

# THE EMPLOYER

BUGBEE &amp; CONKLE | v7 | JUNE 2014

## COURT FINDS PHYSICAL PRESENCE AT WORK NOT “ESSENTIAL”

On April 22, 2014, the Sixth Circuit Court of Appeals decided the case of *EEOC v. Ford Motor Company*, Case No. 12-2484, 2014 WL 1584674, in which it held that telecommuting could be a reasonable accommodation for an employee suffering from a disability. In this case, Jane Harris was hired by Ford as a resale buyer of steel. Her role was to respond to emergency supply issues and ensure that there was no gap in the steel supply to the parts manufacturers. Part of her “essential job functions” was group problem solving with other members of her department.

Ms. Harris suffered from irritable bowel syndrome, which caused unpredictable bouts of fecal incontinence. Ms. Harris testified that at times she was unable to leave her home due to the effects of her disease, or suddenly become incontinent on the drive to work, causing her to return home. She began missing large amounts of time at work. In order to keep up with her workload, Ms. Harris attempted to perform some of her duties remotely, after regular work hours; however this work was fraught with errors as she needed direct contact with suppliers and oth-

ers who were only available during normal business hours. Consequently, Ms. Harris requested a flextime telecommuting schedule. Ford did not approve this request because, in its business judgment, Ms. Harris’s position was not suitable for telecommuting because her job required her to work in the office in order to coordinate with other employees and suppliers. As an alternative, Ford offered Ms. Harris the option of moving her desk closer to the restroom or assisting her in finding a different position at Ford that was more suitable to telecommuting. Ms. Harris rejected both of these options.

In 2009, Ms. Harris filed a charge of discrimination with the EEOC. Following the complaint, Ms. Harris’s supervisor began implementing progressive discipline based in part on her attendance issues. Subsequently, Ms. Harris was terminated from her employment with Ford. Following termination, the EEOC filed a complaint against Ford alleging violations of the ADA for failing to accommodate Ms. Harris’s disability.

The District Court entered an order granting Ford’s motion for summary judgment based upon a prior line of Sixth Circuit cases holding that attendance at work is a necessary function of most jobs. The EEOC appealed. In its opinion, the Sixth Circuit noted that the line of

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Bugbee & Conkle will hold its  
Annual Employment Law  
Seminar at the Hilton Garden  
Inn, 6165 Levis Commons  
Blvd., Perrysburg, Ohio on  
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cases upon which Ford and the District Court relied were dated from the 1990's when telecommuting was not as prevalent as it is today. In language that could foreshadow tremendous changes in an employer's duty to accommodate employees who have a disability, the Court explained its rejection of its prior decisions as follows:

“When we first developed the principle that attendance is an essential requirement of most jobs, technology was such that the workplace and an employer's brick-and-mortar location were synonymous. However, as technology has advanced in the intervening decades, and an ever-greater number of employers and employees utilize remote work arrangements, **attendance at the workplace can no longer be assumed to mean attendance at the employer's physical location.**”

Finding that physical presence at the job site may not be an essential function of a job, the court examined the functions of Ms. Harris's job, and found they were largely adaptable to her telecommuting request. The court went on to look at whether Ford acted reasonably in

rejecting her telecommuting request and found all of the reasons provided by Ford to reject that request were insufficient. Further, the court held that Ford's alternative accommodations (moving her desk, or finding a new position) were inadequate to address all of Ms. Harris's concerns with regard to her accommodation. The court also looked at other factors such as the cost of the accommodation and the impact on other persons in the department and found that Ford failed to provide any evidence that in Ms. Harris's case telecommuting adversely impacted the employer.

The Sixth Circuit's decision in *EEOC v. Ford Motor Company* marks a significant departure from prior cases requiring an employee's physical presence at the worksite. It suggests the court's willingness to look at other kinds of non-traditional, technology-enabled arrangements when evaluating an employee's request for a reasonable accommodation. When employers are confronted with these kinds of requests, it is imperative that the employer thoughtfully evaluate whether the job position is actually suitable for the accommodation requested by the employee, even if it is outside of company policy. If you have any questions about reasonable accommodations under the ADA, please contact a member of our Labor & Em-

If you have any questions concerning any of the topics in this issue of *The Employer*, please contact a member of our Labor and Employment Law practice group at (419) 244-6788.

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