

Employee Benefit

■ Plan Review

Remote Work as an Accommodation: What Employers Need to Know Now

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As employers recalibrate return-to-office expectations in the years after the COVID-19 pandemic, they continue to confront requests from employees for remote work as an accommodation. This article reviews the current state of the law surrounding remote work as an accommodation and provides tips for employers to consider when dealing with remote work accommodation requests.

In short, whether remote work is required as a reasonable accommodation remains a highly fact-specific inquiry focused on the essential functions of the position. Courts closely examine whether the employee can perform those essential functions remotely and have made clear that COVID-era telework, standing alone, does not permanently redefine a job or create a presumption that remote work is reasonable. Employers should still engage in a good-faith interactive process, carefully assess potential accommodations, be prepared to explain why in-person work is necessary for the position, and build a contemporaneous record showing how the request was evaluated.

FIFTH CIRCUIT DECISION IN *HAYES V. GSTEK, INC.*

The Fifth Circuit is the most recent court of appeals to weigh in on the issue of remote work as an accommodation in *Hayes v. GSTek, Inc.*¹

Plaintiff Hayes worked as a contract system administrator through Defendant GSTek's contract with the US Army. Following a return to work after the COVID-19 pandemic, Hayes was overstimulated by his return to office and was subsequently diagnosed with autism, major depressive disorder, and social anxiety disorder. Hayes was also admitted to inpatient psychiatric care due to his suicidal ideations. In October 2022, Hayes submitted a physician's note and a reasonable accommodation request asking GSTek to allow him to telework full time. GSTek was in favor of Hayes performing his work remotely, but the Army determined that it "would not be in the best interest of the organization to allow full-time teleworking." GSTek allowed Hayes to work from home two to three days per week as a compromise, which was in place from December 2022 to January 2023. Hayes experienced a mental breakdown during this time and informed GSTek that his doctor recommended he take a medical leave of absence. When Hayes did not come into work the following week, GSTek fired Hayes due to his absenteeism and other concerns.

In his lawsuit against GSTek, Hayes raised three Americans with Disabilities Act (ADA) claims: failure to accommodate, disability discrimination, and retaliation. GSTek filed a motion for judgment on the pleadings in the

district court, which ruled that Hayes received a reasonable accommodation when GStek provided him with the accommodation of working from home two to three days per week. The district court further ruled that Hayes is not a qualified individual, even with a reasonable accommodation. Hayes appealed to the Fifth Circuit.

The Fifth Circuit applied a three-part test to analyze the claim for failure to accommodate:

- (1) the plaintiff is a qualified individual with a disability;
- (2) the disability and its consequential limitations were known by the covered employer; and
- (3) the employer failed to make reasonable accommodations for such known limitations.

The Fifth Circuit found that in-person attendance was an essential function of Hayes' job; the Army's determination that teleworking was not in its interests was controlling over GStek as an Army contractor, which has a business interest in honoring the Army's conditions. The Fifth Circuit stated that "there is general consensus among courts, including ours, that regular work-site attendance is an essential function of most jobs" and that "full-time teleworking is rarely a reasonable accommodation," even in a post-COVID pandemic world.

While *Hayes* does not represent a change in Fifth Circuit law, nor is it the first time the Fifth Circuit has addressed telework as an accommodation, the decision is important because it reinforces that, in the Fifth Circuit, COVID-era telework does not permanently redefine a job's essential functions or make full-time remote work presumptively reasonable as an ADA accommodation. This recent decision also reinforces that employers may rely on job-specific operational needs—including supervision concerns, customer or contractual

requirements, and the employer's judgment—in determining that regular in-person attendance remains essential.

OTHER CIRCUITS ON REMOTE WORK AS AN ACCOMMODATION

The Fourth, Sixth, and Seventh Circuits have also addressed the issue of remote work as an accommodation and have generally sided with the employer.

