

## **Federal Court Finds Employers May Have to Assist in a Disabled Employee's Commute**

The U.S. Court of Appeals for the Second Circuit (Second Circuit), which has appellate jurisdiction over U.S. District Courts in Connecticut, New York, and Vermont, recently confirmed that employers may be obligated under the Americans with Disabilities Act (ADA) to assist disabled employees with their commute to work.

Title I of the ADA prohibits employers from discriminating against qualified individuals with disabilities who can perform the essential functions of their jobs with or without reasonable accommodation. The ADA covers all "public entities," which includes local governments.

In *Nixon-Tinkelman v. N.Y. City Dept. of Health & Mental Hygiene*, No. 10-3317-cv (2nd Cir. Aug. 10, 2011), Barbara Nixon-Tinkelman, the plaintiff in this case, is hearing-impaired and suffers from cancer, heart problems, and asthma. Tinkelman claimed that her employer, the New York City Department of Health and Mental Hygiene (DOHMH), discriminated against her on the basis of her disabilities by failing to help her with her commute after it reassigned her to work from a different location further from home. The District Court for the Southern District of New York (District Court) dismissed her complaint, finding that "commuting falls outside the scope of [p]laintiff's job, and is thereby not within the province of an employer's obligations under the ADA ...."

On appeal, the Second Circuit disagreed ruling "there is nothing inherently unreasonable ... in requiring an employer to furnish an otherwise qualified disabled employee with assistance related to her ability to get to work." On the contrary, the Second Circuit stated, in some instances, "an employer may have an obligation to assist in an employee's commute."

Whether or not that is the case, the Second Circuit continued, varies with the individual circumstances of the request and necessitates a fact-specific inquiry; one that the District Court failed to undertake. Given Tinkelman's years of service, the District Court should have considered whether it would have been reasonable for DOHMH to accommodate her needs by (1) transferring her to another, closer location, (2) allowing her to work from home, or (3) providing her with a car or parking permit.

On remand, the Second Circuit directed the District Court to determine whether assisting Tinkelman with getting to work would have been reasonable. Specifically, it instructed the District Court to consider the following factors to aid in its analysis:

- the number of employees employed by DOHMH;
- the number and location of its offices;
- whether the Plaintiff was qualified for other available positions;
- whether the Plaintiff could have been moved to a more convenient office without unduly burdening DOHMH's operations; and
- whether it would have been reasonable to allow the Plaintiff to work without on-site supervision.

This case should serve as a reminder to Vermont's municipalities that they need to carefully assess all requests for reasonable accommodations from disabled employees and work with them to determine what, if any, reasonable accommodation can be made to overcome the limitations resulting from their disability.

More information regarding providing reasonable accommodations under the ADA is at [www.eeoc.gov/policy/docs/accommodation.html#5](http://www.eeoc.gov/policy/docs/accommodation.html#5)

The U.S. Equal Employment Opportunity Commission provides technical assistance on the ADA provisions governing employment and can be reached at 1-800-669-4000.

A copy of this decision is at

<http://www.leagle.com/xmlResult.aspx?page=1&xmldoc=In%20FCO%2020110810065.xml&docbase=CSLWAR3-2007-CURR&SizeDisp=7>

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