



## A PERIODIC FLYOVER OF NOTABLE LABOR & EMPLOYMENT CASES

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### **Ward v. McDonald, 762 F.3d 24 (D.C. Cir. 2014).**

*Summary:* A Department of Veterans Affairs employee filed a lawsuit in federal court over the Agency's alleged failure to provide a reasonable accommodation and argued that the failure forced her to resign against her will. She lost her case in the District Court and appealed to the D.C. Circuit.

*Holding:* The U.S. Court of Appeals for the D.C. Circuit upheld the District Court's ruling. It found that the Agency acted in good faith during the reasonable accommodation process but that the employee failed to provide the appropriate paperwork to back up her claim that she needed a reasonable accommodation.

*Comment:* One of the common areas of dispute during the reasonable accommodation process is involves an Agency or Employer asking for more information from the employee to show whether a reasonable accommodation is warranted and what accommodation is needed. The Court did not agree with the employee's claim that she provided the required information. However, this case is interesting because one of the judge's strongly dissented writing that the Agency asked for information it "did not need." The dissent further wrote: the employee should not be held accountable for "failing to respond to questions her supervisors had no business asking." Unfortunately, this case could be interpreted to allow an Agency to ask for information it really does not need.

### **Solomon v. Vilsack, 763 F.3d 1 (D.C. Cir. 2014).**

*Summary:* An employee at the U.S. Department of Agriculture filed a lawsuit after her reasonable accommodation request for a maxi-flex schedule was denied. The District Court dismissed her case and she appealed to the D.C. Circuit.

*Holding:* The Court of Appeals reversed the District Court's decision. The Court ruled that flexible work hours can be a reasonable accommodation.

*Comment:* Union representatives assisting employees with requesting a reasonable accommodation should be aware of this case. While many employees seek telework, this case shows that requesting flexible and compressed work schedules may also be appropriate where such schedules will accommodate the employee's disability.

## **FEDERAL LABOR RELATIONS AUTHORITY (FLRA) CASES\***

### **U.S. Forest Service and NFFE Local 5300, 67 FLRA 558 (2014).**

*Summary:* The FLRA reviewed an arbitration award finding that the Forest Service improperly paid law enforcement officers "AUO" pay instead of FLSA time and a half overtime. The FLRA upheld the Arbitrator's decision.

*Comment:* This case is important for an LEO where an agency is attempting to pay AUO pay even though the Agency knows that the employees will be working overtime. AUO is supposed to be used only for law enforcement work that is "uncontrollable" not work that is scheduled and planned in advance.