

Are Employers Required to Make Commuting Accommodations under the Americans with Disabilities Act?

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The answer to this question is unclear, and federal courts continue to disagree.

The Americans with Disabilities Act (“ADA”) requires employers to provide reasonable accommodations to employees with disabilities, so long as the accommodations do not create an undue burden for the employer or pose safety risks. In analyzing accommodation claims, courts must address each of these inquiries. A longstanding federal circuit divide over employers’ duty to provide commute accommodations recently intensified. The current divide—dubbed a “soft split” by some—is largely the result of the individualized and fact-specific nature of ADA accommodation cases. Given the courts’ reliance on specific facts in each case, the conflicting rulings may be reconciled through future decisions issued by the circuit courts, without resort to the U.S. Supreme Court. The Seventh Circuit’s recent decision in EEOC v. Charter Communications, discussed below, illustrates this willingness to distinguish and reconcile its own ADA accommodations decisions.

Requiring Accommodations: The Second and Third, and now Seventh, Circuits

The U.S. Courts of Appeals for the Second and Third Circuits, in 1995 and 2010, respectively, held that under the ADA, employers are required to accommodate workers with disabilities in their commutes to and from work. In Lyons v. Legal Aid Society, the Second Circuit noted that the ADA does not provide a closed-end definition of “reasonable accommodation.” Based in part on the ADA’s legislative history, the Second Circuit concluded that employers may be required to help pay for the parking spot of “an otherwise qualified disabled employee” who experiences difficulty walking in order to minimize the distance the employee must walk in order to get to work. The Third Circuit, in Colwell v. Rite Aid Corp., similarly concluded that employers must provide schedule changes to accommodate employees’ vision-related driving barriers.

The Seventh Circuit echoed this conclusion in July 2023, in EEOC v. Charter Communications, a case involving an employee with cataracts who requested a

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temporary change in his work schedule so he could start and end work two hours earlier while he found a home closer to his workplace. The Seventh Circuit noted that, “[m]odified work schedules . . . appear in the ADA’s legislative history.” Quoting Third Circuit cases, the Seventh Circuit sought to strike a balance between employees’ and employers’ interests, and further stated that “[a]n employer is not required to bend over backwards to accommodate a disabled employee or expend enormous sums in order to bring about a trivial improvement in the life of a disabled employee. Instead, the duty of reasonable accommodation is satisfied when the employer does what is necessary to enable the disabled worker to work in reasonable comfort.”

In reaching its decision in *Charter Communications*, the Seventh case analyzed its 2008 decision, *Filar v. Board of Education of the City of Chicago*. In *Filar*, the court held that the employer was not required to provide accommodations to minimize or eliminate transportation barriers to employees. But this decision, like others in the ADA accommodations space, was tied closely to the facts of that case. There, the employee was a substitute teacher for schools throughout Chicago who had a hip condition that prevented her from walking long distances and prevented her from driving. She requested to work only at locations “within minimum walking distance from public transportation.” The Seventh Circuit affirmed dismissal of the teacher’s claim, explaining that her request was administratively unreasonable and “too barebones” given the hundreds of schools she may have worked at and over ten-thousand bus stops she may have used. The Seventh Circuit distinguished *Charter Communications* from *Filar* by explaining that the employee’s accommodations in *Charter Communications* would not have imposed any unfair or too-costly burdens on the employer to the point of creating undue hardship.

In addition to considering its past ruling in *Filar* and decisions from the Second and Third Circuits, the Seventh Circuit in *Charter Communications* analyzed—and distinguished—decisions from the Sixth and Tenth Circuits.

Eschewing Accommodations: The Sixth and Tenth Circuits

The U.S. Courts of Appeals for the Sixth and Tenth Circuits, in 2012 and 2021, respectively, held that employers are not required to provide their employees accommodations surrounding transportation barriers, reasoning that such barriers are external to the workplace, or that providing accommodations would constitute preferential treatment for employees with disabilities.

The Sixth Circuit case, *Regan v. Faurecia Automotive Seating, Inc.*, involved an employee at an automotive supplier with narcolepsy. When she began working at the supplier, she lived 24 miles from her workplace, but she later moved 79 miles away, resulting in a two to four hour commute. She requested a work-schedule change, which her employer denied. The employee challenged the denial as being an adverse employment action in the form of constructive discharge. The Sixth Circuit concluded that this denial was “not a significant change in employment status,” and that her commute was “a mere inconvenience” insufficient to constitute an adverse employment action.

In *Unrein v. PHC-Fort Morgan, Inc.*, the Tenth Circuit addressed the issue of commute accommodations as it pertained to a clinical dietician who became legally blind during the course of her employment at a medical center. Like the employee in *Regan*, the dietician had a long commute to work—120 miles round trip—which she could no longer complete on her own following her diagnosis. As an accommodation, she requested “a flexible schedule to accommodate her transportation,” which was unpredictable, involved her reliance on friends and family, and resulted in her inability to guarantee when she would be physically present at the medical center. Following 15 months of the flexible-schedule accommodation, the medical center determined that the dietician’s erratic schedule disrupted her ability to carry out her essential job functions, and that the issue of a transportation barrier was outside its purview as an employer.

The Seventh Circuit in *Charter Communications* considered but distinguished the facts of that case from *Regan* and *Unrein*, explaining that “[t]he plaintiff in *Regan* had chosen to move much farther away from her job, and that choice aggravated the effects of her disability on her ability to commute safely,” and that “[t]he plaintiff in *Unrein* was asking for an accommodation that would have made it impossible for her to meet the essential job function of being physically present on a reliable schedule.”

Conclusion

Conflicting decisions in the federal circuits are often resolved by the U.S. Supreme Court. Given the absence of bright-line rules in ADA accommodations cases and the recent willingness of the Seventh Circuit to distinguish its earlier ruling on a commute-accommodations case, however, the Sixth and Tenth Circuits may be open to making similar refinements to their ADA accommodations decisions. To guard against ADA-accommodations claims, employers should ensure that their employees, regardless of the presence of a disability, are able to perform their essential job functions, and employers should be able to clearly identify and be able to justify those functions to their employees and to a fact finder. They should also continue to engage in interactive discussions with employees about accommodations, including those related to commuting, and carefully evaluate the costs and hardship associated with individual accommodation requests.