

# Ergonomics and Reasonable Accommodations Under the Americans With Disabilities Act

## Part Three of a Four Part Series

**Ann F. Kiernan, Esq.**

In the first two parts of this series, we looked at the ADA's mandate for reasonable accommodations, and reviewed a reasonable accommodation case study where ergonomics played a leading role. In the next two parts, we will look at some recent court decisions involving ergonomics and reasonable accommodations.

According to the Equal Employment Opportunity Commission (EEOC), which enforces not only the ADA and the 2009 ADA amendments, but also the ADA's predecessor, the Rehabilitation Act of 1973,<sup>1</sup> when an employee asks for an ergonomic accommodation, the employer has the right to ask for medical documentation. As detailed in the EEOC's [Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees:](#)

Example B: An accountant with no known disability asks for an ergonomic chair because she says she is having back pain. The employer asks the employee to provide documentation from her treating physician that: (1) describes the nature, severity, and duration of her impairment, the activity or activities that the impairment limits, and the extent to which the impairment limits her ability to perform the activity or activities; and (2) substantiates why an ergonomic chair is needed.

Here, the employee's possible disability and need for reasonable accommodation are not obvious. Therefore, if the employee fails to provide the requested documentation or if the documentation does not demonstrate the existence of a disability, the employer can refuse to provide the chair.

In *Stoltman v. Federal Express Corp.*, 83 Fed. Appx. 898 (9<sup>th</sup> Cir. 2003), a disabled employee claimed discrimination because she did not get the ergonomic chair she had asked for, and was fired shortly after making her request. The federal appeals courts rejected her claim of discrimination, explaining:

Defendant complied with all of Plaintiff's requested accommodations except for providing an ergonomic chair. Defendant gave her two headsets, a larger keyboard, assistance with covering her expanded territory, and a paid leave of absence.

With respect to the request for an ergonomic chair, Defendant did not reject the proposed accommodation. Rather, Defendant conditioned supplying the chair on the receipt of a current prescription, which Plaintiff did not provide, and

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<sup>1</sup> Federal employees and applicants, and federal contractors are covered by the Rehabilitation Act of 1973, instead of the Americans with Disabilities Act. The statutes' provisions are nearly identical.

meanwhile proposed a practical alternative by ordering a high-backed chair. This interactive process was still ongoing at the time of Plaintiff's termination, and thus there is no evidence that Defendant failed to accommodate Plaintiff with respect to the requested chair.

Defendant offered a legitimate, nondiscriminatory reason for terminating Plaintiff's employment. She was fired for violating Defendant's mileage reimbursement policy... Moreover, there is affirmative evidence that the same manager had recently fired another, non-disabled employee for a similarly trivial violation of the reimbursement policy: using a long-distance calling card for a personal call.

In another ergonomic chair case, Cathy Melitski, a New Jersey state worker, had been hit by a car while walking to work, and suffered severe neck injuries, requiring surgery and resulting in limited neck mobility and pain exacerbated by prolonged sitting. She was granted a 13-month medical leave, and a month after she returned to work Ms. Melitski made an accommodation request for a part-time schedule, a stand-up desk, and a special Bodybilt ergonomic chair that cost more than \$1,000.

In response, the State adjusted her schedule, bought her a stand-up desk, and provided two non-Bodybilt ergonomic chairs. Ms. Melitski insisted that she had to have the Bodybilt chair, and sued for failure to provide a reasonable accommodation. The State then bought her the Bodybilt chair, but she persisted in her lawsuit. The State argued that the first two chairs were reasonable, and that it had acted in good faith to resolve her ADA accommodation request. The State prevailed, and Ms. Melitski lost at trial because she did not present any evidence from her doctors proving that the Bodybilt chair was the only chair that would accommodate her disability. [\*Melitski v. State\*](#), No. A-3848-07 (N.J. App. Div. 2009)

David Glow wanted a different type of ergonomic chair: a special ergonomic locomotive engineer's seat. His employer, the Union Pacific Railroad, said that was unrealistic, since it owned more than 8,000 locomotives, any one of which Mr. Glow could be called upon to operate. The railroad offered to buy Mr. Glow a neck support or seat support, which he could use both on and off the job, or to consider any other recommendation his doctor made. But neither Mr. Glow nor his doctor ever followed up on the offer, so a federal court threw out Mr. Glow's disability discrimination case, finding that Union Pacific had done everything in its power to find a reasonable accommodation. *Glow v. Union Pacific RR*, 652 F. Supp. 2d 1135 (E.D. Cal., 2009)

And then there is the case of Donald Stewart, a deputy sheriff in Wisconsin, who was assigned to monitor courthouse security, watching video screens that monitored courthouse activity. The ergonomics of the security post did not meet his needs, and Mr. Stewart's chiropractor recommended that Mr. Stewart sit at slightly above eye level with the monitors, that he rotate his position once or twice an hour, that the lighting be softened, and that he be provided a more comfortable chair. The County built a platform in the security room, installed mini-blinds on the windows and film on the doors to minimize glare, and purchased an ergonomic

chair, but that wasn't enough for Mr. Stewart, who sued for failure to accommodate his neck and back problems.

