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June 2015

Employers Heave a Sigh of Relief Over Telecommuting Decision

By Jennifer R. Asbrock of Frost, Brown, Todd LLC. Reprinted with permission

The Sixth Circuit recently restored the faith of the management community by recognizing that “regular and predictable on-site job attendance” can be an essential function of the job, thereby precluding a telecommuting accommodation. In *EEOC v. Ford Motor Company*, the plaintiff was one of several resale buyers on a team who purchased and resold steel to suppliers. The plaintiff essentially acted as a liaison between Ford’s suppliers and parts manufacturers, facilitating supply and resolving disputes. Her job was highly interactive and required a lot of in-person contact, including periodic on-site visits and impromptu meetings.

Trial Court Rules in Ford’s Favor

Throughout her employment, the plaintiff had chronic attendance problems. She suffered from Irritable Bowel Syndrome (IBS), which made it difficult for her to leave her desk, or even drive to work or to client contacts. Ford’s

telecommuting policy authorized employees to work up to four days per week from a telecommuting site, and several other buyers telecommuted one day per week. However, the policy explained that jobs requiring “face-to-face contact” and employees who were not “strong performers” and had inadequate time-management skills would not be allowed to telecommute. The plaintiff was first permitted to work on an informal flex-time telecommuting schedule, but her absenteeism continued to increase. The plaintiff then requested an accommodation of working from home up to four days a week under the telecommuting policy, which would allow her to still perform her job duties, but better manage her IBS symptoms. Ford denied her accommodation request, asserting that her job

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Hamilton County Law Library

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<http://lawlibrary.hamilton-co.org>

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Tech Tip: Free Patent Searching by Google

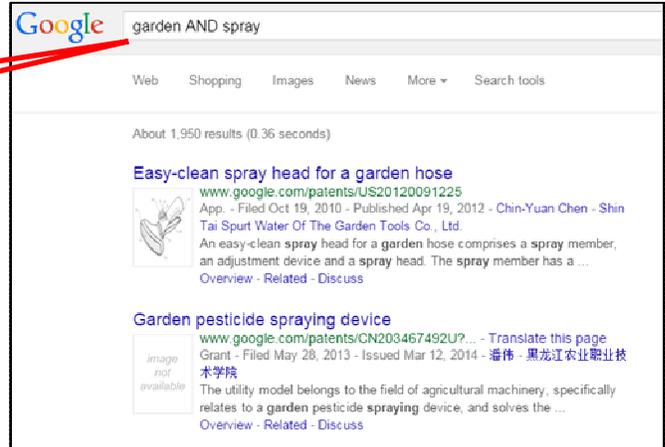
By Julie Koehne, Assistant Law Librarian, Systems



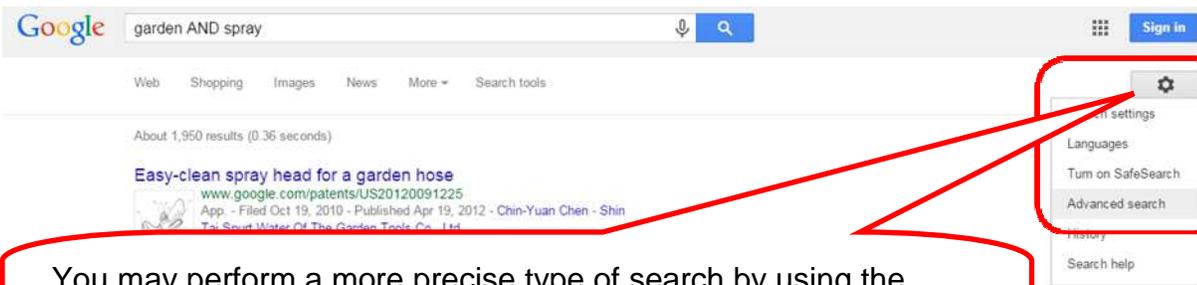
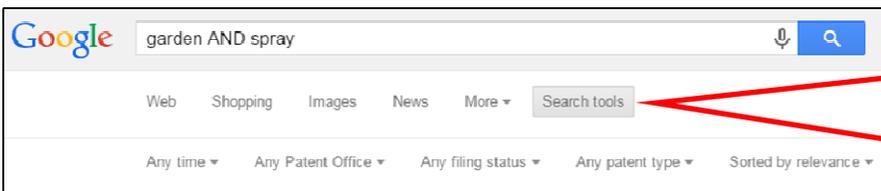
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Restrict date by	Return patents anytime Return patents between: <input type="text"/> and <input type="text"/> e.g. 1999 and 2000, or Jan 1999 and Dec 2000			

Advanced patent search can search by patent number, patent title, inventor name, assignee name, U.S. classification, and international classification.

