WELA
WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION
A NELA AFFILIATE

18 WEST MERCER ST. SUITE 400
SEATTLE, WA 98119-3971
www.welaweb.org

ALERT

Editors: Mike Subit / Jeffrey Needle

CASE UPDATES

UNITED STATES SUPREME COURT

Employees of Private Subsidiaries of Public Companies May Sue Under SOX

In Lawson, the Plaintiffs were former employees of private companies that contract to advise or manage mutual funds. The mutual funds serviced by the employer are public companies with no employees. The employees claimed that there existed fraud relating to the mutual funds and that they were thereafter subjected to retaliation by their employer. They brought suit under the Sarbanes-Oxley Act, 18 U.S.C. Section 1514A(a). The employers moved to dismiss arguing that provision of SOX only protects employees of publically traded corporations, and not employees of private companies that contract with public companies. The motion to dismiss was denied, and the First Circuit reversed and dismissed the claim. The Supreme Court granted certiorari, and reversed the Court of Appeals.

The Court looked to the ordinary meaning of the provision's language and ruled that the retaliation provision of SOX protects employees of a public company's private contractors and subcontractors. The Court acknowledged that without that broad reading of the statute the entire mutual fund industry would be exempt since virtually all mutual funds are structured so that they have no employees of their own. The anti-retaliation provision of SOX applies to employees of publically held corporations and also to employees of private contractors and subcontractors of publically held corporations.

Lawson v. FMR LLC, 134 S. Ct. 1158 (3/4/14). Opinion by Ginsburg, J, in which Roberts, C.J. and Breyer, and Kagan, JJ., joined. Scalia and Thomas, JJ., joined in principal part. Sotomayor, J., filed a dissenting opinion, in which Kennedy and Alito, JJ., joined.

NINTH CIRCUIT

Fire Department Dispatchers Entitled to Overtime Pay Under FLSA

The FLSA exempts employees who are "engaged in fire protection" from overtime pay. The question in this class action was whether fire department dispatchers and fire department aeromedical technicians (paramedics assigned to air ambulance helicopters) fell within the exemption. The district court held that the plaintiffs fell outside the exemption and held that the three-year statute of limitations for willful violations applied. The district court awarded liquidated damages. The Ninth Circuit affirmed.

The dispatchers at issue worked in the Central Operations Control Division below Los Angeles City Hall. They receive emergency calls and dispatch messages to the fire station and specific vehicles to be dispatched. If the incident commander at the scene wants additional resources, the request goes to the dispatcher. Sometimes dispatchers go to the scene to act as liaisons between the incident commander and operations. No dispatcher had worked at a fire scene in 10 years. They don't carry fire protective gear and don't handle firefighting equipment. Most were trained as firefighters.

The aeromedical technicians spend the majority of their flights administrating medical care. They don't carry the same gear as firefighters but they do wear fire protective suits in case there is a fire in the helicopter. The suits aren't designed for fighting fires. The

helicopters are sometimes used to drop water on brush fires. If so, the technicians will load a hose and fittings on the helicopter. They sometimes fill the helicopter with fuel and water. They do not ride in the helicopter when it drops water on the fire.

The FLSA section at issue defines "fire protection activities" and includes people who are engaged in the prevention, control and extinguishment of fires or the response to an emergency situation where life, property or the environment is at risk. The FLSA section did not codify a prior DOL regulation that included rescue and ambulance service personnel.

Prior Ninth Circuit precedent had held that dual-function paramedics, those trained as paramedics and firefighters, did not fall within the exemption. It set out several factors for applying the exemption. Here, the Court held that the exemption refers to those who are dispatched to the fire scene and actively engage the fire. The Court rejected the City's argument that "responsibility to engage in fire suppression" should be expanded to all those employees who make a causal contribution to combating the fire, whether present at the scene or not. The Court relied in large part on Congress's failure to incorporate the prior DOL regulation.