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In *Hall Haggins v. Wilson Air Center, LLC*,² the Fourth Circuit affirmed summary judgment for an employer that terminated an accounting assistant diagnosed with breast cancer after she repeatedly failed to return to the office despite agreeing to a hybrid schedule. Plaintiff Haggins claimed that Wilson Air discriminated against her on the basis of her breast cancer, which is an ADA-recognized "disability." Underlying the discrimination claim were two theories: first, that Wilson Air failed to make reasonable accommodation for her when it told her that she could not work remotely; second, that Wilson Air discharged Haggins because of her disability. The court held that Haggins was not a "qualified individual" under the ADA because her essential job functions—processing mailed invoices, preparing paper checks, and maintaining physical files—required in-person attendance. The Fourth Circuit recognized that "a regular and reliable level of attendance is a necessary element of most jobs." Wilson Air Center offered a reasonable accommodation of a hybrid

schedule allowing Haggins to choose her in-office days around medical treatment, but Haggins appeared for only two partial days over an 80-day period and failed to communicate her absences. The court emphasized that the ADA does not require employers to permit full-time remote work when essential functions demand physical presence, nor does it require employers to reassign those essential functions to other employees indefinitely.

In *Kellar v. The Yunion, Inc.*,³ the Sixth Circuit affirmed summary judgment for a non-profit employer on a failure to accommodate claim brought by a case manager who requested extended remote work after developing mold-related health concerns from a burst pipe in the office building. Plaintiff Kellar provided two doctors' notes, one of which said nothing about requiring remote accommodation and the other of which stated that the doctor "would recommend" that Kellar work off site. Neither note stated that remote work was medically necessary. Kellar's employer informed Kellar that half of her work was case file management, which cannot be performed remotely. When trying to push filing responsibilities onto interns from a nearby school of social work, Kellar was informed that the interns could not handle the on-site filings because they had their own caseloads to manage. The employer allowed Kellar to work remotely on a temporary basis, and implemented a previously-discussed plan to shift Kellar to part-time work so the employer could hire someone else to handle her on-site duties. Kellar returned to full-time in-person work after three weeks of the part-time remote accommodation, and filed a complaint with the Michigan Occupational Safety and Health Administration, alleging discrimination. Kellar claimed that her supervisors reduced her hours in retaliation for raising concerns about the building's safety. Around one year later, the employer lost its contract with the county that was funding a vast majority of its operations. The

employer offered Kellar the opportunity to continue to work as an independent contractor or accept a severance package. Kellar filed a lawsuit claiming discrimination, retaliation, and wrongful termination. The district court granted the motion for summary judgment in its entirety, and the Sixth Circuit affirmed.

The Sixth Circuit applied a three-part inquiry:

- (1) whether the employee proposed an objectively reasonable accommodation;
- (2) whether she could perform the job's essential functions with that accommodation; and
- (3) whether the employer demonstrated undue hardship.

Although the Sixth Circuit found Kellar's request for extended remote work reasonable because the employer permitted employees to periodically work from home, it concluded that Kellar could not perform essential work remotely because on-site hard-copy case file management was a critical in-person duty. The court rejected Kellar's argument that interns could take over her filing responsibilities, holding that the ADA does not require employers to "eliminate or reallocate an essential job function." Notably, the employer permitted Kellar to work remotely by shifting her to part-time so it could assign another employee to cover her on-site responsibilities, but this did not change the essential nature of the full-time position. The employer's contract with the county required it to keep physical case files, rendering the maintenance of those files to be very clearly an essential in-person function. Because Kellar failed to perform the essential functions of her job, even with her proposed telework accommodation, she failed to satisfy this essential element of her failure to accommodate claim.