Upcoming CLE

Free to subscribers; \$50 for non-subscribers
 To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website <http://lawlibrary.hamiltoncountyohio.gov/classes/cle/>

Ohio Legislative History: Research Tips and Tricks

Presenter: Laura Dixon-Caldwell

Thursday, July 30

Noon-1pm

1.0 hour of general CLE pending in Ohio and Kentucky

*Note: this is not the same course that was offered In 2014. This will focus on searching online resources and when to use print vs. online.

Fastcase Now Available in Main Room

Fifty state, plus federal, case law is now available on the public computers in the Main Room of the Law Library. While off-site access is limited to local government officials and to subscribers whose subscription type permits remote use, on-site access to primary law for the general public is an essential component of access to justice, especially as the library's print subscriptions to other states' primary law have largely converted to online. Public users may also avail themselves of HeinOnline and the Nolo Press books on EBSCOhost. We also link to the Public Library of Law from [our website](#). [Ask a librarian](#) if you would like to know more about the Law Library's services to the public or see our [Self-Help page](#).

Research Guides

Over the past few months, our librarians have authored several new online research guides for your use. Recent topics include expungement, Ohio protection orders, disability law, and an overview of available resources for forms. You will find our research guides at <http://libguides.hamilton-co.org/>. Useful to both legal professionals and self-represented litigants, these guides provide 24/7 access to online legal information as well as lists of material in this library and background information on the area of law. Our Tech Tip guide covers a wide range of topics from Lexis Digital Library to mobile printing and URL shorteners. Users can subscribe to updates whenever a topic of interest is added or updated. [Let us know](#) if you would like us to write a guide on a particular topic of interest. In the works: guides on LGBTQ issues, neighbor law, copyright law, small claims court, and Ohio legal research.

Why Do You Use the Law Library?

You may have noticed the testimonials from library users on the [Law Library's website](#). Would you like to chime in with your reasons for using the library and renewing your subscription annually? We would happily add to the testimonials on our site. Just send a short email to [Mary Jenkins](#), the Law Librarian & Director, along with the firm name or affiliation you would like to have listed.

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required too much face-to-face interaction. Ford instead offered to accommodate her by moving her closer to a restroom or by finding her another job. The plaintiff filed an EEOC Charge, and the EEOC filed suit on her behalf. The trial court granted summary judgment in Ford's favor, concluding that the plaintiff was not "otherwise qualified" due to her absenteeism and declining to second-guess Ford's business judgment that her telecommuting request was unreasonable.

Several Turns in the Sixth Circuit

A three-judge panel from the Sixth Circuit initially reversed the trial court's decision. The panel ruled that physical presence at the workplace might not be an essential job function and that telecommuting could be a reasonable accommodation, despite Ford's stance that the plaintiff's position was not suitable for telecommuting. Although the Court did not definitively establish that Ford failed to make reasonable accommodations, its decision made it clear that the determination should be left up to the jury. Following the ruling, several state Chambers of Commerce and other interest groups asked the full Sixth Circuit to reconsider the panel ruling. They argued that the panel's decision essentially gave employees considerable leverage to decide when and where they were able to work. On Friday, August 29, 2014, the Sixth Circuit entered a summary order vacating the panel's opinion and redocketing the case for consideration by the Court en banc.

This month, a nine-judge majority of the Sixth Circuit vacated the previous opinion that had reversed the trial court's decision of

summary judgment for Ford. The majority explained that the ADA "does not endow all disabled persons with a job—or job schedule—of their choosing." The majority recognized that an employer could refuse a telecommuting request if the job had certain requirements, such as in-person interaction with clients, customers, or coworkers and immediate access to materials or information only found at work. Notably, Ford had a long-time practice of placing resale buyers in the same building as the stampers they supplied, which was consistent with on-site work. Buyers who were allowed to telecommute were only allowed to do so one day per week, with the explicit agreement that they would come in if needed. What's more, although the plaintiff claimed that most of her interactions were by phone, she admitted that four of her ten main duties could not be performed at home. The Court therefore concluded that the plaintiff's "up-to-four-days telecommuting proposal" was not reasonable.

Important Takeaways for Employers

Employers are no doubt relieved by the Sixth Circuit's change of heart, although there are certainly some important lessons that follow from the divisive ruling. Going forward, employers should review their scheduling, flex-time, and/or telecommuting policies and practices to determine whether they properly carve out limitations and exceptions for employees whose jobs need to be performed at certain times and under particular circumstances. Employers should also review their job descriptions to ensure that regular attendance, in-person interaction, and/or on-site presence are included as essential job functions, where appropriate. Finally, employers should be aware that allowing accommoda-

tions for one employee in a certain job title may well translate to providing the same accommodation—perhaps even to a greater extent—for others in the same job title. All of these factors will be at play in future telecommuting cases, and the successful employer will have anticipated and prepared for them. For more information, contact [Jennifer Asbrock](#).

