



# Disability, Religious, and Pregnancy Accommodations

David Dubberly & Carlee Taber  
[ddubberly@maynardnexsen.com](mailto:ddubberly@maynardnexsen.com)  
[ctaber@maynardnexsen.com](mailto:ctaber@maynardnexsen.com)

February 21, 2024

# Background

Laws prohibiting discrimination (as well as harassment and retaliation)

- Mainly Title VII, ADEA, PDA, and ADA

Laws requiring reasonable accommodation (accommodation that would not cause undue hardship to employer)

- Title VII (on religion) and ADA plus PWFA

# Overview

- Remote work as an ADA accommodation
- Accommodating employees with vision loss
- Accommodating employees with anxiety
- Religious accommodations after *Groff v. DeJoy*
- Accommodations for pregnant workers under the Pregnant Workers Fairness Act

# Remote Work as an ADA Accommodation

# ADA

Prohibits discrimination against qualified individuals with disability

- Individuals who can perform essential functions of their jobs with a reasonable accommodation (“RA”)

RA=any change in employee’s work environment or way employee usually works that enables him/her to do job and would not cause undue hardship (“UH”) to employer

# ADA

UH="significant difficulty or expense ... when considered in light of ...

- "The nature and net cost of the accommodation needed"
- "The overall financial resources of the" employer
- "The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties"

# ADA

To determine if requested accommodation is reasonable or not, employer and employee must engage in “interactive process”

Remote work may be RA if essential functions of job duties can be done remotely and wouldn't cause UH for employer

# Ford Case

*EEOC v. Ford Motor Co.*

**782 F.3d 753 (6th Cir. 2015) (*en banc*)**

Resale steel buyer for Ford

- Intermediary between steel suppliers and parts manufacturers
- Often had to respond to emergency supply issues and meet with suppliers at job sites

Suffered from irritable bowel syndrome

Ford allowed her to work remotely for trial period

- Was unable to establish regular work hours and missed deadlines



# Ford Case

She asked to work remotely up to four days per week as reasonable accommodation

Ford said no because position involved teamwork and client interaction

- Suggested alternative accommodations, like moving her cube closer to restroom or seeking another job within company

She said no and filed charge with EEOC

- Placed on PIP and terminated
- So filed another charge

# Ford Case

EEOC filed suit on employee's behalf

District Court granted Ford's motion for summary judgment

Sixth Circuit three-judge panel 2-1 reversed, agreeing with employee that essential functions could be performed at home given advances in teleconferencing technologies

Sixth Circuit *en banc* 8-5 vacated panel's decision and affirmed summary judgement

- As a general rule, “regularly attending work on site is essential to most jobs, especially interactive ones”
- Ford engaged in interactive dialogue with employee “to review various options that would meet both the needs of the business as well as [employee's] personal needs”

# St. Luke's Case

*Mobley v. St. Luke's Health System, Inc.*

**53 F.4th 452 (8th Cir. 2022)**

Mobley was customer service supervisor at hospital

Diagnosed with multiple sclerosis

Most of his team worked remotely

Hospital allowed supervisors to work remotely two days/week and sometimes more

He asked to work remotely whenever he had MS flare up—  
blanket request

# St. Luke's Case

## Hospital said no:

- But it considered request
- Said he could use PTO or FMLA leave during flare ups
- Said he could ask supervisor to work remote for a day on case-by-case basis
- And said he could follow up with questions or concerns

Only one instance in which supervisor denied request

# St. Luke's Case

Mobley sued under ADA for failure to accommodate

District Court granted hospital's motion for summary judgment

Eighth Circuit affirmed:

- Mobley's request for additional remote days was reasonable
  - "By allowing Mobley to consistently work remotely ..., St. Luke's implicitly demonstrated a belief that he could perform his essential job functions without being in the office all the time"
- But he couldn't show hospital failed to engage in interactive process
  - "All the interactive process requires is that employers make a good faith effort to seek accommodations"

