



In Person Attendance is a Reasonable Job Requirement for an Interactive Job

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A recent court decision explained how employers need not offer telecommuting as a reasonable accommodation to an employee with a disability in every situation.

On April 10, 2015, the Sixth Circuit issued an en banc decision in EEOC v. Ford Motor Co. Jane Harris, a former employee, claimed that Ford discriminated against her on the basis of her disability by failing to provide her with the ability to telecommute as an accommodation. She allegedly required the accommodation as a result of complications from irritable bowel disease.

Harris claimed that she needed to telecommute up to four out of five days a week on a variable schedule. Her irritable bowel disease made it difficult for her to be away from a bathroom during the day and even for the length of her commute.

Harris's job as a resale steel buyer, however, required the ability to connect directly with suppliers and other employees to resolve unplanned supply interruptions. In Ford's business judgment, this made regular, in-person attendance an essential function of the job.

Ford permitted other employees in her position to telecommute, but denied Harris's request because she wanted to telecommute every day. Other employees who telecommuted in Harris's role did so a maximum of one fixed day per week and were available to come into the office on that day as needed. Harris requested to telecommute no less than 80% of her time and could not represent that she would be able to come into the office when needed. In fact, Ford had offered Harris two previous opportunities to attempt to telecommute, but both times Harris was unable to "establish regular and consistent work hours," even at home, and did not perform her job

satisfactorily. Ultimately, Ford terminated Harris for poor performance.

Reversing an earlier decision by a three-judge panel, the full Sixth Circuit reinstated the trial court's earlier decision dismissing the EEOC's lawsuit. The full Sixth Circuit found that requiring an employee to be present in the office to use "good old-fashioned interpersonal skills" was a reasonable requirement of Harris's job.

The Court noted that the long-standing general rule that "regularly attending work on-site is essential to most jobs, especially the interactive ones," applies to telecommuting. It also highlighted "[a] sometimes-forgotten guide [that] likewise supports the general rule: common sense. Non-lawyers would readily understand that regular on-site attendance is required for interactive jobs."

The Court found unconvincing the EEOC's argument that technological advances have reduced the need for in-person job attendance. Although technology as a general matter may facilitate telecommuting, there was no evidence here that it could replace on-site attendance. Indeed, Plaintiff admitted that she could not perform four of her ten main job responsibilities from home and that she could not perform an additional four responsibilities as well at home, even with the benefit of technology.

The Court disagreed with the EEOC's position that Ford was required to permit Harris' frequent and unpredictable telecommuting because it allowed other employees to telecommute on a more limited basis. The Court observed that such a rule would discourage companies from permitting telecommuting at all. Instead, "countless employees who benefited from generous telecommuting policies would suffer."

Of course, telecommuting will still be a reasonable accommodation for disabilities in appropriate situations. But, the decision in [Ford Motor](#) makes it clear that employers must engage in the interactive process and make a careful, fact-specific determination about the feasibility of telecommuting as an accommodation. If you have any questions about how this decision could affect your organization, please contact [Scott Ohnegian](#), [Daniel Zappo](#), or any member of Riker Danzig's [Labor & Employment Group](#).

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