

**"Work Hours and Disability Justice"**  
**Jeannette Cox, University of Dayton School of Law**  
**International Disability Rights Affirmation Conference 2022**  
**October 28**

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[2022/10/28 11:29] Elektra Panthar: Hello everyone.

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Voice-to-text services provide an in-the-moment snapshot of ideas and concepts, so that those who are unable to hear or to understand the audio program are able to participate in real-time.

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Transcription is provided by Virtual Ability, Inc.

The transcriptionists are:

Elektra Panthar

Carolyn Carillon

The speakers will be identified by initials as they speak.

The following initials in the transcription record will identify the speakers:

JC: Jeannette Cox

[2022/10/28 11:35] Diva Barcelos: Hello and welcome to Virtual Ability's annual IDRAC conference.

My name is Diva Barcelos and I am Hard of Hearing, as a result of losing my hearing during my childhood.

I prefer typing than using voice owing to my inability to understand voice accents as also combined with the fact, I read lips in most of my interactions.

I've been in SL for 13 years, and I really love dances and going to live music concerts.

I also enjoy participating in group discussions relating to mental health.

In RL I'm trained in counseling youth, as well as education therapist to work with special needs children.

Presently I am studying American Sign Language and Singapore Sign Language.

I am also working with a company that advocates for fairer practices in hiring of the deaf and creating awareness of the deaf community, their culture, practices and accommodations for them.

Today I would like to introduce Jeannette Cox who is a professor of Law at the University of Dayton School of Law, whose research focuses primarily on disability and employment discrimination, even as she teaches courses in disability rights law, civil procedures & statutory interpretation.

Her topic today is titled : Work Hours and Disability Justice

A very important aspect of Disability Justice is eliminating employment discrimination.

I hope after listening to Jeannette, more of you may find better working opportunities, and will also offer them to those who are differently abled.

Audience, please hold your questions and comments to the end, so as not to interrupt Jeannette who is new to Second Life.

Welcome, Jeannette Cox. The floor is yours.

[2022/10/28 11:39] Elektra Panthar: JC: Thank you Diva for your kind introduction and thanks Alice for mentoring and welcoming me, this is my first time in SL so sorry if I make any mistakes

My research is about how courts deal with ADA

Especially part-time accommodation

The definition provides a list of examples of 'reasonable' accommodation

But I want to highlight the part time accommodations have been there since the beginning

So the employers should grant them

The term "reasonable accommodation" may include—

(A)making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B)job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities unless the employer demonstrates there are overwhelming expenses or difficulties

For example a flight attendant can't reasonably do only half flight, but a Spanish teacher can reasonably do half day

Courts concluded part time schedules were reasonable accommodation in case of illnesses or physical conditions

Most times it doesn't cause hardships to the employer

The problem is that other courts denied this part of ADA

"Whether a company will staff itself with part-time workers, full-time workers, or a mix of both is a core management policy with which the ADA was not intended to interfere."

That conclusion is in conflict with the ADA

It's clear that the ADA is made for that

Some courts of appeal made this conclusion though, so they 'justified' employers not hiring disabled people who would be able to only work part time

These cases concern me and I want to know why some are doing this

What I found is that they provide 2 reasons for not enforcing the PT accommodation

I think they are a sort of excuse hiding the real reason why they do this

Courts' stated explanations for concluding the ADA does not require part-time schedule accommodations....

1. Part-Time Schedule is Reasonable Only When Employer Has a Designated Part-Time Vacancy

2. Full-Time Hours Are "Essential"

So they're saying the PT position should already exist

So they don't think employers should 'split' jobs to accommodate

This line of reasoning is problematic

So the courts said you can ask for part time only if you want to be reassigned

It violates the ADA, which states they are two separate accommodations  
It's very clear on this - there's a different paragraph about reassignment

### 1. Part-Time Schedule is Reasonable Only When Employer Has a Designated Part-Time Vacancy

The term "reasonable accommodation" may include . . . part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities

In another case the worker requested a job share and the employer had done so many times before