The Court found a willful violation based on the prior Ninth Circuit precedent. Also, the City reassigned the dispatchers to the Bureau responsible for firefighting only three months after the litigation began.

The Ninth Circuit affirmed the district court's damages calculation applying credits and offsets of paid overtime on a week-by-week approach. The circuits are split on whether this is the correct approach. The Ninth Circuit joined the Sixth and Seventh in conflict with the Fifth and Eleventh.

Haro v. Los Angeles, 745 F.3d 1249 (9th Cir. 3/18/14) (Pregerson, Tallman, Simon (D. Or.)).

WASHINGTON SUPREME COURT

$57 Million Judgment Affirmed but Prejudgment Interest Not Available Where Amount of Compensation Owed Could Not Be Determined at Time Payment Was Due

This class action involved monetary claims by individual health care providers who live with the DSHS clients for whom they provide care. The Plaintiffs' theory was that DSHS's subsequently invalidated "shared living rule" reduced their compensation below the actual time they spent working because the rule presumed providers who lived with their clients always worked 15% less than providers who did not. A jury found in favor of the providers and awarded $57 million. The judge awarded an additional $39 million in prejudgment interest.

Writing for a majority of five Justices, Justice Owens upheld the jury verdict on the basis that Washington law does not require a violation of an express contract term in order to find a duty of good faith and fair dealing. It also held that the duty of good faith and fair dealing arises when one party has discretionary authority to determine a future contract term. Here that was the amount of the payments to be made to the providers. Finally, the majority held that it makes no difference that the breach of duty of good faith and fair dealing arises from a statutory violation.

The Court unanimously affirmed the grant of summary judgment on the providers' RCW 49.52 claims. The Court held that DSHS was not an agent of the clients, who are legally the employers of the providers. Nor was DSHS an employer of the providers in this context. It was not sufficient that DSHS controlled the money the client-employers used to pay the employee-providers.

Eight members of the Court held that prejudgment interest wasn't available because the providers' damages couldn't be calculated

with exactness at the time the payments were legally due. The damages formula in this case was the difference between what the providers were paid under the shared living rule and what the providers should have been paid under the correct formula. The actual hours worked data necessary for the calculation under the correct formula were not entered or collected contemporaneously. It wasn't enough that mathematical estimation methods were available.

Justice Charles Johnson dissented on the prejudgment interest issue. He asserted that prior wage and hour cases had found damages to be liquidated in similar circumstances. Here the providers' damages could have been calculated with exactness using an hours worked time hourly rate calculation. He argued that no discretion defeating liquidated damages existed once the jury found the number of unpaid hours the providers worked.

The Court unanimously held attorneys' fees were also not available because the providers did not recover wages under RCW 49.52 and merely prevailed on a contract claim.

Justice Stephens, who had dissented in the 2007 case invalidating the shared-living rule, also dissented here from the affirmance of the jury verdict. Justices Jim Johnson, Madsen, and Fairhurst joined the dissent. The dissent asserted that DSHS had no contractual obligation to the providers to determine the hours of authorized care for which they would receive compensation. The dissent also found no other basis for recovery for either the providers or the clients.

Rekhter v. State, --- Wn.2d ---, 323 P.3d 1036 (4/3/14).

WASHINGTON COURT OF APPEALS

Primary Owner/Manager of Casino Liable for Willful Withholding of Wages Because He Controlled the Corporation's Financial Decisions and Knew of the Obligation to Pay

The Defendant in this case was the sole LLC manager of a Washington casino, who lived in Texas. The Defendant also had a 51% ownership interest. The individual did not personally write checks on behalf of the casino, did not set employee wages, did not make any decisions about the payment or non-payment of wages and did not initially know about the casino's wage payment policies. Following her termination, the Plaintiff sent a letter to the casino demanding payment of her back wages per casino policy. The LLC manager learned of the wage payment obligation but still refused to pay. He argued that he was not liable for the non-payment of employee wages under RCW 49.52. The Superior Court agreed. Division Two reversed.

