under the ADA.

Despite the favorable outcome in this case, employers would be well served to heed the dissent's emphasis on a written job description, which set forth requirements and qualifications for the role (e.g. location). This was particularly emphasized in the context of the summary judgment. The majority also reiterated that "regular work-site attendance is an essential function of most jobs," but was careful to point out that permitting employees to telecommute is no longer as extraordinary an accommodation as it once was. Regarding accommodations, the court noted that "[l]itigants (and courts) in ADA cases would do well to assess what's reasonable under the statute under current technological capabilities, not what was possible years ago."