

## Is Telecommuting a Reasonable Accommodation in Ohio?

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In the recently issued decision in *McDaniel v. Wilkie*, the U.S. District Court for the Northern District of Ohio considered whether telecommuting constitutes a reasonable accommodation under the Americans with Disabilities Act (ADA). The short answer is that it can constitute a reasonable accommodation if it would enable an employee to satisfactorily perform the essential functions of his or her position and does not impose an undue burden on the employer.

In this case, an employer initially permitted an employee to telecommute four days per week. When the employee's productivity declined, the employer informed her that she must improve her productivity or her telecommuting privileges would be suspended. One week later, the employee requested full-time telecommuting as an accommodation for her alleged disability. The employer denied her request and revoked her telecommuting arrangement altogether. The employee resigned and claimed that her employer subjected her to a hostile work environment, failed to accommodate her alleged disability, and constructively discharged her.

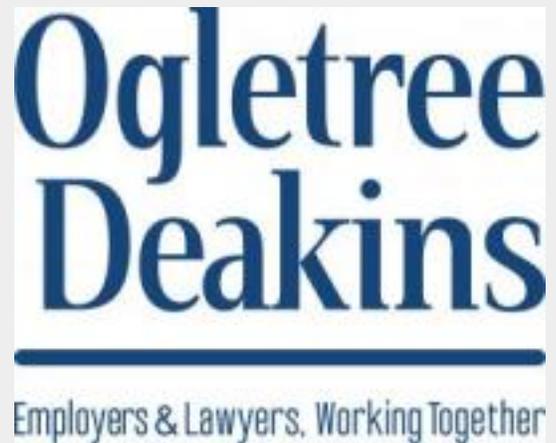
With respect to the employee's failure to accommodate claim, the court held that the employee failed to establish that she was, in fact, "disabled" within the meaning of the ADA. The court noted that having a medical diagnosis—in this case, anxiety and depression—and alleging that these conditions were made worse while working for the employer is not enough to establish a disability. The employee must also establish that that he or she was substantially limited with respect to a major life activity, which the employee in this case failed to do.

In addition, the court found that the telecommuting arrangement that the employee requested was not a reasonable accommodation because the employee was not able to satisfactorily perform her duties within that accommodation request. Further, the court found that the employee failed to engage in the interactive process in good faith insofar as she refused to sign a medical release permitting the employer to request medical information regarding her alleged disabilities in order to evaluate other potential accommodations and then resigned while the process was ongoing.

The judge granted summary judgment in favor of the employer on the employee's hostile work environment, failure to accommodate, and constructive discharge claims.

### Key Takeaways

This case provides employers faced with a request for a telecommuting arrangement as a disability accommodation with several takeaways. Most importantly, this decision reminds employers that when engaging in the interactive process with an employee who has requested a disability accommodation, they may want to consider whether telecommuting constitutes a reasonable accommodation that would enable the employee to perform the essential functions of his or her position. The decision also demonstrates that courts may recognize



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that factors, such as an employee's performance issues, can undermine the reasonableness of a telecommuting arrangement as an accommodation.

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