Forms

“I need a form for...” – that’s the beginning of what’s probably the most frequently asked question at the library. During library hours, a librarian will point you to a selection of forms quickly or email you some samples based on the search terms and topic you provide. But what about after hours? You will find access to local, federal, and general forms via [our forms guide](#) (click the Research tab on [the library’s website](#)). We also link to court forms from [our Self Help page](#). And we have thousands of forms available to our subscribers on Westlaw FormFinder and other sources in the library. Just ask a librarian when you need a specific form. We will get it to you.

New Law Firm Subscribers

We are pleased to welcome the following law firms and their attorneys and staff as subscribers to the Law Library this year, in addition to dozens of other new library users in 2015. We appreciate the opportunity to serve your legal information needs. Contact us if we can help by orienting you further to our resources and services.

- Cors & Bassett
- Gottesman & Associates
- Porter, Wright, Morris & Arthur

We Auction Discards and Used Equipment

When we no longer need equipment or furniture and when we withdraw books from the collection, we post those items to [Hamilton County’s auction site](#). It’s hit or miss; not everything is a treasure. We often bundle books by topic but one does generally have to bid on a lot of items, like six books or three chairs, for example. As I type this, there are some Nancy Drew and Hardy Boys books on the auction site. They’re not from the Law Library but it’s a good example of the random items you’ll find, like seats from the ball park and jewelry, in addition to more routine office equipment and discarded library books.

We Deliver!

We can help you with time-consuming legal information retrieval. We don’t offer a courier service, but we do deliver documents quickly via email to county officials and to our subscribers. If we can save it electronically or scan it, we can send it to you. If you need a case, a Shepard’s report, a chapter, a law review article, a statute, a form, etc., just let us know what you need and we’ll email it to you. We can also do preliminary research for you. Call us at 513.946.5300 and ask for a librarian or email [Reference](#) or complete the Ask a Librarian form on our website.



Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', Westlaw, IntelliConnect, Hein Online Law Journals and Federal Register, and over 70 Aspen /LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

Bi-weekly news updates in various practice areas

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises, HeinOnline and IntelliConnect.

You and the Legal System: DUI and Traffic Law

Attorney Paul Laufman is our next speaker in the *You and the Legal System* series for the public. Mr. Laufman will discuss DUI and Traffic Law on Friday, June 19 at noon in the Law Library.

The program is free to the public. To register, call 513.946.5300 or register via our website at <http://lawlibrary.hamiltoncountyohio.gov/classes/you-and-the-legal-system/>

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact *You and the Legal System* is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. Save the date for the next event in the *You and the Legal System* series. Attorney Tom Hodges will discuss Landlord Tenant Issues on Friday, July 17.



Criminal Law Resources

Law Library subscribers have access to a variety of resources on Criminal Law. If you have questions about accessing these or any of the library's resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Anderson's Ohio criminal practice and procedure
KFO561 .A951 2014-2015

Attacking and defending drunk driving tests
KF8925.T7 B37 2014

Attorney's guide to defending veterans in criminal court
KF7709.A7 A88 2014

Crime in the United States
HV6787 .A374 2015

Criminal advocacy
KFO575.A75 C73 2014

Criminal law boot camp
KFO575 .P72 2014

Criminal law handbook: know your rights, survive the system
KF9619.85 B47 2013

Criminal law of Kentucky, annotated
KFK1761 .A33 K4 2015

Death penalty defense
KFO565.C2 D4 2014

Death penalty defense: trials and appeals

KFO565.C2 D4 2014

Federal criminal code and rules
KF8836 .F422 2015

Innovative DUI trial tools
KF2231 .K17 2014

Katz Giannelli criminal law (Ohio)
KFO561 .K37 2015

Kentucky driving under the influence law
KFK 1497.8 .K46 2014-2015

Ohio arrest, search and seizure
KFO576 .K38 2014

Ohio criminal law handbook
KFO561.Z9 O55 2015

Ohio driving under the influence law
KFO297.8 .P34 2014-2015

Pulled over: will it be a DUI?
KFO297.8 .P85 2012

Sixth Circuit criminal handbook
KF9619 .S59 2014

Online Resources: Remote Access*

Aspen/Loislaw Drunk Driving Defense Library

Forms & Checklists

Drunk Driving Defense

EBSCO

Criminal Law: A Desk Reference

Criminal Law Handbook

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

June 19: You and the Legal System: DUI and Traffic Law

July 17: You and the Legal System: Landlord Tenant Law

July 30: Legislative History CLE

Law Library Holidays

The Law Library will be closed on Friday, July 3 in observance of Independence Day.



June 2015 Law Library Newsletter

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