

# Overtime Can Be An Essential Job Function

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A recent decision from the District Court for the District of Nebraska serves as a reminder that overtime can be an essential job function. See [McNeil v. Union Pac. R.R., 2018 U.S. Dist. LEXIS 85250](#). On May 21, 2018, Union Pacific Railroad Company's ("Union Pacific") motion for summary judgment was granted and the Court determined that it did not have to grant an emergency dispatcher's request to be exempt from overtime to accommodate her depression and anxiety because working overtime in emergency situations was an essential element of her job.

Tasha McNeil ("McNeil") was hired by Union Pacific as a Critical Call Dispatcher in its Response Management Communication Center. Dispatchers are responsible for coordinating emergency responses for critical railroad incidents, responding to related phone calls, notifying government agencies about such incidents, and preparing witness reports. Dispatchers were scheduled for 8.25 hour shifts and were subject to mandatory overtime based on staffing needs. Each dispatcher's work week was color-coded to determine the order of overtime assignments. On a "red day" a dispatcher could be called to begin a shift up to four hours before the standard start time and/or remain at work up to four hours beyond the typical end time. McNeil was assigned to the daytime shift.

In early 2014, McNeil took FMLA leave to care for her ailing mother. While on leave, she applied for, and received, short-term disability benefits relating to a diagnosis of depression and anxiety relating to caring for her mother. McNeil did not return to work at the end of her short-term disability. Instead she was placed on long-term

disability leave. As her return to work date drew near, McNeil provided Union Pacific with medical records which stated that she could only work daytime hours and no overtime. McNeil was subsequently terminated because Union Pacific could not accommodate a permanent overtime restriction and there were no day shifts available at that time.

After exhausting her administrative remedies, McNeil filed suit alleging an assortment of Title VII and American with Disabilities Act (“ADA”) claims. Specifically relating to her disability discrimination claims, McNeil alleged that Union Pacific discriminated against her by failing to accommodate her inability to work overtime upon her return from long-term disability.

In its analysis, the Court recognized that an overtime requirements has been recognized as an essential job function. See *Tjernagel v. Gates Corp.*, 533 F.3d 666, 673 (8th Cir. 2008). Moreover, “an employee who cannot meet the attendance requirements...cannot be considered a ‘qualified’ individual protected by the ADA.” *Id.* The facts, as evidenced by the dispatchers’ work schedules, job description, and the RMCC’s Schedule and Attendance Guidelines, showed that the ability to work overtime was an essential function of the Critical Care Dispatcher position. Therefore, McNeil’s requested accommodation to be exempt from the overtime requirement was not a reasonable accommodation, and Union Pacific was under no obligation to accommodate her inability to perform an essential function of her job.

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