Part-Time Work Can Be a Reasonable Accommodation under the ADA

A new case out of the Sixth Circuit debunks the oft-cited premise that full-time presence at work is an essential function of all jobs. In *Hostettler v. College of Wooster*, 2018 U.S. App. LEXIS 19612; 2018 FED App. 0140P (6th Cir. July 17, 2018), an HR Generalist who suffered from post-partum depression and separation anxiety requested a part-time schedule after her return from maternity leave. Her employer initially granted this request, but fired her when she asked for an extension, asserting that she could not perform her job while working part-time. The District Court granted the College's motion for summary judgment on Hostettler's disability discrimination claim, holding that full-time work was an essential function of her HR position.

In opposition to her employer's motion, Plaintiff submitted her own testimony and that of a former colleague that she was able to satisfactorily complete her essential functions while working part-time, including by working after-hours from home. She also stated that she had offered to increase her hours. Although her employer disputed this and contended Plaintiff's modified schedule put a strain on the rest of the department; it had given her a satisfactory review and did not replace her with a full-time employee for several months. The Court found this competing evidence precluded summary judgment and reversed the decision of the District Court.

In reversing, the Court distinguished prior cases holding that full-time work was essential, finding that those cases were based upon "a fact-intensive analysis of the actual job requirements." The Court concluded that "[o]n its own … full-time presence at work is not an essential function. An employer must tie time-and-presence requirements to some other job requirement." It summed up as follows:

"[F]ull-time presence at work is not an essential function of a job simply because an employer says that it is. If it were otherwise, employers could refuse any accommodation that left an employee at work for fewer than 40 hours per week. That could mean denying leave for doctor's appointments, dialysis, therapy, or anything else that requires time away from work. Aside from being antithetical to the purpose of the ADA, it also would allow employers to negate the regulation that reasonable accommodations include leave or telework. 29 C.F.R. § 1630.2(o)(2)(ii).

Wooster may have preferred that Hostettler be in the office 40 hours a week. And it may have been more efficient and easier on the department if she were. But those are not the concerns of the ADA: Congress decided that the benefits of gainful employment for individuals with disabilities—dignity, financial independence, and self-sufficiency, among others—outweigh simple calculations of ease or efficiency. To that end, the ADA requires that employers reasonably accommodate employees with disabilities, including allowing modified work schedules. An employer cannot deny a modified work schedule as unreasonable unless the employer can show why the employee is needed on a full-time schedule; merely stating that anything less than full-time employment is per se unreasonable will not relieve an employer of its ADA responsibilities."

The Sixth Circuit also reversed the district court's grant of summary judgment on Plaintiff's FMLA equitable estoppel claim. The District Court had held that Plaintiff's FMLA claim was barred because Hostettler had taken more than the 12 weeks of leave permitted by the FMLA. In reversing, the Sixth Circuit found that equitable estoppel "can prevent a defendant from challenging not only FMLA eligibility, but also entitlement to an FMLA benefit." It concluded that Plaintiff had submitted sufficient evidence of reasonable reliance to her detriment on Wooster's misrepresentations to present a jury issue.

By Lisa B. Golan, Attorney at Law
www.disability-discrimination-attorney.com