The Court of Appeals held that the LLC manager was personally liable for willful withholding under RCW 49.52.070 once he learned of the company's obligation to pay wages. Relying on *Morgan*, the Court held that the Legislature intended to hold individuals who control the financial decisions of the corporation liable under RCW 49.52.070. The LLC manager had the power to "oversee the Company's business." He was liable for participation in the willful withholding of wages once he learned about the casino's payment obligation to the employee and refused to comply.

The Court held that *Ellerman*'s statement that only persons who have direct control over the payment of wages may be held liable under RCW 49.52 applies only to "low-level employees responsible for payroll." It does not limit the liability of individuals who have authority over the financial decisions of a corporation and refuse to pay a known employee wage obligation.

Jumamil v. Lakeside Casino LLP, --- Wn. App. ---, 319 P.3d 868, 877 (Div. II 3/4/14) (Penoyar, Hunt, Worswick).

Public Employee Disability Benefits are Wages Because They Are "Vested"

The Plaintiff in this case was a Washington State Patrol officer. He claimed his state law disability benefits vested when he was disabled in the line of duty. The Superior Court granted summary judgment to the State. Division Two reversed and held that the Plaintiff was entitled to summary judgment. The Court further held that the Plaintiff was entitled to attorneys' fees under RCW 49.48.030. The Court held that disability benefits under RCW 43.43 are "vested compensatory payments" distinguishable from contingent benefits such as unused sick leave.

Merino v. State, --- Wn. App. ----, 320 P.3d 153 (Div. II 3/11/14) (Hunt, Worswick, Penoyar).

Anti-SLAAP Statute Doesn't Apply to Employer Postings about Former Employee on Web Site

In *Hedlund*, the Plaintiff worked as a Sales Coordinator for the Defendant, supplying tents to the United States military. He made several postings regarding Defendant on an Internet job site forum, *Indeed.com*. *Indeed.com* is a web site designed to be a resource for job seekers, and includes job postings, salary averages, and a forum where employees and applicants can discuss a company's work environment. The site is designed to allow job seekers to ask others about a company to aid in making a decision whether or not to work there. The Plaintiff posted comments about the Defendant to describe an accurate picture of the Defendant, and because he suspected that other postings were made by the Defendant's employees masquerading as job seekers. The Defendant focused on one particular posting which addressed allegedly inadequate security measures taken by the company and which were based upon public information contained in police reports and newspapers. The Defendant brought suit against Plaintiff for having allegedly violated a prior confidentiality agreement he signed during his employment.

The employee claimed that the posting was made on a public forum and moved to strike the claim under the state anti-SLAPP statute, RCW 4.24.525. The trial court, Judge Yu (now Justice Yu), found that the statute applied, dismissed the claim, and awarded Plaintiff reasonable attorney fees and costs and a statutory required penalty in the amount of $10,000. The Defendant appealed.

The Court of Appeals ruled that the Plaintiff's conduct did not involve a matter of public concern and was therefore not protected activity under the statute. It also found that the action involved a claim for breach of contract and not free speech. "[T]he legislature did not grant a party immunity from liability for the consequences of speech that is otherwise unlawful or unprotected." The Court declined to extend California case law protecting consumers of products "to someone who signed a confidentiality agreement potentially limiting his right to speak on certain issues." "The issue here is a simple contractual issue - whether or not Hedlund violated a contract he signed with his former employer."

A Petition for Review is pending.

Alaska Structures, Inc. v. Hedlund, --- Wn. App. ----, 323 P.3d 1082 (Div. I. 4/23/14) (Grosse, Lau, Dwyer).