A federal appeals court dismissed his case, explaining: “[W]e confess that it is difficult for us to imagine how much more Brown County could have done with the security room and the conditions of his employment to make life more comfortable, short of giving Stewart a blank check and full authority to order a complete rehab of the building.” *Stewart v. County of Brown*, 86 F.3d 107 (7<sup>th</sup> Cir. 1996)

*Next time: The conclusion of our survey of recent ADA reasonable accommodation cases involving ergonomics.*

*About the author: [Ann F. Kiernan, Esq.](#) has more than 20 years of experience as an employment lawyer, having litigated claims of wrongful discharge and discrimination before state and federal courts and administrative matters before the New Jersey Division on Civil Rights, the National Labor Relations Board and the Equal Opportunity Employment Commission. She focuses her law practice on preventive law for employers, especially legal training for managers.*

# **Ergonomics and Reasonable Accommodations Under the Americans With Disabilities Act**

## **Part Four of a Four Part Series**

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In this final part of this series, we continue our look at some recent court decisions involving ergonomics and reasonable accommodations.

Last time, we saw that organizations that acted as reasonable employers when faced with ergonomic changes as part of an ADA accommodation request will have their positions vindicated by the courts. Unreasonable employers have not done so well.

For example, Cecelia Brown had been an IRS agent for more than 20 years when she asked in November, 2000 for accommodations for her fibromyalgia, including an ergonomic work chair. Her manager reacted: "I don't know what reasonable accommodation is and I don't care what it is. I don't have time to fool with it." The next month, Ms. Brown took her direct supervisor to the adjacent Collections Department, showed him an ergonomic chair with adjustable lumbar support, and asked for the same model. He told her that those chairs were only for Collections, but he would order one for her.

Five months later, in April, 2001, the ordered chair was finally delivered, but to Ms. Brown's dismay, the new chair did not have adjustable lumbar support. She asked her union for help, and her union rep said "she was worn down and defeated by her efforts to get something as simple as an ergonomic chair to make her work life a little more comfortable." After a management representative admitted to the union that she knew the chair was not ergonomic and that it had been purchased because it was cheaper, the union filed a grievance in May, 2001. Three days later, the requested chair, with adjustable lumbar support, was provided by the Collections Department, where a number of unused ergonomic chairs had been stored the entire six months that Ms. Brown had been asking for one.

Ms. Brown sued for retaliatory harassment based on her requests for reasonable accommodation. The court denied the IRS's motion to dismiss the claims, and sent the case on for jury trial to evaluate her "six month battle to receive a chair that was located adjacent to her office space." *Brown v. Snow*, 2006 U.S. Dist. LEXIS 16297 (E.D. Tenn. 2006)

In a 2007 EEOC case, Heshmat Ansari, a federal employee, complained that he had been discriminated against because of his Iranian national origin and disability when he was denied overtime, not promoted to the position of Director, and denied an ergonomic chair. Mr. Ansari had received the highest score on the list of eligible applicants, but the Director job remained unfilled. Further, Mr. Ansari repeatedly requested overtime and an ergonomic chair for his ruptured lumbar vertebrae and discs, but his requests were either ignored or denied while others employees who were not Iranian or disabled were provided with overtime and/or ergonomic chairs. The agency was ordered to promote Mr. Ansari to the Director position, and pay him back pay and \$25,000 in compensatory damages. [\*Heshmat Ansari v. Department of the Treasury\*](#), EEOC Appeal Nos. 0720070054, 0120070238 (June 15, 2007).

In *Morales v. BellSouth Communications, Inc.*, 2009 U.S. Dist. LEXIS 40246 (M.D. Tenn. 2009), Cynthia Morales worked as a customer service representative in a call center, where she responded to both telephone calls and on-line service requests. She developed back problems and sciatica, and her orthopedist prescribed an ergonomic chair and adjustable desk, so she could alternate sitting and standing while at work. Like other call center employees, Ms. Morales used a telephone headset, and because of the length of the headset cord and the relatively low height of the standard desk, it was impossible for Ms. Morales to stand and work with the telephone and computer.

Ms. Morales' supervisor picked out a new spot for Ms. Morales' workstation, since a raised desk would fit only in certain locations. The total cost was estimated at \$500, and the entire relocation process, once the new chair was delivered, would have taken less than one hour. But the furniture was never ordered. Ms. Morales took short-term disability leave and FMLA leave, but her back problems continued to deteriorate. While on FMLA leave, she e-mailed her supervisor, saying she would be out of work until "this matter of an ergonomic work station (as prescribed by my doctors) [is] rectified." A few weeks later, one of her supervisors e-mailed to another that Ms. Morales "said she is not returning until she got a raised desk. ... When can I put her off payroll?" Ms. Morales eventually exhausted her FMLA leave entitlement.

During the interactive process Ms. Morales responded to repeated requests for medical information, and submitted not only her prescription, but also her MRI, treatment notes from her orthopedist, and treatment notes from her physical therapist. But BellSouth said that was insufficient documentation and denied her request, then terminated her for job abandonment. She sued for disability discrimination and wrongful termination, and a federal judge denied BellSouth's summary judgment and allowed the case to proceed to jury trial.

The judge found that: "[T]he record is convincing that all Morales wanted was a raised desk and chair, so she could do her job without intense pain. That is, Morales was not trying to "game the system" for paid time off or other benefits. All indications are that Morales really could not suffer through most days at work because of the pain caused by sitting for an extended period of time." BellSouth argued that it had acted in good faith during the interactive process, but the federal judge expressed some serious doubts, opining that the e-mails demonstrated that Ms. Morales' supervisors "were ignoring her request for accommodation and instead looking for a way to remove her from the payroll."

As we have seen over the course of this series, ergonomics can often supply the solution to an ADA accommodation, but only if both the employer and employee take the interactive process seriously, and keep their minds open to alternatives. All managers and supervisors should be [trained](#) on avoiding disability discrimination, preventing disability harassment, and on their legal responsibilities for recognizing and handling request for reasonable accommodation, as well as your organization's policies and procedures.

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