

Reasonable Accommodation Covers Commute to Work

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In a recent case, the Second Circuit Court of Appeals held that an employer's reasonable accommodation obligation extends to assisting employees with their commute to work. Nixon-Tinkelman v. NYC Dept of Health and Mental Hygiene, Case No. 10-3317-cv (2d Cir. Aug. 10, 2011). The obligation stems from both the American's with Disabilities Act and the federal Rehabilitation Act.

Plaintiff suffered from cancer, heart problems, asthma, and had a hearing impairment. After working successfully for a number of years in Queens, she was transferred to Manhattan. Following her transfer she sought a reasonable accommodation in making the longer and more difficult commute. Her employer denied her request by claiming that commuting falls outside the scope of an employee's job and therefore need not be accommodated. The District Court agreed and granted defendant summary judgment.

On appeal, the Second Circuit reversed. The court stated that employers may have an obligation to assist an employee with their commute, and that there is nothing inherently unreasonable in requiring an employer to furnish an otherwise qualified disabled employee with assistance in getting to work. It cited prior case law in which it held that allowing an employee to work from home was such an accommodation.

In the instant case, the Court provided a number of accommodations it thought employers should consider. Aside from working from home, these included exploring whether other vacancies existed that better met plaintiff's needs, transferring her back to Queens, providing her

a car, or giving her a parking permit. Subject to the undue hardship defense, the court stated each of these options deserved consideration.

The significance of the case is that it goes beyond prior Second Circuit law, and the findings of other Circuits, which together seemed to limit accommodations to working from home, changing shifts, and changing start times. Here the Court actually stated that providing a car to an employee, or giving them special parking privileges, fall within the range of reasonable accommodation.

Employers need to be cautious when approached with accommodation requests, and must engage in the interactive process, determine the specific changes the employee has in mind, and not dismiss them out of hand as unreasonable. As the employer here found, the definition of “reasonable” continues to expand.

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