

Working overtime can be an essential function of the job

Marvin Davis agreed to work overtime when he accepted a job under a collective bargaining agreement with Florida Power & Light Co. But after he aggravated his back while working as a lineman, he moved to light duty. Eventually, he applied for and received a position connecting and disconnecting service, a job in which workers averaged more than 200 hours of overtime a year.

Two years into this new position, Davis' doctor recommended he work only eight hours a day. Davis demanded that Florida Power promise him that he'd never have to work overtime again unless he wanted to. The company offered him a transfer but he refused. Soon after, Davis was fired.

He sued under the Americans with Disabilities Act and lost. The 11th Circuit court said that Davis' inability to work overtime disqualified him from ADA protection. Since he could not work overtime, he could not perform an essential function of his job and was, therefore, not a "qualified individual with a disability" as defined by the ADA. The decision goes against an Equal Employment Opportunity Commission argument that working overtime can never be considered an essential job function. (Davis v. Florida Power & Light Co., Nos. 99-4076 & 99-10524, 11th Cir., 2000)

Advice: Overtime can be an essential job function as long as it is not just a convenience or peripheral aspect of the job. Thus, if no reasonable accommodation is possible for employees who are unable to perform overtime due to physical impairments, you can safely remove them from the job.

How to silence protests over required overtime

The drum-tight labor market means that more companies are using mandatory overtime to fill in the gaps. But the increased use of this tactic is creating serious friction, and some lawsuits. Take these steps to keep the issue from boiling over in your workplace:

- Explain during hiring that overtime will be required.
- Include a policy in your employee handbook on when overtime will be required. Cite any exceptions on when employees can refuse it, such as illness. Be consistent in enforcing your policies or you'll risk a discrimination suit. Have staffers sign a form saying they understand the policy.
- Give notice when you'll need overtime and ask for volunteers before assigning mandatory overtime.

Check restrictions under your state's labor law, safety requirements and any collective bargaining agreements.