

Seventh Circuit Clarifies that Employers *May* Be Obligated to Offer an Accommodation Relevant to an Employee's Work Commute

By Ariel M. Kelly

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In *EEOC v. Charter Communications, LLC*, 75 F. 4th 729 (7th Cir. 2023), an employee requested to work an earlier shift because he could not safely drive from work at night due to a vision impairment. Of note, the employee did not have any viable transportation alternatives, such as public transit. The employer granted the employee's request on a temporary basis but refused to extend the accommodation beyond thirty days. The Equal Employment Opportunity Commission ("EEOC") sued on the employee's behalf after he filed a charge and conciliation efforts were unsuccessful.

At the district court level, the Eastern District Court of Wisconsin rejected the EEOC's position that employers have a duty to provide reasonable accommodations which allow an employee to safely commute to work, even where the proposed accommodation is unrelated to an essential job function. Basing its holding on Seventh Circuit precedent, the court granted summary judgment for the employer.

On appeal, the Seventh Circuit noted that the district court's interpretation of its precedent was overbroad, and found that an employer *may*, in fact, be required to provide an employee with a schedule change that will allow the employee to safely commute to work. In evaluating an employer's obligation in that regard, the Court held that both the needs of the employer and employee must be evaluated and that the employer should consider a number of factors, including the proposed accommodation's: efficacy and its effect on business operations, staffing and workloads of other employees, and any collective bargaining agreements. Though not a bright line rule, the Seventh Circuit ultimately determined that the employee's request to continue to work an earlier shift was not unreasonable as a matter of law, because the employee's alleged vision disability impeded his ability to safely commute home after work and attendance was an essential job function.

Employers should take away from this decision that a qualified employee with a disability that substantially interferes with their ability to commute to work *may* be entitled to a modified schedule accommodation, "if commuting to work is a prerequisite to an essential job function, including attendance in the workplace, and if the accommodation is reasonable under all the circumstances." *Id.* at *734. In addition, and importantly, however, the Court stated that "[i]n most cases, an employer has no duty to help an employee with a disability with the method and means of his commute to and from work, assuming the employer does not offer such help to employees without disabilities." *Id.* at *738.

If you have any questions about this article, please contact Ariel M. Kelly at akelly@vedderprice.com or any other Vedder Price attorney with whom you have worked.

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