

Second Circuit Finds that Employers May Be Obligated to Accommodate a Disabled Employee's Commute

October 11, 2011 by James Hays & Jonathan Sokolowski

The Second Circuit Court of Appeals has held that under the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act, employers may be required to assist disabled employees with their commute.

In *Nixon-Tinkelman v. N.Y. City Dep’t of Health & Mental Hygiene*, No. 10-3317-cv, 2011 U.S. App. LEXIS 16569 (2d Cir. N.Y. Aug. 10, 2011), plaintiff Barbara Nixon-Tinkelman (“Plaintiff”), who has cancer, heart problems, asthma, and is hearing impaired, brought suit under the ADA and the Rehabilitation Act alleging that the New York City Department of Health & Mental Hygiene (“Defendant” or “DOHMH”) failed to reasonably accommodate her disability. Specifically, following her transfer from Queens to Manhattan, Plaintiff requested that DOHMH accommodate her commute by transferring her back to an office location closer to her home in Queens. DOHMH ultimately denied Plaintiff’s request.

The Southern District of New York dismissed Plaintiff’s complaint on Defendant’s motion for summary judgment, finding that activities which “fall outside the scope of the job, like commuting to and from the workplace, are not within the province of an employer’s obligations under the ADA and the Rehabilitation Act.” However, on appeal, the Second Circuit faulted the district court’s holding, explaining that certain circumstances may require an employer to provide commuting assistance to a disabled employee, and furthermore, that providing such assistance is not “inherently unreasonable.” Accordingly, the Second Circuit remanded the case to the district court, and tasked it with engaging in the “fact-specific inquiry” necessary to determine whether it would

have been reasonable to provide Plaintiff with a commuting accommodation. On remand, the Second Circuit directed the district court to consider the following factors: (a) Defendant's total number of employees; (b) the number and location of Defendant's offices; (c) whether other positions exist for which Plaintiff was qualified; (d) whether Plaintiff could have been transferred to a more convenient office without unduly burdening Defendant's operations; and (e) the reasonableness of allowing Plaintiff to work from home without on-site supervision.

In addition to the above-listed factors, the Second Circuit also noted that the district court should have contemplated whether transferring Plaintiff "back to Queens or another closer location, allowing her to work from home, or providing a car or parking permit" would have accommodated her needs.

Nixon-Tinkelman serves as a reminder to employers that they must carefully assess all requests for reasonable accommodations from disabled employees. Although employers are not required to provide the specific accommodations employees may request, they must nevertheless work with employees to determine what reasonable accommodations, if any, can be made.