

DEMOTION AS REASONABLE ACCOMMODATION AND RESPONDING TO HOSTILE-WORK-ENVIRONMENT CLAIMS UNDER THE ADA IN FORD V. MARION COUNTY SHERIFF'S OFFICE

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In the recently decided case of Ford v. Marion County Sheriff's Office, the United States Court of Appeals for the Seventh Circuit extensively discussed important elements of claims brought pursuant to the Americans with Disabilities Act, or "ADA." More specifically, it formally recognized that claims of disability-based workplace harassment are actionable under the ADA, it set forth what factors can overcome claims that discrete incidents constituted a "single unlawful employment practice," and it affirmed that under certain circumstances, demotions can constitute reasonable accommodations.

Ford involved Brigid A. Ford, an employee of the Marion County Sheriff's Office, who appealed the trial court's entry of partial summary judgment, which disposed of some of her claims, as well as an adverse jury verdict that resolved those claims that remained. Ms. Ford had alleged in part that the defendant Sheriff's Office had refused to provide her with sufficient accommodations and that she had been the victim of disability harassment. Ms. Ford's need for accommodations followed a work-related accident which severely injured her dominant right hand and left her with ongoing and sometimes debilitating pain in her lower arm. The Sheriff's Office placed her on various light duty tasks for approximately a year, during which time she sought treatment for her arm.

When it became evident that she would be physically unable to resume her prior position, Ford claimed she was given three options: accept a position as a civilian clerk that involved a cut in pay; resign; or be terminated. Ford inquired as to whether there were other possible positions to which she could transfer but alleged that she received no response. Consequently, she requested numerous accommodations that she believed would enable her to perform the civilian clerk position, and when the Sheriff's Office provided her with all of them but one, she accepted the position. What followed, however, was a litany of complaints from Ms. Ford, alleging that two of her co-workers were hostile toward her due to her disability. Eventually, the Sheriff's Office transferred the two individuals about whom Ms. Ford had complained. It did not take long, however, for Ms. Ford to begin complaining about a new co-worker who had started after the two prior co-workers had been transferred, although it was not until eighteen months later that she first couched those complaints in terms of disability harassment.

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In affirming the trial court, the Seventh Circuit initially noted that while its prior decisions had “assumed” that hostile work environment claims existed under the ADA, at some point “extended hypothetical analysis should end.” Thus, it held that it was joining the Second, Fourth, Fifth, Eighth, and Tenth Circuit Courts of Appeal in formally recognizing “that a plaintiff may assert a claim for an illegal hostile work environment on the basis of disability under the [ADA].” The court adopted the Second Circuit’s March 6, 2019 decision in Fox v. Costco Wholesale Corp., specifically that court’s reasoning that as Congress used language from Title VII – which prohibits race and gender discrimination in the workplace – to write the ADA, and as Title VII recognizes hostile work environment claims, they also were actionable under the ADA.

The Seventh Circuit then considered the trial court’s severance of Ford’s disability harassment claims against her original two co-workers from the ones she would, eighteen months later, make against her new co-worker. The importance of this severance is that without it, conduct that might otherwise be time-barred could be deemed part of a “single unlawful employment practice” and thus still be actionable. Although the appellate court disagreed with the trial court’s basis for severing the claims – namely that different co-workers were involved – it nonetheless affirmed the lower court’s ultimate finding in favor of the Sheriff’s Office.

In doing so, the Seventh Circuit cited other factors that bifurcated what might otherwise have been treated as an ongoing, indivisible hostile-work-environment claim. These factors were: “a substantial passage of time” between the initial and the subsequent incidents of alleged harassment; a change in the employee’s supervisors, there having been in this case three successive supervisors; and “an intervening remedial action by the employer,” specifically the transfer of the plaintiff’s original two co-workers. This latter factor was perhaps the most critical, the Seventh Circuit writing that “‘prompt and appropriate corrective action reasonably likely to prevent the harassment from recurring’ defeats employer liability for co-worker harassment.”

The court then turned to – and rejected -- Ms. Ford’s claim that being offered what was essentially a demotion violated the ADA’s requirement that employers reasonably accommodate disabled employees. The Seventh Circuit acknowledged that employers are required to “first consider lateral moves to positions that are regarded as equivalent,” that are (or soon will be) vacant when the employee requests accommodation, and that the employee can perform with or without reasonable accommodations. It noted, however, that Ms. Ford failed to adduce any evidence that such vacancies existed. Thus, in the absence of such positions, the court held that a “demotion can be a reasonable accommodation.”

As discussed in Ford, when faced with complaints of disability harassment, employers must investigate and, if such conduct has occurred, promptly implement corrective action. Doing so is not only legally required, but should subsequent conduct be alleged, the employer’s effective response to the initial incidents might

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prevent claims that would otherwise be susceptible to a statute-of-limitations defense from being resurrected as part of an ongoing illegal employment practice. Furthermore, in holding that Ms. Ford's demotion was a reasonable accommodation, the court reiterated what it termed a "well-established" principle, namely "that an employer is obligated to provide a qualified individual with a reasonable accommodation, *not* the accommodation he [or she] would prefer."

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