# ISS Facility Services Case

*EEOC v. ISS Facility Services, Inc.*

**No. 1:21-cv-03708-SCJ-RDC (N.D. Ga. 2021)**

H&S manager assigned to manufacturing site

Diagnosed with chronic obstructive lung disease

Alleged disease put her at high risk of contracting  
COVID-19

Requested to work remotely two days per week and  
take breaks while on site as RA

Employer denied request and terminated employee

# ISS Facility Services Case

## EEOC's main allegations:

- Employer did not provide RA even though it allowed other employees to work remotely
- And retaliated for accommodation request

## Employer's main defenses:

- Offered RA
- Granting requested RA would constitute UH
- Termination was for non-discriminatory reason

Case settled for \$47,500

# EEOC Guidance

## “What You Should Know About COVID-19 and the ADA”

Updated May 15, 2023

- D.15: “The fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework for the purpose of protecting their safety from COVID-19, or otherwise chose to permit telework, does not mean that the employer permanently changed a job’s essential functions, that telework is always a feasible accommodation, or that it does not pose an undue hardship. These are fact-specific determinations.”
- D.16: However, “the period of providing telework because of the COVID-19 pandemic could serve as a trial period that showed whether or not this employee with a disability could satisfactorily perform all essential functions while working remotely, and the employer should consider any new requests in light of this information.”



# Winning on Reasonable Accommodation

## Update job descriptions

- Does role require in-person work and why

## Make sure there is legitimate, non-discriminatory reason to deny a request for accommodation

## Document company's good faith efforts to interact with employee and try to find solution

- Ford met with employee several times, identified alternative accommodations, and attempted to engage in additional discussion even after its alternative accommodations were rejected
- St. Luke's considered Mobley's request, allowed him to seek permission for remote work on a case-by-case basis, and told him to follow up with questions or concerns

# Additional ADA Accommodations

## Consider:

**Legally blind salesman can no longer drive a vehicle and asks for accommodation of being driven around by another salesman**

# Americans with Disabilities Act

**Prohibits discrimination against qualified individual with a disability**

**To be a qualified individual under the ADA, an employee must have**

- A physical or mental impairment
- That substantially limits
- A major life activity



# Expansion of Major Life Activities

- **Working**
- **Caring for Oneself**
- **Walking**
- **Seeing**
- **Breathing**
- **Speaking**
- **Learning**
- **Eating**
- **Performing Manual Tasks**
- **Procreation**

## **ADAAA Added**

- **Reading**
- **Thinking**
- **Hearing**
- **Sleeping**
- **Standing/Bending/Lifting**

# Qualification Under ADA

**Employee is able to perform essential functions of job with reasonable accommodation**

**Essential function = “one that bears more than a marginal relationship to the job;” a “fundamental job duty” of the position**

- **Court gives consideration to employer’s judgment as to what job functions are essential**
- **Job description is evidence of the essential functions of the job**

# Employer's Obligation

**Provide reasonable accommodation = any change in employee's work environment or way employee usually works that enables them to do job**

- Unless accommodation creates undue hardship i.e. it is not reasonable
- Undue hardship = significant difficulty or expense when considered in light of:
  - The nature and net cost of the accommodation needed
  - The overall financial resources of the employer
  - The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties

# Obligations of Employer

**No obligation under the ADA to hire an additional person to perform an essential function of the disabled employee's position**

- **No obligation under the ADA to reallocate essential functions to other employees**
  - Reallocation or redistribution of **non-essential** functions may be a reasonable accommodation under the ADA
- **No obligation under the ADA to create a new job or recreate old job as an accommodation**



# Obligations of Employer

## When do we have to consider reassignment?

Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that:

