



Recently, in *Matthews v. City of Tempe*, 2023 WL 6880652, the Arizona Federal District Court considered whether an employer discriminated against a former employee when it denied him an opportunity to telecommute on certain days but allowed female employees to take advantage of remote work.

In December 2020, the city of Tempe instituted a policy that allowed employees to telecommute for the first week after returning to work from Families First Coronavirus Response Act (FFCRA) leave. When this policy was implemented, the plaintiff employee had already used all his FFCRA leave, and thus, the policy was not offered to him. This resulted in the employee losing out on, at most, five days of remote work. Because the policy *was* offered to two female employees, the plaintiff filed an internal complaint alleging that his coworkers' requests were granted because they were female, and his request was denied because he was not.

To support his allegations of discriminatory treatment under Title VII of the Civil Rights Act of 1964, the employee argued that the denial of his request to telework was an adverse employment action against him. In rejecting this argument, the district court looked outside the U.S. Court of Appeals for the Ninth Circuit—which has not directly ruled on whether loss of teleworking options is considered an adverse employment decision under *McDonnell Douglas*—and found that the Ninth Circuit's view of what constitutes an adverse employment action aligns with cases from other circuits, holding that the denial of temporary remote work requests did not constitute an adverse action. Noting that the employee's assigned duties and compensation would not have changed, the district court held that "[t]he loss of at most five days of remote work options is far too short to constitute a significant change in employment status."

Arizona employers facing employee requests related to remote work should consult experienced counsel for guidance.

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