Public Records Act Requires Disclosure of Unsubstantiated Sexual Misconduct Allegations against Terminated Public School Teacher

Plaintiff was a teacher in the Riverside School District. After affording the Plaintiff statutory due process, he was terminated from employment for having sex with a former student in a classroom. A reporter from the Spokesman-Review submitted a public records request concerning the details of Plaintiff's termination from employment. The School District informed the Plaintiff of the request, and Plaintiff then filed a lawsuit to enjoin the disclosure. The trial

court ordered the disclosure and the Plaintiff appealed.

The Court ruled that [“a] party seeking to enjoin production of documents under the PRA bears the burden of proving that an exemption to the statute prohibits production in whole or part.” Exemptions under the PRA are to be narrowly construed to assure that the public interest will be protected. RCW 42.56.030. The Plaintiff claimed that two exemptions to the PRA applied:

> RCW 42.56.230(3) exempts disclosure of "[p]ersonal information in files maintained for employees . . . of any public agency to the extent that disclosure would violate their right to privacy."
>
> RCW 42.56.240(1) exempts from public inspection and copying specific investigative records compiled by investigative agencies, the nondisclosure of which is essential to the protection of any person's right to privacy.

The Court explained that under the PRA, a person's right to privacy "is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, *and* (2) is not of legitimate concern to the public." RCW 42.56.050 (emphasis added). It is not enough that the disclosure of personal information may cause embarrassment to the public official or others. RCW 42.56.550(3). Even if the disclosure of the information would be offensive to the employee, it shall be disclosed if there is a legitimate or reasonable public interest in the disclosure.

"[W]hen a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint." (*Citing Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405,* 164 Wn.2d 199, 215, 189 P.3d 139 (2008)). However, teachers have a right to privacy in their identities when the complaint involves unsubstantiated or false allegations because these allegations concern matters involving the private lives of teachers and are not specific instances of misconduct during the course of employment. *Id.*

The Court ruled that the records were properly disclosed. The Court concluded that there existed substantiated allegations of sexual misconduct. Moreover, the former teacher failed to establish that his right to privacy because the public has a legitimate interest in the disclosure of Plaintiff’s identity; “even when allegations of misconduct are unsubstantiated, the public may have a legitimate concern in the nature of the allegation and the response of the school system to the allegation.”

Martin v. Riverside School District No. 416., 179 Wn. App. 1018, --- P.3d --- (1/30/14; pub. 4/2014) (Kulik, Brown, Fearing).

Unemployment Benefits Granted Where Employee Terminated For Error In Judgment

Dorothy Thomas was employed as a security officer, and was assigned to work at a United Parcel Post warehouse in Auburn, Washington. Part of her job was to file incident reports concerning unsafe or criminal activities. She observed a variety of potential criminal conduct, including the theft of headphones, and filed related incident reports. When insufficient remedial action was taken, she acted outside of her contractual duties (outside the chain of command) and informed the UPS theft hotline. They followed up aggressively and the theft of headphones stopped. Her immediate manager learned that she went over his head and acted outside of her contractual duties, and requested that she no longer work at the warehouse. Thereafter a meeting was scheduled with HR and the CEO. At the meeting she was asked to write a full report of all of the incidents that she reported. Thomas became suspicious because

she had already written those reports, and was unaware that they had not been forwarded to corporate officials, including HR. She repeatedly refused to write the report because she feared it would be used against her. She was terminated from employment for insubordination.

Ms. Thomas applied for unemployment compensation. The Department found that she had been terminated because of misconduct and denied the unemployment compensation. An ALJ set aside the Department's determination on the basis that Thomas did not commit an act of misconduct but an error of judgment, and the employer appealed to the Commission who affirmed. The Superior Court also affirmed. The employer appealed and the Court of Appeals affirmed.

A commissioner's decision may be reversed if it is based on an error of law, substantial evidence does not support the decision, or it was arbitrary or capricious. Questions of law are reviewed de novo and substantial weight is given to the agency's interpretation of the statutes it administers. Findings of fact are reviewed for substantial evidence in light of the whole record.

