

CLIENT ALERT

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Is A Request To Work From Home A Reasonable Accommodation Under The ADA?

In a decision that reflects the reasoning of a growing majority of Circuit Courts of Appeals, in *Mason v. Avaya Communications, Inc.*, the Tenth Circuit held that the Americans with Disabilities Act ("ADA") does not require an employer to allow disabled employees to work at home if doing so will interfere with their ability to perform their essential job functions.

Factual Background

Plaintiff Diane Mason was working for the Post Office in Edmond, Oklahoma in August 1986 when she witnessed the murder of several of her co-workers. Mason developed post-traumatic stress disorder and sought employment elsewhere.

On March 21, 2000, Mason was working as a service coordinator at Avaya Communications, Inc. (Avaya), scheduling service appointments for its technicians, when one of her co-workers drew a knife during an argument with another employee at the facility at which Mason worked. Avaya suspended the knife-wielding employee. Mason learned of the incident through co-workers, who also told her that the employee had previously threatened to "go postal," stockpiled weapons, and compiled a "hit list."

When Avaya notified its service coordinators that the employee was returning to work, Mason called in sick because she was physically and emotionally unable to work at the same facility as the employee. Mason requested that Avaya accommodate her post-traumatic stress disorder by allowing her to work from home.

Avaya denied Mason's request on the ground that physical attendance at Avaya's facility was an essential function of her job. Avaya discharged Mason for failing to report to work.

Mason filed a lawsuit against Avaya, alleging that it had violated the ADA by failing to accommodate her disability and terminating her employment as a result of her disability.

The ADA

The ADA bars discrimination on the basis of disability. Discrimination includes "not making reasonable accommodations" to allow an otherwise qualified individual with a disability to perform his or her job responsibilities.

In order to establish a prima facie case of discrimination under the ADA, an employee must demonstrate that he or she: (1) is disabled; (2) is qualified, with or without reasonable accommodation, to perform the essential functions of the position at issue; and (3) was discriminated against because of the disability.

In determining whether a particular job function is "essential," courts consider: (1) the employer's judgment; (2) written job descriptions; (3) the amount of time that employees in the position spend performing the function; (4) the consequences of not requiring an employee to perform the function; and (5) the experiences of others in the position.

The Tenth Circuit

The district court dismissed Mason's claims on summary judgment. On appeal, the Tenth Circuit considered whether Mason had established a prima facie case of disability discrimination under the ADA. Because Avaya did not dispute that Mason was disabled under the ADA, the court turned to the second prong and considered whether Mason was qualified, with or without reasonable accommodation, to perform the essential functions of the service coordinator position.

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Avaya presented evidence that: (1) it considered attendance at its facility, teamwork, and supervision to be essential functions; (2) all of its service coordinators worked at the facility; (3) its service coordinators were never permitted to work anywhere else; and (4) it could not adequately supervise or train service coordinators if they worked outside of the facility.

Mason responded that physical presence was not an essential function of the service coordinator position, because she could perform all of her job responsibilities from home using a computer, telephone, and fax machine. She also argued that, because Avaya's job description for service coordinators did not mention teamwork or supervision, they were not essential job functions. Mason also argued that teamwork would not suffer by allowing her to work from home, because another service coordinator could to perform "teamwork" duties such as filling in for a co-worker on a break.

Avaya countered by presenting evidence that it would not be able to supervise a service coordinator who worked from home. Although Avaya would be able to monitor when such an employee was logged

onto the computer, it would not be able to ascertain what he or she was doing. The court agreed, holding that it was "in no position to second guess Avaya's desire to directly supervise its lower level employees."

Avaya also presented evidence that teamwork was an essential function of the service coordinator position because it was a "hectic" job and, as a result, service coordinators frequently assisted and covered for one another. The court accepted this argument and held that the fact that others could perform the function instead of Mason did not mean that the function was non-essential.

Finally, the court rejected Mason's argument that teamwork and being supervised were not essential functions of the service coordinator position because they were not listed in the job description. The court held that these were common sense requirements implicit in the description.

Having determined Mason's physical presence at Avaya's facility was an essential function, the court considered whether Avaya could have reasonably accommodated Mason. The court concluded that "a request to work at

home is unreasonable if it eliminates an essential function of the job," but noted that it may not be unreasonable if the employee presents evidence that she can perform her essential job functions from home. It indicated that the determination of whether requests to work at home are reasonable should be decided on a case-by-case basis.

Conclusion

The *Mason* case increases the likelihood that an employer will not incur liability for rejecting a disabled employee's request to work at home. Because the employer's actions will be decided on a case-by-case basis, however, employers should only reject such requests if they are able to demonstrate that working at home would prevent the employee from performing an essential job function

We send these Alerts to our clients and friends to provide information on recent developments in the law. The Alerts, however, should not be relied on for legal advice in any particular matter.

IMMIGRATION NEWSFLASH

PRESIDENT PROPOSES TEMPORARY WORKER PROGRAM

On January 6, 2004, President Bush unveiled a proposal for a temporary worker program that would create a new nonimmigrant visa category to provide legal status to millions of out-of-status foreign nationals currently living and working in the United States. The goal of the program is to match foreign workers with employers in instances where there is no U.S. worker willing to accept the job that is being offered. The program would be open to out-of-status foreign nationals currently in the United States, estimated to be over 8 million people, as well as to foreign nationals outside the United States who have been offered such a position.

Details of the President's proposal will need to be worked out when the measure goes to Congress. The President emphasized that the proposal is not a so-called "blanket amnesty," and further that foreign nationals provided with status under this program will not receive preferential treatment over temporary visa holders in the United States or foreign nationals abroad who are seeking permanent residence.

For further Employment & Labor information, please contact:

David W. Garland, Co-Chair
Employment & Labor
973.643.6390
dgarland@sillscummis.com

Lester Aron, Co-Chair
Employment & Labor
973.643.5795
laron@sillscummis.com

For further Corporate Immigration information, please contact:

Susan Storch (NJ), Co-Chair
Corporate Immigration
973.643.5983
sstorch@sillscummis.com

NEW YORK
399 PARK AVENUE
NEW YORK, NY 10022
TEL: 212.643.7000
FAX: 212.643.6550

NEW JERSEY
THE LEGAL CENTER
ONE RIVERFRONT PLAZA
NEWARK, NJ 07102
TEL: 973.643.7000
TEL: 973.643.6500

SAN FRANCISCO
ONE MARKET
SAN FRANCISCO, CA 94105
TEL: 415.643.7000
FAX: 415.643.6500