

Insights

A Flexible Interactive Process Decides the Appropriate Accommodation

January 1, 2020

By: Nancy J. Townsend and Kate Trinkle

The Rehabilitation Act of 1973, as Amended (Rehab Act) prohibits disability discrimination in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. A recent case from the Seventh Circuit Court of Appeals, *Yochim v. Carson*, 935 F.3d 586 (7th Cir. 2019), reaffirms that the Rehab Act does not give employees the right to dictate the specific accommodation they receive. This case has broader impact though, because the Rehab Act and the Americans with Disabilities Act (ADA) use the same standard for determining whether a violation has occurred.

In *Yochim v. Carson*, an attorney who worked for the Housing and Urban Development (HUD) returned to work after carpal tunnel surgery with a medical restriction that prevented her from gripping things, such as handles or rails on crowded public transportation. She claimed that HUD failed to accommodate her disability because it refused to her request to telework from home. HUD had rejected her teleworking request but offered a modified work schedule so she would not have to commute during rush hour and could receive physical therapy near her home.

The Seventh Circuit Court of Appeals upheld the district court's summary judgment against her, finding that HUD had provided an effective reasonable accommodation, although it was not the one she preferred. Where the employer engages in a meaningful back-and-forth with the employee and either grants the employee's requests or responds with a list of alternative options that reasonably address her needs, the employer has met its obligation under the Rehab Act to engage in a flexible "interactive process" and make a "good faith effort" to determine what accommodations are necessary.

The court repeated other courts' opinions that "an employer must provide a reasonable accommodation not the accommodation the employee would prefer." So long as the accommodation offered reasonably addresses medical needs and enables the employee to fulfill her job functions, the reasonable accommodation meets the requirements of the Rehab Act and, by analogy, the ADA.