Court Holds Employer May Have Obligation to Assist Employee with Commute

by Grant T. Collins - Monday, September 19, 2011

The American's with Disabilities Act ("ADA") requires employers to provide reasonable accommodation to qualified individuals with disabilities, unless to do so would cause undue hardship. The employer's accommodation obligation is not all encompassing, and is limited to those accommodations that are "***job-related***." Job-related accommodations are distinguished from "personal" accommodations that "assist[] the individual throughout his or her daily activities."

With regard to an employee's commute to and from work, the First, Third, Fourth and Sixth Federal Circuit Courts of Appeals have ruled that the employer's accommodation obligation does ***not*** include providing commuting assistance to employees since this is not part of the actual work environment.

In addition, in a 2001 "Informal Guidance" letter from EEOC Associate Legal Counsel Peggy R. Mastroianni, the EEOC took the position that "***it is the employee's responsibility to arrange how s/he will get to and from work***" and that the ADA does not require an employer to provide commuting assistance as a form of reasonable accommodation.

Nevertheless, last month, the Second Circuit Court of Appeals (based in New York) decided in Nixon-Tinkelman v. New York City Dep't of Health and Mental Hygiene, No. 10-3317, 2011 WL

3489001 (2d Cir. Aug. 10, 2011), that an employer's accommodation obligation may include providing an employee with certain commuting assistance.

In that case, the employee suffered from multiple physical disabilities. After transferring to the Manhattan office, she requested a transfer back to the Queens office, which was closer to her home and her doctor. The employee also requested several other transportation-related accommodations, including use of City-owned car, a parking permit and the ability to work from home for a few days every week. She then sued the City when they denied these requests, but the trial court dismissed the case because commuting was outside the scope of her work environment.

The Second Circuit disagreed, explaining that because job performance relies on attendance, the employer must consider measures that "assist in [the] employee's commute." They then ordered the lower court to reconsider whether the employer could have reasonably accommodated the employee by (a) transferring her back to the Queens facility or another closer location, (b) allowing her to work from home, or (c) providing her with a City-owned car or parking permit.

Bottom Line

This decision represents an emerging split among the federal courts regarding the employer's duty to accommodate commuting and transportation needs. The Eighth Circuit, in which Minnesota sits, has not yet ruled definitively on this issue and we will have to keep an eye on how this issue develops locally. Ultimately, the matter may have to be resolved by the Supreme Court. Until then, employers should give some thought to whether they can accommodate this sort of situation in an efficient and effective manner, just to stay on the safe side.

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