

# SITTING ON THE JOB: WHEN SITTING IS REQUESTED AS AN ADA ACCOMMODATION

Publication  
Jan 2, 2020

The retail setting is a particularly difficult one in which to make accommodations. This is because retail employees engage in a host of different duties that require all manner of physical activities. Those who are restricted from climbing may not be able to stock high shelves. And those restricted from bending and stooping may not be able to stock low shelves. Meanwhile, workers who can only lift with one arm may have difficulty checking out items at the cash register.

Thus, most physical limitations prevent employees from performing all the essential functions of their jobs. But different issues arise when an employee is physically capable of performing all the functions of the job, but for less than the entirety of a shift (for example, someone who is under doctor's orders to take a 10-minute seated break on a specified schedule throughout the course of the day). Retailers must ensure that when considering requests for rest breaks as an accommodation, each request is evaluated on its own merit.

## 2.6 MILLION REASONS TO GET THIS RIGHT

Illustrating this point is [the recent \\$2.6 million settlement](#) in an Americans with Disabilities Act (ADA) failure-to-accommodate claim between the EEOC and a Texas-based company that provided food demonstrators to grocery stores. In particular, the company employed individuals to man sample stations in its customers stores. The nature of this position, in which employees often worked alone, was not conducive to an employee being able to leave the

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workstation. The company had a rule allowing these employees, who normally work standing up, to only sit for 10 minutes every two hours. The company apparently did not make exceptions to this rule for individuals whose medical conditions require them to sit for longer periods of time.

The EEOC claimed that the job could be performed from a seated position and, as such, that the ADA obligated the company to allow employees to perform the job from a seated position in accord with their doctor's instructions. Because this matter was settled before it was argued in court, it is unclear whether a court would have agreed with the EEOC's position. But given the size of the settlement, the company likely believed the EEOC's position was strong.

## **SITTING IS A COMMON ADA ACCOMMODATION**

Since the advent of the ADA, allowing employees to be seated while performing their duties has been a commonly requested accommodation. The accommodation generally arises in the situation of a cashier who may be behind a cash register for periods of time where they are not actually serving a customer. In such situations, courts have generally held that where a cashier has no need to stand, the employer must allow the opportunity for the employee to sit down.

On the other hand, if a cashier has duties between customers that require them to remain on their feet for a period of time, there is no obligation to provide seating as an accommodation. However, it may still be a good idea to make seating available to cashiers. In fact, California has a law requiring employers to allow cashiers to be seated whenever they are not waiting on a customer as long as they have no other duties.

The case with the food demonstrators represents a situation where the duties did not support the claim that an individual had to be able to stand for 110 minutes out of each 120-minute period in order to perform the essential functions of the position. Particularly, while individuals in these positions did need to stand to arrange product and interact with customers, there would necessarily be periods where the individual was not engaged in these activities. Since the food demonstrator usually works for a third party and has no other duties in the store, denying such a person an opportunity to sit when these periods occur could, as the

EEOC alleged, seems to constitute a failure to reasonably accommodate.

## WHAT DOES IT ALL MEAN?

The main lesson to be learned from this situation is that the ADA demands you avoid maintaining inflexible rules that you cannot solidly justify. Standing to interact with customers who are also standing is a reasonable job requirement. Sitting to speak to someone who is standing may be considered rude. Likewise, handing a sample to a customer may require the employee to stand. But limiting the individual's opportunity to sit down for only 10 minutes in a two-hour period cannot be said to be connected directly to a person's ability to perform the essential functions of the job of food demonstrator.

Retailers must ensure that all policies relating to the physical abilities of employees directly correlate to the essential functions of the job. It is not enough that such policies roughly estimate the actual physical duties. For example, if you have a physical requirement for a job that an individual must be able to lift 100 pounds, you must show that an employee performing the job actually lifts 100 pounds. You cannot simply rely on a 100-pound lifting requirement an essential function of the job if employees are only actually required to lift 50 pounds. Likewise, if you require employees to be able to stand for an entire eight-hour shift with no break, you must be able to show that standing for eight hours with no break is necessary in order to perform the job.

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