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ADA ACCOMMODATIONS VERSUS ESSENTIAL FUNCTIONS: PA COURT RULES ON EMPLOYEE REQUEST TO BE REMOTE

The Commonwealth Court of Pennsylvania recently issued a decision in *Pennsylvania Public Utility Commission v. Pennsylvania Human Relations Commission* that provides a good explanation concerning an issue under the Americans with Disabilities Act (ADA) we are asked to address on a regular basis:

What constitutes an “essential function” of a position for the purpose of determining if an employee can perform the essential functions of his or her job when considering accommodations?

In this case, the court affirmed a decision of the Pennsylvania Human Relations Commission (PHRC) that the Public Utility Commission (PUC) violated the Pennsylvania Human Relations Act when it denied an employee’s request to work from home on a full-time basis as an accommodation due to the employee’s disability.

In order to successfully pursue a claim against an employer based on a failure to accommodate, an employee must satisfy three prerequisites:

- **First**, the employee must establish that he or she is a disabled person.
- **Second**, they must show that they are otherwise qualified to perform the essential functions of the job they hold, with or without reasonable accommodation.
- **Finally**, they must prove they suffered an adverse employment decision because of discrimination.

The fundamental issue addressed in this case was whether in person attendance was an essential function of this employee’s job as a Compliance Specialist. In its analysis, the court noted that the Equal Employment Opportunity Commission (EEOC) has addressed the term’s meaning through its ADA administrative regulations. Specifically, the EEOC has stated that “essential functions” are the fundamental job duties of the employment position the individual with a disability holds and does not include marginal functions of the position. Furthermore, according to the EEOC’s regulations, a job function may be considered essential for any of several reasons, including but not limited to the following:

- ⇒ The function may be essential because the reason the position exists is to perform that function. For example, an individual may be hired to proofread documents. The ability to proofread would then be an essential function since this is the only reason the position exists;
- ⇒ The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed. This may be a factor either because the total number of available employees is low, or because of the fluctuating demands of the operation. For example, if an employer has a relatively small number of available employees for the volume of work to be performed, it may be necessary that each employee perform a multitude of different functions. Therefore, the performance of those functions by each employee becomes more critical and the options for reorganizing the work become more limited. In such a situation, functions that might not be essential if there were a larger staff may become essential because the staff size is small compared to the volume of work that has to be done; and/or...
- ⇒ The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function. In certain professions and highly skilled positions the employee is hired for his or her expertise or ability to perform the particular function. In such a situation, the performance of that specialized task would be an essential function.

The EEOC has also provided a non-exhaustive list of evidence that can be used to determine whether a certain job function is essential:

- * The employer’s judgment as to which functions are essential;

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- * Written job descriptions prepared before advertising or interviewing applicants for the job;
- * The amount of time spent on the job performing the function;
- * The consequences of not requiring the incumbent to perform the function;
- * The terms of a collective bargaining agreement;
- * The work experience of past incumbents in the job; and/or...
- * The current work experience of incumbents in similar jobs.

The court noted that the inquiry into what constitutes essential functions is not intended to second guess an employer's judgment with regard to standards, whether qualitative or quantitative, nor to require employers to lower standards. However, an employer will have to show that it actually imposes such standards on its employees in fact, and not simply on paper.

The PUC's arguments that in-office work was an essential function of the position at issue was based upon several linked lines of reasoning many of which our clients have presented to us when addressing this issue with our clients.

First, PUC argued that it had conducted a thorough assessment of the Compliance Specialist position and had determined that it was essential that those employees with that organizational role be physically present. Second, the Compliance Specialist position was not one that was intended to be remote in nature, as all relevant PUC documentation (including the official job description, the agreement that allowed telework during the pandemic, and the formal plan for such employees to return to the office) show that in-office work was an essential function of that job. Third, Compliance Specialists were tasked with observing hearings and also with presenting materials at legislative meetings, neither of which can be done remotely. Fourth, some PUC files were not in electronic format, and it imposed a burden upon other PUC employees to scan such physical files and transmit them to remote workers. Finally, Compliance Specialists were required to occasionally report to the office in order to process mail.

The court stated that the question of whether a particular function is essential is a factual determination that must be made on a case-by-case basis. In determining whether a particular function is essential, all relevant evidence should be considered. An employer's position regarding a job's essential functions and the formal description of that job are two possible types of evidence for determining the essential functions of a position, but, according to the court, that evidence is not to be given greater weight simply because it is included in the non-exclusive list set out in the EEOC regulations. In other words, the evidence cannot be interpreted in isolation, but instead as data points within the broader, real-world context of an employment situation. For example, an employer may state that typing is an essential function of a position. However, if the employer has never required any employee in the position to type, this will be evidence that typing is not actually an essential function of the position. With these fundamentals in mind, the court concluded that the PUC's arguments were without merit. The court stated that, while the PUC formally required Compliance Specialists to both appear at and present materials during various kinds of hearings and meetings, the record failed to show that this was actually enforced in practice. As for concerns regarding access to physical files, and in-person mail sorting duties, the court concluded that the evidence proved that they were nothing more than "marginal functions" of the position.

The fundamental lesson of this decision is that a substantive fact-based analysis of the duties of a position must take place when assessing what are the essential functions of a position and an employer's conclusion that it believes the functions at issue are essential standing alone will not be sufficient.

Clients who have questions regarding issues discussed in this article, or any employment law matter, should feel free to call us at 215-345-9111.

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