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ABOUT THE AUTHOR



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ADA Does Not Require Creation of Shared Job as Accommodation

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The Americans with Disabilities Act (ADA) requires employers to provide a disabled employee reassignment to an existing vacant position for which the employee is qualified if no other accommodation exists and the employee would otherwise lose their job due to the disability. However, in a recent opinion in the case of *Perdue v. Sanofi-Aventis U.S., LLC*, the Fourth Circuit Court of Appeals, which presides over federal district courts in North Carolina, South Carolina, and Virginia, held that an employer is not required to create a shared job as an ADA accommodation.

In *Perdue*, the plaintiff was a sales representative with an autoimmune disorder that ultimately restricted the amount of time and distance she could travel for her job. Her employer had previously accommodated her disability by permitting her to share job responsibilities with a co-worker. However, when travel restrictions required her to transfer to a different territory, her manager denied her proposal for a job-sharing arrangement agreed to by her co-worker and thereafter terminated her employment based on her inability to work.

The sales representative filed suit claiming that her employer had failed to accommodate her disability as required by the ADA. The district court dismissed the lawsuit, citing the lack of a vacant position for the sales representative. The Fourth Circuit affirmed the dismissal, reasoning that the ADA's reassignment obligation only applies to positions that are both vacant and existing, neither of which existed in this case. The sales territory in question had one full-time sales position, which was not designated as a shared position. Therefore, the manager was not required to create such a position to accommodate the sales representative. Neither the fact that the employer had previously offered a job-sharing arrangement to the sales representative as accommodation in her prior territory nor the fact that the sales representative's co-worker was willing to share her job were deemed relevant to the court's analysis.

This ruling is a reminder that while disabled employees may request accommodations to permit them to perform their job duties, they cannot mandate basic changes to the job or the essential duties of their position. In addition, the requested position must be both vacant and in existence.

If you have questions about this decision or any other employment-related matter, please call [Connie Carrigan](tel:9192502119) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

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