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Corporate changes justified end of ADA at-home accommodation

On June 26, the 7th U.S. Circuit Court of Appeals added to the growing body of jurisprudence concerning the circumstances under which the Americans with Disability Act requires an employer to provide a reasonable accommodation in the form of a modified work schedule.

The case is *Bilinsky v. American Airlines Inc.*, No. 18-3107, 2019 U.S. App. LEXIS 19101 (7th Cir., June 26, 2019).

The ADA prohibits employers from discriminating against a qualified individual on the basis of disability. Under the ADA, employers are required to provide reasonable accommodations to qualified individuals with disabilities. In relevant part, the ADA defines a “qualified individual” as one who “can perform the essential functions of the employment position” (42 U.S.C. Section 12111(8)).

In *Bilinsky*, the primary issue under consideration was whether an employee who could not be physically present in the office was a “qualified individual” under the ADA.

Specifically, employee Kimberly Bilinsky contracted multiple sclerosis during her employment with American Airlines. Although Bilinsky was a communications specialist in the flight service department, which was located in Dallas at the company’s headquarters, her medical records indicated that excessive heat aggravated her MS symptoms and caused her discomfort and reduced functioning.

Accordingly, American provided Bilinsky with a “work from home arrangement.” The accommodation permitted Bilinsky to do her job from her home in Chicago, “where hot weather is less of a concern,” even though her colleagues operated out of the company headquarters.

Bilinsky usually traveled to Dallas one day per week to meet with colleagues and perform tasks that required a physical presence.



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Although Bilinsky’s communications specialist position had no formal, written job description, the evidence demonstrated that Bilinsky’s duties before 2013 “included participating in conference calls, administering an internal website used to distribute information to flight attendants, publishing articles intended for consumption by flight attendants, producing email communications to employees and preparing remarks for her boss’ weekly internal video announcement.”

During this time, Bilinsky successfully performed these duties at home for several years prior to American’s merger with US Airways in 2013.

Following the merger, American had to integrate the operations of both airlines into a single entity with common policies and procedures.

American’s flight service department vice president testified that the department “expanded its workload, transitioning from primarily producing written communications to putting on live events and performing crisis management functions.” This additional work caused the Dallas employees to feel “spread very thin at times.” He therefore unilaterally decided to require all employees to be physically present at the Dallas headquarters.

In response, Bilinsky claimed that her work from home accommodation was necessary as a result of her disability and that relocating to Dallas was not an option. American attempted to determine whether it could make alternative accommodations that would allow Bilinsky to relocate and looked unsuccessfully for other positions for her.

In 2015, American told Bilinsky that she would need to complete her relocation or leave her job. Bilinsky’s employment was terminated shortly thereafter.

After exhausting her administrative remedies, Bilinsky filed suit in the U.S. District Court for the Northern District of Illinois, alleging that American failed to accommodate her disability under the ADA.

Although American conceded that Bilinsky was qualified to do the job with her accommodation prior to the 2013 merger, it argued that physical presence in the office became an essential function of Bilinsky’s position after the merger and that her inability to relocate to establish a physical presence rendered her unqualified for the transformed position.

The district court agreed with American and granted summary judgment against Bilinsky, finding that she was ineligible for the ADA’s protection because she was not a “qualified individual” for the position in light of the changes in her responsibilities.

A divided 7th Circuit panel affirmed the district court’s judgment, reasoning that “an employer is not required to maintain an existing position or structure that, for legitimate reasons, it no longer believes is appropriate.”

Nonetheless, the 7th Circuit was quick to clarify that its holding “is confined to the unique facts of this case.” Although “an employer may not rescind an accommodation simply because it is inconvenient or

burdensome,” the court noted that “American faced a unique intervening event: a major merger between two large corporations.”

Thus, the court’s opinion leaves open the question of what circumstances — short of a major merger between two large corporations — might alter a position’s essential functions in such a way that rescission of a flexible working arrangement is appropriate.

The 7th Circuit added a further “note of

caution” regarding its previous holding in *Vande Zande v. State of Wisconsin Department of Administration*, 44 F.3d 538, 545 (7th Cir. 1995), in which the court said that “it would take a very extraordinary case for the employee to be able to create a triable issue of the employer’s failure to allow the employee to work at home.”

In light of technological development in the 24 years since *Vande Zande*, the court suggested that “such an accommodation is not quite as extraordinary as it was

then,” and opined, “Litigants (and courts) would do well to assess what’s reasonable under the statute under current technological capabilities, not what was possible years ago.”

In sum, while the employer in *Bilinsky* ultimately was not liable for violation of the ADA when it rescinded a flexible work arrangement, employers should nonetheless heed the court’s emphasis on the potential validity of flexible working conditions as ADA accommodations.