But the courts used the part time position argument and the employer didn't approve it  
The courts have basically told employers they don't have to provide the PT accommodation

### 2. Full-time hours are "essential"

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

Essential function means jobs task, for the job's purpose

The courts have warped this and came to the conclusion that those who can't work full time are not qualified

This is not what the ADA said

These courts let the employers off the hook and it's wrong

The essential functions mean the ability required for the job, not the full time hours

But the statutes say that part time enables the employee to do the job

In the case a worker who had a 20 hours workload was fired because she couldn't work double the hours

There wasn't even financial justification

So the courts made part time optional

Those are the stated reasons, but I'm going to share what I think are the unstated reasons

### Unstated Reasons for Courts' Reluctance to Enforce the ADA's Part-Time Schedule Accommodation:

Entrenched 40-hour norm

The problem is what Courts think of as 'normal' hours vs extreme work hours , like someone working on an oil rig

So in that case the courts said that they could hire someone else to let the worker to recuperate, but the same jurisdiction denied someone who asked to half his 60 work hours

So they're prioritizing the able bodied average hours, ignoring the inclusion goal of the ADA  
They also are pushing medicalized reasons for part time, because they're reluctant to grant long term part time to someone that has a disability

They use the term Leave of Absence for someone who is unable to work for a long amount of time, and some courts lump the part time within this mentality

They prioritize the status quo

Another unstated Reason:

Concern about treated disabled part-time workers more favorably than nondisabled part-time workers

I see this reflected in the reluctance to think that the part time would be a new thing

Employers say that a part time worker shouldn't have full time employee benefits (like health insurance)

[2022/10/28 12:07] Carolyn Carillon: JC: Here's an example

A worker asked the courts for a PT position after layoffs

The plaintiff had been FT

But needed an accommodation

But the employer had laid off PT employees

This is what's really going on

It's a status quo bias

PT jobs are typically lower quality

Where do we go from here?

We need to prioritize the ADA's text

We need to pull courts back to the text

The reality is that courts rarely revisit precedent

We may need to think about reforms

One potential reform is to create parity between PT and FT work

Equal compensation

PT workers typically earn 30% less

We need parity in benefits

That would make PT work more feasible

It would normalize PT work

Another reform is to reduce employer incentives to have a small staff working large hours instead of the reverse

We give businesses small business status

Based on the # of employees

That creates an incentive

Maybe we need to base it on revenues or profits instead

A more significant change would be to adopt a single-payer health care system

We need to reduce the #of jobs that pay overtime

We need to shorten the standard work week

There are many reforms worth considering

We need to consider the language we use to refer to job hours

Our language centers the physically robust worker

Even the language of job sharing suggests that those employees only give some of their effort

So we should call it a 20- or 40-hour job

I'll [stop] there

I look forward to your questions

[2022/10/28 12:15] Gentle Heron: You've given us a lot to think about, Jeannette.

QUESTION: How did you get interested in this area of disability law?

[2022/10/28 12:15] Carolyn Carillon: JC: I've been interested for a long time

My sister has Down's Syndrome

But I also experienced a chronic illness

I was able to self-accommodate

That made me aware

Of restricted work options

I was part of a Facebook group

I was lucky  
I didn't have to quit my job

[2022/10/28 12:15] Mook Wheeler: QUESTION: This is very disturbing news about an institution which is supposed to stand up for the rights of the ordinary citizen.

Would you know: 1) Are these conflicts between court judgements and ADA clauses happening all over the US, or just in certain places? 2) Is this change in direction \*recent\*? 3) Do you think this new behaviour by the courts is politically motivated? You don't have to answer the last question if you prefer.

[2022/10/28 12:17] Carolyn Carillon: JC: It's not everywhere  
Most are in the 7th Circuit (Chicago) and the 11th (Georgia, Florida)  
Courts are not consistent

And it's not recent

In the 4th Circuit, the shifts have been recent  
(Virginia)

That may be connected to the change in the composition of the court due to judges appointed by Trump

[2022/10/28 12:18] Pecos Kidd: How does the recent rapid increase in 'work from home' jobs factor into this discussion?