(1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or

(2) all other reasonable accommodations would impose an undue hardship

**(Vacant, Qualified, Equivalent or downgrade)**

## Consider:

**Employee is having anxiety because of  
job and wants to move to a new  
supervisor**

# Mental Impairment Under the ADA

- **Is employee a qualified individual?**
- Definition includes emotional and mental illness e.g. anxiety, depression
- **Limited in ability to perform essential functions?**
- Courts are clear that the major life activity of working is not substantially limited if an employee simply cannot work under a certain supervisor because of anxiety and stress (if the employee can do the same job for another manager he/she can do the job and isn't a qualified individual under the ADA)

# Mental Impairment Under the ADA

- **If employee had a disability:**
  - Consider all other possible accommodation options before reassignment (accommodation of last resort)
  - Reassignment does not require us to “bump” another employee
  - As part of reassignment process, not required to give employee a position that results in a promotion

# Religious Accommodations

## After *Groff v. DeJoy*

# Title VII Religious Accommodation Requirement

Requires reasonable accommodation of employee's sincerely held religious belief that conflicts with job requirement

Engage in interactive process with employee to explore reasonable accommodation

Either provide accommodation or show cannot do so without undue hardship ("UH") to the business

- Unlike the ADA, Title VII does not define UH
- So up to courts to define

Avoid discriminating/retaliating against the employee for requesting an accommodation

# Old Standard for UH under Title VII

*TWA v. Hardison, 432 U.S. 63 (1977)*

Requiring employer “to bear more than a de minimis cost” to grant requested accommodation would be an UH

Contrast ADA definition: “Significant difficulty or expense”

# New Standard for UH under Title VII

## *Groff v. DeJoy*, 600 U.S. 447 (2023)

Mail carrier Gerald Groff requested religious accommodation to not work on Sundays

USPS tried to find other carriers to cover Groff's Sunday shifts, but it was sometimes not able to do so

Groff requested to be exempted from working any Sunday

USPS said no because it would create UH

District and appeals courts sided with USPS



# New Standard – *Groff v. DeJoy*

Appeals court, applying “de minimis” standard, found exempting Groff from Sunday work caused UH because it:

- “imposed on his coworkers,
- disrupted the workplace and workflow, and
- diminished employee morale”

SCOTUS unanimously: UH “is shown when a burden is in the overall context of an employer’s business” substantial

- “[A]n employer must show that the burden ... would result in substantial increased costs in relation to the conduct of” the employer’s business

# New Standard – *Groff v. DeJoy*

On overtime: “It would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship”

- Quantify how cost would be substantial in the overall context of the business

On shift swaps: “Consideration of other options, such as voluntary shift swapping, would also be necessary”

# New Standard – *Groff v. DeJoy*

## On employee morale:

- Impacts on coworkers are relevant only to the extent they affect the conduct of the business
- So ask:
  - Does the requested accommodation negatively impact coworkers?
  - Does the negative worker impact affect the conduct of the business
- Per SCOTUS, do not consider coworker animosity towards:
  - A particular religion
  - Religion in general
  - The idea of accommodating religious practice

# New Standard – *Groff v. DeJoy*

## Nothing on safety and health, but:

- Requests for accommodation that would jeopardize safety and health of coworkers, patients, customers, etc. can be UH
- Examples:
  - Request for exemption from vaccination requirements in healthcare
  - Request for exemption from no facial hair rule in sterile lab
  - Request for prayer breaks on manufacturing line

# New Standard – *Groff v. DeJoy*

## Nothing on safety and health, but:

- Requests for accommodation that would jeopardize safety and health of coworkers, patients, customers, etc. can be UH
- Examples:
  - Request for exemption from vaccination requirements in healthcare
  - Request for exemption from no facial hair rule in sterile lab
  - Request for prayer breaks on manufacturing line

# Latest EEOC Litigation

Three cases filed after SCOTUS decision in *Groff v. DeJoy*

In each case, EEOC claimed employer did not engage in interactive process and accommodation would not have caused UH

