

# Consider shift change as reasonable disability accommodation

A federal court has held that, under certain circumstances, the ADA may obligate an employer to accommodate an employee's disability-related difficulties in getting to work.

The 3rd Circuit Court of Appeals held that changing a part-time employee's schedule to day shift—because her poor vision made it dangerous for her to drive at night—could be a reasonable accommodation under the ADA.

The case is *Colwell v. Rite Aid* (No. 08-4675, 3rd Cir., 2010).

### Night and day

In April 2005, Jeanette Colwell began working as a part-time retail clerk at a Rite Aid drugstore, generally working weekdays from 5 to 9 p.m. A few months after she began working there, Colwell was diagnosed with retinal disease and glaucoma, which eventually left her blind in one eye.

In September 2005, Colwell told her supervisor that the partial blindness made the drive to work at night dangerous and difficult for her. She asked to be switched to a 9 a.m. to 2 p.m. shift so she could drive to work safely. Public transportation was not an option, because the buses stopped running at 6 p.m. in that area.

Colwell was told her shift would not be changed because it “wouldn't be fair” to the other employees. At that point, Colwell began to rely on relatives to drive her to work, although she said it was a “hardship” for her family.

On Oct. 12, 2005, after a number of unsuccessful attempts to have her shift changed to permanent day shift, Colwell wrote a letter of resignation to Rite Aid stating that she felt she had “not been given fair treatment.” Rite Aid never responded to Colwell's note.

A few months after leaving her Rite Aid job, Colwell filed a lawsuit that included a claim that the company had failed to accommodate her disability by refusing to move her to the day shift.

### Guidelines for specific disabilities

The EEOC regularly adds to its ADA guidance that includes suggestions for accommodating specific disabilities. Guidelines already released include the following common disabilities, which may require reasonable accommodations: diabetes, cancer, epilepsy, vision or hearing impairment, and intellectual disabilities.

Employers can find suggested accommodations for many disabilities at the Job Accommodation Network (JAN) site: [www.jan.wvu.edu/soar](http://www.jan.wvu.edu/soar).

**Advice:** When confronted with an accommodation situation, use the JAN web site and document all the steps taken. Courts will have a hard time ruling against an employer that evaluated every accommodation listed on the site.

### Commuting unrelated to work?

The trial court granted summary judgment to Rite Aid on Colwell's failure-to-accommodate claim. The reasoning: Colwell “did not need an accommodation to perform her job once she arrived at work.”

The lower court found that her requested accommodation “had nothing to do with the work environment or the manner and circumstances under which she performed her work.”

The federal appeals court reversed that decision, disagreeing with Rite Aid's position that Colwell's difficulties amounted to a “commuting problem unrelated to the workplace.”

Instead, the court found that changing Colwell's work schedule to day shift was, in fact, the type of accommodation contemplated by the ADA.

The court pointed to language within the ADA in which the term “reasonable accommodation” is defined to specifically include “modified work schedules,” and what Colwell was requesting was, in essence, a schedule change. The court held that “under certain circumstances the ADA can obligate an employer to accommodate an employee's disability-related difficulties in getting to work, if reasonable.”

Because Colwell's requested accommodation was a change in a workplace condition that was entirely within the company's control, and would have

allowed Colwell to get to work to perform her job, the court found that the shift change could be viewed as a reasonable accommodation.

### Use the interactive process

This case underscores the need for employers to:

- **Fully evaluate** each individual employee's particular medical impairment to determine what aspects of employment are affected
- **Use the interactive process** required under the ADA, in which the employer and employee together try to identify reasonable accommodations
- **Review the employee's request** in the broadest context to determine if it will help the employee perform his or her job.

Because this decision seems to expand employers' reasonable accommodation obligations, it is worth following to see whether other courts of appeal—such as the 2nd Circuit, which affects New York employers—rule consistently with the case.

**Note:** Although in this case, the court held that the ADA contemplates that an employer may need to modify an employee's work schedule to accommodate disability-related difficulties in getting to work, that doesn't prevent an employer from arguing that rescheduling may create an undue hardship.