[2022/10/28 12:19] Carolyn Carillon: JC: If you're interested, I have a colleague who wrote a paper

Arlene Kantor

Work from home is significant

The expense isn't part of the employer's responsibility

So it may make it more feasible

I'll recommend Arlene Kantor's article

I can find a link

[2022/10/28 12:22] JeannetteCox Resident:

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3895798](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3895798)

[2022/10/28 12:19] Pecos Kidd: Thanks!

[2022/10/28 12:22] Orange Planer: Works well, thank you. :)

[2022/10/28 12:23] LV (LoriVonne Lustre): Here is more information on papers by Arlene Kanter: <https://www.researchgate.net/profile/Arlene-Kanter>

[2022/10/28 12:19] Orange Planer: Based on your analysis, it seems as though people like me, who are temporarily prevented from driving to work, are SOL when asking for an accommodation to work from home. Is that your take? What steps could I take to force work to approve the accommodation?

[2022/10/28 12:20] Carolyn Carillon: JC: Work from home is separate from part time work  
As long as the job is one that can be done from home

[2022/10/28 12:20] Gentle Heron: QUESTION: As he signed the ADA into law, President George H. W. Bush said: "Let the shameful wall of exclusion finally come tumbling down." You pointed out several walls that still exist. What can we do as a virtual world community to help bring those walls down?

[2022/10/28 12:21] Carolyn Carillon: JC: My impression is that you're doing a lot to bring those walls down

The challenge is communicating that to other communities

To see what's possible

Invite more people in  
That's one step

[2022/10/28 12:22] Mook Wheeler: Jeannette -- your information has reached many countries today -- we are a very international audience

[2022/10/28 12:23] Carolyn Carillon: JC: I'm curious  
What's your impression of accommodations where you are

[2022/10/28 12:23] Gentle Heron: Please put your location in chat

[2022/10/28 12:23] Itico (Itico Spectre): I am in Wisconsin...enough said. haha

[2022/10/28 12:23] iSkye Silvercloud (iSkye Silverweb): Yeah Itico....yup

[2022/10/28 12:23] LV (LoriVonne Lustre): Nova Scotia, Canada

[2022/10/28 12:24] iSkye Silvercloud (iSkye Silverweb): I call Wisconsin the North Coast - we can shout across Lake Superior to Canada

[2022/10/28 12:23] Linn Darkwatch: East Coast US

[2022/10/28 12:23] Mook Wheeler: UK

[2022/10/28 12:23] Zzri Avian (Zri Portal): Malaysia

[2022/10/28 12:24] Rhiannon Chatnoir: /me is in Massachusetts

[2022/10/28 12:24] Pecos Kidd: The country of Texas

[2022/10/28 12:24] Lorin Tone: Scintillating Turlock CA

[2022/10/28 12:24] Elektra Panthar: similar mentality in Italy - not sure about PT accommodation but remote jobs were 'recalled' even in cases where going to the office doesn't really improve things, especially with the cost of gas now

[2022/10/28 12:25] Slatan Dryke: in Italy is called Smart Working quite hilarious hehe

[2022/10/28 12:24] Vulcan Viper: The Netherlands

[2022/10/28 12:24] Chezz Conundrum-Firelyte (Chezz Firelyte): Exi and I are also in New England

[2022/10/28 12:24] Orange Planer: Yeah yeah, I'm in Massachusetts.

[2022/10/28 12:25] Itico (Itico Spectre): For those who do not know, Wisconsin is a state which is trying to hold on to a past that never existed in a good way for disabled people.

[2022/10/28 12:25] Carolyn Carillon: JC: People want to return to a pre-pandemic normalcy  
Even though we learned during the pandemic

[2022/10/28 12:25] Gentle Heron: Normal or prior normal is not necessarily better

[2022/10/28 12:25] Carolyn Carillon: JC: agrees with Gentle

[2022/10/28 12:25] iSkye Silvercloud (iSkye Silverweb): the pre-pandemic normal was not working... going back to it is not gonna work either

[2022/10/28 12:25] Orange Planer: In my case, the COO is old school - he thinks that if people aren't physically at work, they aren't working.