***EEOC v. Hank's Furniture, Inc., No. 3:23-cv-24533 in (N.D. Fla. 2023)***

***EEOC v. United Healthcare Services, Inc., No.2:23-cv-03010-MHW-KAJ (S.D. Ohio 2023)***

- Employees fired after requesting exemption from mandatory vaccination due to religious beliefs

***EEOC v. Blackwell Security Services, Inc.***

**No.1:23-cv-14110 (N.D. Ill. 2023)**

- Employee who wears beard for religious reasons fired after requesting exemption from requirement to shave
- Case has settled for \$70,000

# Real Life Situations

Sabbath observance

Prayer time breaks

Religious clothing (headscarf) or beards

Exemptions from COVID-19 or flu vaccines

Participation in some aspects of DEI training

# Questions for HR

What would be the financial cost of agreeing to the accommodation?

What about other business impacts?

What safety and health risks would be involved, if any?

Would the accommodation have an impact on coworkers or others that would affect the business?

What would be the duration of the accommodation?

How many employees are seeking the same accommodation?



# Pregnancy Accommodations

# The Pregnant Workers Fairness Act

- **Intended to fill in the gaps of other legislation including the ADA, FMLA, and PDA**
- **Passed with bipartisan support**
- **Intended to be flexible so the pregnant employee can continue to make a living**
- **Congressional findings strongly supported a unified approach to accommodations for pregnant employees**
- **Enforced by the EEOC – Final regulations were due by December 29, 2023**
- **30 states with a version of the PWFA enacted**
- **Related – PUMP Act**

# PWFA - Definitions

- **Covered employer = 15 employees**
- **“Qualified individual” includes those who cannot perform an essential job function if**
  - Inability to perform is caused by a pregnancy-related condition
  - Inability to perform is “temporary”
  - essential function can be performed “in the near future” (\*up to 40 weeks)
- **Includes current pregnancy, past pregnancy, potential or intended pregnancy, labor, and childbirth**
- **“Related medical conditions” examples include termination of pregnancy, infertility, fertility treatment, use of birth control, menstrual cycles, and postpartum depression**
- **Existing health conditions exacerbated by pregnancy, such as anxiety or high blood pressure, would also be covered conditions.**

# The Interactive Process

- **Employer must engage in the “interactive process” with the employee**
- **Accommodation is not reasonable if it will cause the employer to experience an “undue hardship”**
  - Fundamentally affects the nature of the business
  - Employer’s operation i.e. structure, composition functions of workplace
  - Financial resources
  - Nature/net cost of accommodation
  - Location
  - Number of employees

# Reasonable Accommodations

- **Employer cannot force pregnant employee to take leave if another reasonable accommodation is available**
- **Examples**
  - Job restructuring
  - Assignment to light duty
  - Modified work schedules
  - Telework
  - Modified equipment/uniforms/devices

# Reasonable Accommodations

- **Management/supervisors should be trained to spot and quickly accommodate some requests that are “per se reasonable” and thus do not impose an undue hardship**
  - Carrying/drinking water
  - Additional restroom breaks/as needed breaks to eat and drink
  - Standing when the job requires sitting or sitting when standing is required (ex: cashier being provided a stool)
- **Important: It is unreasonable to request medical documentation for these types of requests**

# Medical Documentation

- **It is unreasonable to require documentation when both the limitation and the need for reasonable accommodation are obvious**
- **Unreasonable to require additional documentation when sufficient information has been provided**
- **Unreasonable to require documentation when the accommodation needed involves lactation**

# Considerations

- **Failure to accommodate pregnant employee when accommodations are made for others for medical conditions may violate other laws**
  - UPS v. Young – 2015 case involving PDA
  - Frontier's settlement with EEOC/pilots announced December 2023 to provide accommodations for pregnant/lactating pilots
    - PUMP Act and PDA

**Temporarily grant accommodations and reassess later**



Lastly...

Don't forget to post the PWFA  
poster in a visible place

**Available on the [EEOC website](#)**

Thank you!

Questions?