

CLIENT ALERT**EEOC Files *First* Disability Accommodation
Lawsuit Related to COVID-19****By: Marc R. Engel, Esq.¹**

In a Press Release issued on September 7, 2021, the Equal Employment Opportunity Commission (EEOC) announced that it had filed a lawsuit against ISS Facilities Services, Inc. (ISS), a Denmark-based workplace experience and facility management company with U.S. headquarters in San Antonio, alleging that it unlawfully denied one of its employees a reasonable request for an accommodation for her disability and then fired her for requesting it. The lawsuit is the *first* that the EEOC has filed in connection with a request for an accommodation under the Americans with Disabilities Act (ADA) related to COVID-19.

According to the EEOC Press Release, the core allegations in the lawsuit are as follows. An employee worked as a health and safety manager in the company's facility in Georgia. In the spring of 2020, ISS required all of its employees to work remotely four days per week due to the COVID-19 pandemic. In June, 2020, the facility re-opened. The employee requested an accommodation to work remotely two days a day and take frequent breaks while working onsite due to a pulmonary condition that placed her at greater risk of contracting COVID-19. The EEOC states in the press release that the company denied the employee's accommodation request and fired her shortly thereafter, even though it allowed other employees in the employee's position to work from home. The EEOC asserts that the employer's actions violated the ADA. The EEOC is seeking back pay, compensatory damages, and punitive damages from the company as well as injunctive relief to prevent future discrimination.

The EEOC Press Release quotes Marcus G. Keegan, Esquire, the regional attorney for the EEOC's Atlanta District Office, as follows:

"The ADA requires employers to provide reasonable accommodations to employees with disabilities to ensure those with disabilities have an equal opportunity to work to their full ability. Denying a reasonable accommodation and terminating an employee because of her disability clearly violates the ADA at any time. In light of the additional risks to health and safety created by COVID-19, it is particularly concerning that an employer would take this action several months into a global pandemic."

The lawsuit serves as an important reminder for employers of the importance of taking seriously health related accommodation requests made by employees, particularly in connection with the pandemic, and signals the EEOC's commitment to enforcing the ADA during these historic times.



¹ Marc R. Engel, Esq. is an employment attorney and litigator at Lerch, Early & Brewer, Chartered where he co-chairs the firm's Employment and Labor Group and is a member of the firm's Litigation Group. He advises employers on all types of employment issues (including accommodations, remote work, return to work, wage and hour, and overtime issues); performs human resource audits; and conducts training on a variety of employment issues, including understanding and preventing harassment claims, and conflict resolution, strategies for defending overtime and compensation claims, and improving hiring, performance management, and retention. He also litigates and mediates employment and business disputes and counsels clients on litigation avoidance strategies. For more information about the services that Marc provides and/or the firm's employment practice, please contact him at (301) 657-0184 or by email at mengel@lerchearly.com.