

Press Coverage | August 16, 2023

New Accessibility Rule Could Impact Employees with Disabilities

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Susan Lessack, a partner in Troutman Pepper's Labor + Employment Practice Group, was quoted in the August 16, 2023 *SHRM* article, "New Accessibility Rule Could Impact Employees with Disabilities."

Susan Lessack, an attorney in the Philadelphia and Berwyn, Pa., offices of Troutman Pepper, said the rule could lead to more people with disabilities landing jobs. While the employment rate for individuals with disabilities is rising, it still lags far behind that of people without a disability.

"It's possible that the increase in accessibility may encourage people with mobility impairments to apply for jobs that they previously avoided because they were concerned about safety issues caused by commuting to the workplace," she said. "If so, that could expand the applicant pool for open positions."

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Lessack said some employees with mobility limitations may request an accommodation—such as working remotely or asking for a delayed start time—to address their difficulty in getting to work. In such a case, employers might consider the accessibility improvements implemented as a result of the Access Board rule when engaging in the interactive process with the employee.

"If the sidewalks on which the employee travels on their route to work have been improved by the changes implemented as a result of the rule, the employee may face a more difficult task in establishing the need for a reasonable accommodation of working remotely," Lessack explained.

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Considering the interactive process often focuses on whether an accommodation request is medically necessary, employers might consider whether an employee's commute has improved sufficiently enough to travel that route, Lessack added.

"As a practical matter, if an employer has been permitting an employee with a mobility impairment to work remotely, this rule seems unlikely to change the employer's approach," she said. "Note that courts have differed on whether an employer is even required to provide a reasonable accommodation related to an employee's commute."

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