

Flex-Time And Telecommuting Requests: Potential Traps For The Unwary Employer

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Imagine this nightmare scenario for an employer: employee requests a “flexible schedule” where she could start and end her workday up to an hour later than usual and to take extra breaks (up to three per day) during the day following panic attacks. She says she will need this schedule “indefinitely.” You have no idea when your employee will come to work or how long she will work during the day and there is no end in sight to this accommodation.

What do you do? The depression and anxiety were well-documented and appeared to be a qualifying Americans with Disabilities Act (ADA) disability. Can you deny this request?

A federal court judge in Tennessee recently found that such a request was unreasonable because “attending her job regularly in a timely fashion” was an essential job function and therefore the company was justified in refusing the requested accommodation. She later abandoned her job by not reporting to work. It seems like a pretty basic concept: if an employee cannot regularly come to work on time and stay through his/her scheduled shift, the employee is not “qualified” to work.

Put another way, regular attendance at work is an “essential job function” for most jobs under the ADA. It is that “most jobs” qualifier that is the problem. As we have covered in a [recent blog post](#), some courts have held that telecommuting was a reasonable accommodation under the ADA where the physical presence at work was not considered an essential job function (i.e., for an attorney).

To make this even more confusing for employers, the two decisions discussed above were both from the Western District of Tennessee from two different judges in a span of less than one year. One found in-person attendance was an essential job function so the request was unreasonable (i.e., plaintiff loses); the other found that in-person attendance was not an essential job function so the request was reasonable (i.e., plaintiff wins). Reasonable accommodation requests require careful consideration of the medical limitations and essential job functions of the position.

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