"[W]hether a particular employee's behavior constitutes 'misconduct connected with his or her work' is a mixed question of law and fact." The ALJ found that Thomas "acted out of apprehension and confusion, rather than out of a conscious intent to harm the employer," and that her "failure to give more of an explanation or to attempt to write something down . . . , was at worst the kind of error of judgment that the statute states is not misconduct." The Court of Appeals rejected the employer's argument "that regardless of what her motivations were in refusing to write the report, the refusal itself amounted to an act of insubordination because it was a willful, deliberate, purposeful refusal to follow her employer's instructions." The Court found that the employer did not challenge the ALJ's findings of fact, and distinguished cases cited by the employer.

Moreover, the Court found that the employer failed to establish that the request was reasonable, which is a required showing for insubordination. The ALJ specifically found to the contrary in light of all the attendant circumstances. The Court found that there existed substantial evidence to support the ALJ's findings of fact.

Kirby v. State of Washington Department of Employment Security, ___ Wn. App. ___, 320 P.3d 123 (3/10/14). (Grosse, Leach, Veullen).

Employer May Be Found Liable for Unfair Labor Practice Based on Bias of a Subordinate to the Final Decisionmaker

The Public Employment Relations Commission (Commission) found that the city of Vancouver (City) committed an unfair labor practice by discriminating against Vancouver Police Officers' Guild (Guild) President Ryan Martin out of animus over his union activities, and the City appealed.

In relevant part, the Court held that the Commission could impose liability on individuals (the Police Chief, Cook) for unfair labor practices, but that the Commission in this case did not do so. The Court also ruled that the Commission applied an incorrect burden of proof for the City's liability when it applied the theory of subordinate bias liability (cat's paw) pursuant to *Staub v. Proctor Hospital*, ___ U.S. ___, 131 S. Ct. 1186, 179 L. Ed. 2d 144 (2011). Applying the principles of *Staub*, the Commission ruled:

> In cases such as this, a respondent will not be found in violation of Chapter 41.56 RCW if it demonstrates that the decision was made completely free from the recommendation of the subordinates who displayed union animus. However, once a subordinate has made a recommendation to a decision

> maker that has been tainted by animus, it is not enough for the decision maker to say the decision was made independently. Credible evidence must exist that demonstrates that the decision maker purged from the decision making process the discriminatory recommendation.

Slip Opinion at 8.

In reference to the City's liability, the Court found that the Commission did not find that the biased subordinate's influence was a "substantial factor" in the adverse decision, but rather that it influenced the decision "to any degree" or was a "motivating factor" and was therefore an incorrect application of Washington law.

> If Sutter's recommendation had little or no effect on Cook's ultimate decision, either because Cook disregarded the recommendation or because he independently reached his decision to deny Martin the position, we cannot say that Sutter's animus caused Cook's decision, and the City is not liable for Sutter's conduct. *See Shrager*, 913 F.2d at 405. If, however, Sutter exercised the necessary control over the ultimate decision, the City bears liability for a decision caused by his animus. *BCI Coca-Cola Bottling Co.*, 450 F.3d at 486-88.

Slip Opinion at 17-18.

The Court found that unfair labor practice complaints filed under RCW 41.56.140 are statutory discrimination cases, and the same standard applies. *"Consequently, a complainant seeking to use the subordinate bias theory of liability must show that the subordinate's animus was a substantial factor in the decision resulting in the unfair labor practice." Id.* at 18. *(*emphasis added). Because the Commission's order merely required that an agent with animus "influence[]" an adverse employment decision, it adopted the "to any degree" standard which has been rejected by Washington law; an agent with animus could influence the ultimate decision by having a trivial, but not remotely important, effect on the decision maker's choice. "The standard adopted by the Commission is thus incompatible with the burden of proof assigned to complainants seeking to prove a statutory discrimination case under Washington law." *Id.* at 19. *Citing Allison*, 118 Wn.2d at 94.

