

## Courts Diverge On Whether Disabled Employees Must Be Allowed To Work Off-Site

Should an employer allow a disabled employee to work at home or off-site as a reasonable accommodation to the employee's disability? In a pair of recent cases, the Massachusetts Appeals Court and the United States District Court for the District of Massachusetts reached different conclusions when addressing this issue. These conclusions, though divergent, are instructive.

In *Doreen M. Smith v. Bell Atlantic*, 829 N.E.2d 228 (Mass. App. Ct. June 10, 2005), the Appeals Court upheld a jury verdict finding that Bell Atlantic had failed to reasonably accommodate an employee who suffered from post polio syndrome and had diminished use of her legs when, despite nominally agreeing to a work-from-home arrangement, it failed to supply the employee with the resources she needed for the accommodation to be effective. In reaching this conclusion, the Court reasoned that the jury could reasonably have found that it was feasible for the employee - a manager who gathered and analyzed data, wrote reports, and made technical recommendations - to perform most, if not all, of the essential functions of her position from a remote location with adequate computer and telephone access to the company's network. The Court also relied upon the following pertinent facts: the employee was willing and able to travel to the office when she needed to interact personally with others; the employee did not supervise other personnel and did not require close supervision herself; and the company had permitted other non-handicapped employees in the same managerial position to do considerable amounts of work from home in the past. Finally, the Court took note that Bell Atlantic did not contend that the work-at-home arrangement created any undue hardship for its operation.

In *Michael D. Mulloy v. Acushnet Company*, Civil Action No. 03-11077-DPW (D. Mass. June 20, 2005), the United States District Court reached the opposite result when it held that Acushnet, a manufacturer of golf-related products, had not failed to reasonably accommodate an employee's handicap when it denied the employee's request to work remotely by use of a web cam. The employee, an electrical engineer who oversaw the operation of one of the company's plants, suffered from health problems related to certain chemicals used in Acushnet's manufacturing facilities and requested that he be allowed to work at the company's headquarters, some 15 miles from the plant he oversaw. In reaching the conclusion that such an accommodation would not be reasonable, the Court found that the employee's training and support of other company personnel as well as his oversight of machine functioning - all of which were essential functions of his job - required his regular presence in the plant. In this connection, the Court noted that the employee was not seeking to work remotely only when those duties were not required to be done, but was rather asking that he be allowed to work remotely at all times. The Court further relied on the fact that no other employee with the same responsibilities had ever been permitted to work entirely outside the company's manufacturing facilities. Finally, the Court noted that Acushnet had made a compelling "undue burden" argument that, in order to effectuate the accommodation of working remotely via a web cam, the company would be required to hire an additional person to communicate with the employee regarding what to capture on the camera.

Despite reaching different results, both of these decisions - and others that have addressed the issue - make clear that although it may be the unusual case, if a disabled employee can perform the essential functions of his or her position from an off-site location without posing an undue hardship on the employer, such an accommodation may be considered reasonable and thus required under state and federal disability discrimination law. In determining the essential functions

of a particular position, courts generally place weight upon such things as: the employer's judgment, written job descriptions, and the work experience of previous and current employees in the position. In deciding whether an employee can perform the essential functions of his or her position without undue hardship to the employer, a court will consider such factors as: whether the employee's position requires that he or she work and interact with other employees or clients on-site; whether the employee supervises other employees; whether the employee requires direct supervision; whether the employee is seeking to work entirely off-site or whether the employee is willing to work on-site when necessary; and whether the company has previously allowed other employees in the same position to work off-site. In addition, as seen in the *Bell Atlantic* case, if working from home or working off-site represents a reasonable accommodation, an employer will need to take reasonable steps necessary to effectuate that accommodation.

In sum, telecommuting and other off-site work arrangements are becoming increasingly prevalent in the modern workplace. *Bell Atlantic* and *Acushnet* teach that, in certain circumstances, such arrangements may be legally mandated by state or federal disability discrimination law.

### Contact Information

For questions about this issue, or any other labor and employment concerns, please contact any member of Ropes & Gray's Labor & Employment Group.

