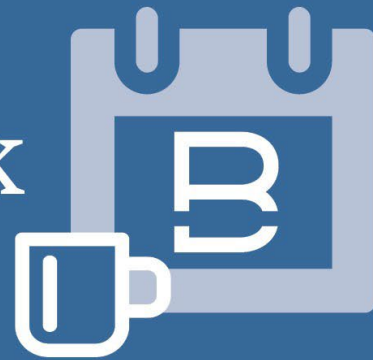


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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A Hard Lesson on Undue Hardship: What Employers Can Learn from the Eighth Circuit's *Drivers Management* Ruling

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The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to qualified employees with disabilities unless doing so would cause an “undue hardship.” This is a crucial defense for employers, but as a recent Eighth Circuit Court of Appeals opinion illustrates, the legal standard to assert this defense can be high.

In *Equal Employment Opportunity Commission v. Drivers Management, LLC*, the Eighth Circuit issued a significant decision that serves as a cautionary tale for employers that are considering asserting the undue-hardship defense. 142 F.4th 1122. To successfully invoke the undue-hardship defense, an employer must provide specific, concrete evidence, connected to the business as a whole.

Werner Enterprises Appeals a Jury Verdict in Favor of the EEOC on Undue-Hardship Grounds

Drivers Management involved a deaf individual, Mr. Robinson, who was a truck-driver trainee. Mr. Robinson was denied a position with Werner Enterprises, Inc., a company managed by Drivers Management, LLC, because his deafness would require the company to provide an interpreter during its “placement driver program”—a mandatory program for new hires with less than six months of experience in which a trainer and a trainee would drive together in a truck.

The company’s Vice President of Safety and Compliance told Mr. Robinson that it was unable to hire him due to his deafness. The Equal Employment Opportunity Commission (EEOC) filed a lawsuit on Mr. Robinson’s behalf, alleging disability discrimination in violation of the ADA. A jury found in favor of the EEOC, awarding compensatory and punitive damages.

On appeal, Werner Enterprises argued that it should have been allowed to assert an undue-hardship defense. The company claimed that providing an interpreter for the training program would have “fundamentally altered” the nature of the placement driver program, which it argued was based on the instantaneous, non-verbal cues trainers and trainees give each other in the cab of the truck.

The Eighth Circuit Puts the Brakes on Undue Hardship

The Eighth Circuit rejected the company’s argument, finding that Werner Enterprises failed to establish its undue-hardship defense. It highlighted two critical failures on Werner’s part:

1. **Lack of concrete evidence:** The court found that Werner “produced virtually no evidence” about how the proposed accommodation—training without verbal cues—would fundamentally alter its business. The company relied on a conclusory statement that non-verbal communication was essential for “instantaneous” safety training, but the court found it was “unclear how non-verbal communication . . . significantly affected their ability to carry goods in interstate commerce, which is Werner’s primary purpose.”
2. **No financial burden shown:** The court also noted that Werner provided no evidence that the accommodation would result in “significant expense” to the company. Because the ADA defines undue hardship as an action that would require “significant difficulty or expense, Werner’s failure to provide evidence of either a fundamental alteration to its business or a significant financial burden was fatal to its defense.

Once a plaintiff shows a reasonable accommodation is possible on its face, the burden shifts to the employer to establish that the accommodation would be an undue hardship. In this case, Werner failed to meet that burden.

Rules of the Road for Undue-Hardship Defenses Post-*Drivers Management*

The *Drivers Management* decision is a recent reminder that an employer’s good-faith belief or a simple, logical-sounding argument are not enough to defeat a *prima facie* ADA claim. Employers who believe an accommodation would cause them hardship will set themselves up for success by carefully applying the legal standard to the specific facts:

- **Document Everything:** When faced with an accommodation request that you believe may cause an undue hardship, the first step is to document your reasoning. Keep detailed, organized notes throughout the interactive process and retain correspondence and business records related to the request and the decision(s).

- **Analyze the Impact on Your Business as a Whole:** Conduct a thorough analysis of the specific accommodation and how it would impact your business operations. This analysis should go beyond simple statements and include detailed facts. The undue hardship analysis is not limited to a single department or a specific team. As the court in *Drivers Management* noted, you must consider the effect on the “business as a whole.” If you plan to argue that an accommodation is too expensive, you must identify the cost of the accommodation and show how that cost is significant in relation to your company’s overall financial resources. A larger company with more resources will have a harder time proving undue hardship than a smaller one.
- **Consider All Options:** The ADA requires that employers engage in the interactive process with qualified employees. An employer cannot simply reject a request, but should engage with the employee to explore alternative accommodations that would not cause undue hardship. The court’s rejection of Werner’s argument reinforces the reality that an employer should consider alternatives, such as voluntary shift swaps or other accommodations, before concluding that an accommodation is an undue hardship.
- **Training is Vital:** The initial decision to deny an accommodation request is often made by a manager or HR representative. This case highlights the importance of training these individuals to understand the legal standards for undue hardship and the necessity of documenting their reasoning with factual evidence.

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