The Court found, however, that the error was harmless because the record was clear that the subordinate's bias caused (was a substantial factor) the adverse employment action.

City of Vancouver v. State of Washington Public Employment Relations Commission; (3/25/14) (Bjorgen, Johanson, Maxa).

MEMBER CONTRIBUTION

Sixth Circuit Holds That Given The State Of Modern Technology Telecommuting Can Be A Reasonable Accommodation

By Reba Weiss

In a recent Sixth Circuit case,[1] the Court reversed summary judgment for the employer finding that telecommuting can be a reasonable accommodation where actual physical presence at the worksite is not necessary and technological advances make the remote worksite feasible. The Court found that through modern technological advances, "the 'workplace' is anywhere that an employee can perform her job duties."

In E.E.O.C. v. Ford Motor Company, the charging party, Jane Harris, was employed as a

1 *E.E.O.C. v. Ford Motor Co.*, ___ F.3d ___, 2014, WL 1584674 (6th Cir., 4/22/14).

resale buyer at Ford. Her job duties included responding to emergency supply issues to ensure no gap in steel supply to the parts manufacturers, updating spreadsheets, and periodic site visits. Ford contended that "the essence of the job was group problem-solving, which required that a buyer be available to interact with members of the resale team" and others on a face-to-face basis.

Harris suffered from IBS, an illness that causes fecal incontinence. Harris was sometimes unable to drive to work or stand up from her desk without soiling herself. Needless to say, Harris was frequently absent from the worksite due to her disability. Ford allowed Harris to work on a flex-time telecommuting schedule on a trial basis, but ultimately deemed this arrangement unsuccessful because Harris "was unable to establish regular and consistent work hours." In an attempt to make up for lost work time, Harris worked from home including on evenings and weekends. Ford took the position that "if [Harris] was too ill to come to work, she would be considered too ill to work," and refused to credit Harris with the time she spent working during non-"core" hours and marked the days that she stayed home because of her illness as absences. Some of Harris's co-workers took on Harris's work because she was not permitted to work remotely.

Harris formally requested that she be permitted to telecommute on an as-needed basis as an accommodation for her disability. Ford had a policy that permitted authorized employees to telecommute up to four days per week. Under this policy, several other buyers telecommuted on one scheduled day per week. Ford denied Harris's proposed accommodation and offered to either move her cubicle closer to the bathroom or find her another job more suitable for telecommuting. Harris rejected each of these suggestions.

Harris filed a charge of discrimination with the E.E.O.C. A few weeks later, Harris's supervisor held a team meeting to discuss Harris's absences. During the meeting, Harris became emotional and fled the room. She then received a negative performance review and a Performance Enhancement Plan. Harris was terminated shortly after it was determined that she had not met the goals of the plan.

The E.E.O.C. filed a Complaint, alleging Ford violated the ADA by failing to accommodate Harris's disability and by retaliating against her for filing a charge of discrimination. The district court granted Ford's motion for summary judgment on all claims. The Sixth Circuit reversed the dismissal of the failure to accommodate claim as well as the retaliation claim.2

There was no dispute that Harris was disabled within the meaning of the ADA. The dispute centered around whether Harris was "otherwise qualified" for her position with Ford. Harris presented evidence that she was qualified on two alternative bases: (a) she was qualified if Ford eliminated the requirement that she be physically present at the work site; or (b) she was qualified with a telecommuting accommodation. Ford responded that either (a) physical presence in the workplace was an essential function of the job; or (b) telecommuting would create an undue hardship.