Finally, the Seventh Circuit in *Kinney v. St. Mary's Health, Inc.*,⁴ affirmed summary judgment for

a hospital on an ADA failure to accommodate claim brought by the executive director of imaging services. Plaintiff Kinney supervised approximately 120 radiology department employees but refused to return to work in-person at the hospital because wearing a face mask or other face covering in compliance with the hospital's COVID-19 policies exacerbated her anxiety. Kinney did not tell any of her colleagues or notify her supervisors that she would be working from home. Eventually, hospital management told Kinney that she had to return to work at least several days each week. Kinney submitted a doctor's note requesting that she be allowed to work solely from home to avoid having to wear a mask in the hospital; hospital management denied this request and a later request for accommodation. Kinney resigned and sued the hospital under the ADA, claiming her employer failed to accommodate her disability and the denial of her requested accommodation constituted a constructive discharge and discrimination. The district court granted summary judgment for the hospital.

The Seventh Circuit held that working from home was not a reasonable accommodation because Kinney's essential functions—supervising staff, serving as a liaison between radiologists and department heads, and overseeing equipment—required physical presence in the hospital. It was clear to all parties that the hospital's safety protocol, which mandated that Kinney use "personal protective equipment as required," was a valid and undisputed job requirement. But rather than propose wearing a face shield or other PPE that would be less triggering to her anxiety, Kinney's response was that she should be allowed to work from home rather than in the hospital. Testimony showed that Kinney's absence shifted her workload to others, and the Seventh Circuit stressed that "having another employee perform a position's essential function, and to a certain extent perform the job for

the employee, is not a reasonable accommodation." The Seventh Circuit admitted that technology has made working from home more feasible, and the "crux of Kinney's argument for why she should have been allowed to work from home is that she and many of her co-workers did so beginning in March 2020," but just because they were "forced to do so by a global health crisis" does not render their jobs now able to be completed remotely. Co-workers suffered a heightened workload because of Kinney's teleworking, and the hospital was able to show that Kinney's absence had a negative effect on the staff she was required to supervise. In sum, the Seventh Circuit found that Kinney's request was "not for a reasonable accommodation because it would have allowed Kinney to avoid performing tasks essential to her job rather than helped her to accomplish them." Accordingly, the Seventh Circuit affirmed summary judgment in favor of the hospital.

Notably, two Courts of Appeals—the Second and the Ninth—have yet to weigh in on the issue of remote work as an accommodation.

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KEY TAKEAWAYS AND PRACTICAL CONSIDERATIONS

- Although recent Court of Appeals decisions have been employer-friendly, requests for remote work as an accommodation remain highly fact-specific. Employers should maintain a clear record of the employee's

request, the medical or other support provided, the essential functions of the role at issue, and the company's efforts to evaluate possible alternative accommodations.

- Do not short-circuit the interactive process. Employers should engage with the employee, assess the requested accommodation, consider alternatives, and document the reasons for any denial.
- Be prepared to show why in-person attendance matters for the specific position at issue. Job descriptions, performance expectations, and contemporaneous business records should clearly state that physical in-office presence is required. Job descriptions and other business records should also articulate the essential functions of the job that necessitate

in-office presence, including on-site supervision, collaboration, client or customer interaction, access to equipment or confidential materials, and paper-based or location-specific work.

- Review attendance and remote-work policies with accommodation requests in mind. Policies should explain when in-person attendance is required, why it is tied to business needs or essential job functions, and how employees may request accommodations through the company's established process.
- Tailor the accommodation analysis to the role, industry, and workplace. Compliance obligations, confidentiality concerns, supervision needs, client-facing responsibilities, and operational requirements may all affect

whether remote work is reasonable for a particular position. When the answer is close, employers should consult counsel before denying a request for remote work as an accommodation. 🌀

NOTES

1. *Hayes v. GStek, Inc.*, 175 F.4th 603 (5th Cir. 2026).
2. *Hall Haggins v. Wilson Air Center, LLC*, 163 F.4th 872, 878 (4th Cir. 2026).
3. *Kellar v. The Yunion, Inc.*, 157 F.4th 855, 864-65 (6th Cir. 2025).
4. *Kinney v. St. Mary's Health, Inc.*, 76 F.4th 635, 639-40 (7th Cir. 2023).

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