

A close-up photograph of a hand holding a wooden gavel, poised to strike a large, tiered wooden block on a dark wooden surface. The background is blurred, showing a person in a white shirt. The text is overlaid on a semi-transparent brown band across the middle of the image.

BREAKS AND FLEXIBLE HOURS NOT A REASONABLE ADA ACCOMMODATION FOR FREQUENTLY ABSENT EMPLOYEE, COURT HOLDS

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Breaks and Flexible Hours Not a Reasonable ADA Accommodation for Frequently Absent Employee, Court Holds

By Katrin U. Schatz on February 15, 2017

Employers can easily feel overwhelmed when it comes to enforcing employee attendance standards while providing reasonable accommodation to employees with chronic health conditions. Increasingly, however, court decisions such as *Williams v. AT&T Mobility Services LLC* are providing much-needed guidance regarding the scope of an employer's duty to accommodate. The *Williams* case illustrates how carefully-designed policies, frequent communication, and a generous sprinkling of patience form key ingredients in the recipe for avoiding liability under the Americans with Disabilities Act (ADA).



Kirsten Williams worked for A&T Mobility Services (AT&T) as a Customer Service Representative (CSR), answering calls. Like most call center employers, AT&T insists on regular attendance. When a CSR is absent, calls must be rerouted, which can adversely impact wait times, quality of service and employee morale. AT&T's attendance policy seeks to control absenteeism by assigning "attendance points" to unscheduled absences. Eight or more points are grounds for termination. No points attach when leave is taken under the Family and Medical Leave Act (FMLA),

under AT&T's short-term disability (STD) policy or as an ADA accommodation.

Williams suffered from depression and anxiety. After taking FMLA and STD leave during most of 2013, she continued to have trouble coming to work in 2014. In April, she went on leave once again and did not return until her discharge three months later. By that time, she had accrued a whopping 16 attendance points.

AT&T repeatedly asked Williams about her intent to resume working. Each time, she replied that she was not yet ready and asked for more leave. As of June, her requests were denied due to insufficient supporting information from her healthcare providers. When Williams failed to return to work on June 30, AT&T ended her employment. Williams sued, claiming that AT&T failed to accommodate her disability. She argued that she would have been able to work if only she had been allowed a flexible start time and ten-minute breaks every two hours, as her doctor had recommended.



But the Sixth Circuit Court of Appeals sided squarely with AT&T. Relying on prior caselaw finding regular attendance to be an essential function of most jobs, the court noted that this was certainly true for CSRs, and Williams' proposed accommodations would not have solved her attendance problem. Williams testified she needed breaks to calm down after anxiety attacks, but those attacks were unpredictable and would not occur on a fixed two-hour schedule. In addition, Williams' history reflected that she could not work at all for significant periods of time. She simply was not qualified for the job.

The court also rejected the notion that more leave was required. Williams had already been off work for many months. Additional leave was not a reasonable accommodation, the court held, because her doctor still could only venture an estimate of when she might be able to return to work. AT&T was not required to keep her on leave indefinitely.

Lessons learned? AT&T did a lot right in this case, but most importantly, it was flexible and patient. AT&T won in large measure because it communicated regularly with Williams, applied its attendance policy flexibly and granted generous leave before taking the final termination step.

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