The Court first analyzed whether physical presence in the workplace was an essential function of Harris's job. The Court acknowledged that for many jobs, physical presence at the workplace was essential. **In today's world, however, "the 'workplace' is anywhere that an employee can perform her job duties."** The assumption in many early cases that "regular attendance in the workplace" requires the employee to be physically present at the worksite provided by the employer does not necessarily hold in today's world:

> [A]s technology has advanced, . . . , and an ever-greater number of employers and

2 The retaliation claim and analysis are not addressed in this article.

> employees utilize remote work arrangements, attendance at the workplace can no longer be assumed to mean attendance at the employer's physical location. Instead, the law must respond to the advance of technology in the employment context, as it has in other areas of modern life, ...

Finding that whether physical presence at the Ford worksite was an essential function of the job is a "highly fact specific" question, the Court reversed summary judgment.

Significantly, the Court also found that employers should not be allowed to redefine the essential functions of an employee's position to serve their own interests. "Rather, we should carefully consider all of the relevant factors, of which the employer's business judgment is only one."

The Court went on to analyze whether telecommuting created an "undue hardship" for Ford. Similar to its "modern day" analysis regarding qualification, the Court found that "the class of cases in which an employee can fulfill all requirements of the job while working remotely has greatly expanded." The Court differentiated between "flex-time" arrangements and telecommuting. "Flex-time" may be an unreasonable accommodation because businesses cannot operate effectively where employees are allowed to set their own work hours. Telecommuting, on the other hand, allows the employer to rely on an employee working regular scheduled hours. Therefore, telecommuting can be a reasonable accommodation that does not create an "undue hardship" on the employer.

The Court agreed with earlier cases that "[a] proposed accommodation that burdens other employees may be unreasonable." It found that in this case, however, Harris's co-workers were required to do some of her work not because she was physically absent, but because Ford prohibited her from working remotely during the business day.

It was Ford's responsibility to engage in the interactive process to explore reasonable alternatives for accommodation. Ford's failure to do so "is not evidence that a telecommuting arrangement in any form was unreasonable." Furthermore, Ford cannot use Harris's past attendance as a basis to deny her accommodation because her absences were related to her disability. Ford's argument that Harris was not qualified because she rejected alternative accommodations made by Ford also did not pass muster. An accommodation must address the employee's unique needs and reasonably accommodate her disability. In response to Ford's suggestion that moving Harris closer to the bathroom was a reasonable accommodation, the Court said it was not reasonable to expect Harris to "suffer the humiliation of soiling herself on a regular basis in front of her coworkers." Reassignment, another accommodation offered by Ford, was only considered when an accommodation within the individual's current position would pose an undue hardship.

In analyzing whether an accommodation would pose an undue burden, the Court considered several factors, including the nature and cost of the accommodation and the financial resources of the employer. Finding that with Ford's financial resources, the cost of a home workstation would be "de minimis," the Court rejected that argument.

The significance of this decision cannot be overstated. Following is a summary of the important points made in the case:

- In today's world of technological advances, it cannot be assumed that the "workplace" is the physical worksite provided by the employer;

- Whether physical presence in the workplace is truly an essential function of the job is a "highly fact specific" inquiry not suitable for summary judgment;
- An employer's definition of the essential functions of an employee's job may not be used to serve its own interests. Rather, the Court should consider all the factors of which the employer's business judgment is only one;
- The class of cases in which an employee can fulfill all requirements of the job while working remotely has greatly expanded;
- Flex-time arrangements should not be confused with remote work arrangements;
- A proposed accommodation that burdens other employees may be unreasonable;
- An employer has a duty to engage in the interactive process to explore reasonable alternatives for accommodation of a disabled employee;
- An employer cannot use past attendance records as a basis to deny an accommodation where the absences were related to the employee's disability;
- Reassignment of an employee is only considered when accommodation within the individual's current position would pose an undue hardship; and
- The resources of the employer can be considered when determining whether an accommodation imposes an undue hardship on an employer.

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WELA *ALERT* EDITORS

Michael C. Subit (206) 682-6711
msubit@frankfreed.com

Jeffrey Needle (206) 447-1560
jneedlel@wolfenet.com

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