There were a few bad apples in 2020-2021, and that's poisoned his attitude.

[2022/10/28 12:26] Elektra Panthar: indeed that's the problem I think, a very old and / or 'set in their ways' employers

[2022/10/28 12:26] LV (LoriVonne Lustre): Focus on the work done not the where and when it is done.

[2022/10/28 12:26] Carolyn Carillon: JC: There's so much research about how productive we were working from home

That's one of the core problems in the US

The notion of what's essential

How employers have structured work is essential

But the ADA was written to create flexibility

[2022/10/28 12:27] Rhiannon Chatnoir: I really feel one of the only good things to come of COVID is that folks could work remotely and hopefully more job places embrace this.

[2022/10/28 12:27] iSkye Silvercloud (iSkye Silverweb): we have very old/set in their ways politicians running around and I am not being ageist about it - it's the old-school mentality of too many of them. A few are more forward-thinking but they are a small minority

[2022/10/28 12:29] Marcus Llewellyn: From YouTube [livestream]: Shaerken Changeheart: I don't think "old" as in "aged" is the issue -- closed minds, fear of change and other emotional structures are highly active in the inflexible viewpoints that some decision makers hold

[2022/10/28 12:29] Elektra Panthar: Agreed, Shaerken

[2022/10/28 12:27] Linn Darkwatch: I can't help wondering about all the employers who don't provide benefits for those not working full-time. Not precisely on this topic, but related.

[2022/10/28 12:29] Xi Conundrum-Firelyte (Existential Conundrum): industrial revolution factory hours don't really work for today's world and the jobs available today.

[2022/10/28 12:30] Namaara MacMoragh: nods

[2022/10/28 12:29] Pecos Kidd: Are there many positive examples though? Companies that fully embrace part time work and similar accommodations, and can show improved success because of their approach?

[2022/10/28 12:29] Carolyn Carillon: JC: I'm guilty of focusing on the negative because that's what goes to court  
but there are lots of employers doing a great job  
I see examples who do a nice job

[2022/10/28 12:30] Gentle Heron: We probably need to highlight the positive examples as models.

[2022/10/28 12:30] Mook Wheeler: And how many of these disputes never get to court? Many people get too stressed to pursue these injustices. Or cannot afford it.

[2022/10/28 12:31] Gentle Heron: good point Mook

[2022/10/28 12:31] Carolyn Carillon: JC: Good point Mook  
I'm looking at 1% that get to court

[2022/10/28 12:31] iSkye Silvercloud (iSkye Silverweb): or are too intimidated to go forward  
Don't know how to go about starting a class action suit  
So many reasons these things don't make it to a courtroom

[2022/10/28 12:31] Carolyn Carillon: JC: Class action suits are difficult  
Because they require agreement  
People who need the same accommodations

[2022/10/28 12:32] iSkye Silvercloud (iSkye Silverweb): Too true

[2022/10/28 12:32] Itico (Itico Spectre): Thank you!

[2022/10/28 12:32] Gentle Heron: Thank you Jeannette!

[2022/10/28 12:32] Orange Planer: Wonderful talk. I learned a lot.

[2022/10/28 12:33] Linn Darkwatch: Apaws!

[2022/10/28 12:33] Slatan Dryke: thanks a lot great presentation

[2022/10/28 12:33] Lorin Tone: Fantastic work and wonderful views, thank you Jeanette!

[2022/10/28 12:33] Mook Wheeler: Thank you Jeannette!

[2022/10/28 12:33] Pecos Kidd: Great job - thanks!

[2022/10/28 12:33] Eme Capalini: Thank you

[2022/10/28 12:33] iSkye Silvercloud (iSkye Silverweb): Thank you Jeannette :)

[2022/10/28 12:33] Carolyn Carillon: JC: thank you

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