

ADA Accommodation: When is it required?

AUTHOR: SANDBERG PHOENIX

By Geri Lynn Arrindell

[Geri Lynn Arrindell](#) type unknown

The Seventh Circuit Court of Appeals determined that a former hairdresser was entitled to have a jury decide whether an Illinois nursing home failed to offer her a reasonable accommodation when she was unable to push wheelchair-bound patients between their rooms and the salon. The Court reversed the lower court's dismissal of the case on the grounds that if the percentage of time spent on a job task is small and inexpensive enough, an employer may need to shift the task to other employees in order to comply with the Americans with Disabilities Act ("ADA").

The ADA forbids employers from discriminating against "a qualified individual" which is defined as "an individual who, with or without reasonable accommodation, can perform the essential function of the employment position that such individual holds or desires." At issue in this case is whether the task of wheeling residents was an essential aspect of the hairdresser's job.

The Seventh Circuit found that determining the actual time spent transporting residents was critical to deciding "whether her inability to wheel could reasonably be accommodated by assistance from other staff." The former hairdresser estimated on 2 out of 4 days it took between 6% - 12% of her day to wheel residents, and the nursing home estimated that it took between 60% - 65%.

The Court noted that the lower court failed to consider that "job restructuring" is one of the accommodations that an employer must consider. Specifically, the Court observed that if a "minor adjustment in the work duties of a couple of other employees" would have enabled the hairdresser, despite her disability, to perform the essential duties of her job as a hairdresser; then "the nursing home's refusal to consider making such an adjustment was unlawful." In reaching this conclusion, the Seventh Circuit was not persuaded by the nursing home's argument that the accommodation would cause a hardship (i.e., cause a financial burden). In fact, the Court noted that after the hairdresser resigned, the nursing home utilized other staff to wheel residents to and from the salon until another hairdresser could be hired.

Ultimately, the Seventh Circuit is divided on how relevant the percentage of time is to an employer's obligation to offer an accommodation. The Court noted that wheeling patients might not be an essential aspect of the hairdresser's job "if it was so small a part that it could be reassigned to other employees." However, one judge noted that the amount of time spent on a task is just one of many factors to consider in determining whether a task is an essential job function, and that "an employer is free to determine job responsibilities of its employees."

This case is certainly one for employers to watch because the analysis of whether certain tasks are deemed an "essential function," will determine whether an employer is required to make a reasonable accommodation that can significantly impact how employers structure their workforce.

Kauffman v. Petersen Health Care VII, LLC, No. 13-3661, United States Courts of Appeals for the Seventh Circuit, October 16, 2014.