

A COURT RULING THAT COULD STINK FOR SOME EMPLOYERS



Pamela Core a worker at the Champaign County Department of Job and Family Services in Urbana, Ohio is asthmatic and is sensitive to certain perfumes and scented products. One of her co-workers began to wear a “Japanese Cherry Blossom” perfume, the constituents of which include notes of Kyoto rose petals, Himalayan cedar, musk, plum and oak moss, among others. Having a severe chemical sensitivity she found that she was allergic to the scent and complained to her superiors – the problem arose when her complaint went unheeded and the superiors turned a deaf ear to her grievance. The employer’s refusal to provide a “fragrance-free” workplace environment sparked off a major disability argument and resulted in an important ruling on telecommuting as a possible accommodation, by the court. Core’s issues with the fragrance became so severe that it led to her seeking emergency medical treatment. From here on, one thing led to another and matters took a turn for the worse. Now that the Core’s co-workers were aware of her aversion to the perfume and her medical emergency, they began ridiculing her chemical sensitivity on Facebook. They also began to wear the perfume, deliberately, fully aware that it would discomfort and negatively impact Core. It took a note from a nurse practitioner, for the company to finally see reason and the severity of the matter. In an email it asked staff not to approach Core personally and only communicate with her via phone or email. But Core eventually was forced to take leave because her symptoms continued to worsen. As accommodation she asked to be allowed to work from home, a request that the company declined. The company condescended to ask the staff not to wear the offending Japanese Cherry Blossom perfume. Core said that it would be more preferable if every staff member were to be prohibited from wearing any scent near her. Again the company declined. Core took the company to court alleging that the company failed to accommodate her request for a fragrance-free workplace. However, the company said that her request was not tenable as her job required that she interact with members of the public and furthermore, they had asked the employees not to wear the offending perfume. They asked the court to throw out the case. However the courts ruled in Core’s favor. The court reasoned that, even though the company was right in saying that they couldn’t provide a completely fragrance-free workplace, but it did acknowledge that providing one would “at least minimize and limit the employee’s exposure to perfumes.” The court further found that Core’s “no-fragrances” was not entirely unreasonable, considering the conduct of her colleagues and the lack of disciplinary action taken by the company. The case can now proceed to a prolonged trial, or an amicable settlement, or both. According to Mike Underwood of Porter Wright Morris & Arthur, there are important lessons for both accommodation and telecommuting requests. Firstly, just because an accommodation would not be very popular with the staff does not mean it is irrational. Secondly, the company was punished for its tardiness in stopping the harassment against Core. But what should be remembered most is that the court went out of its way to note that telecommuting-as-reasonable-accommodation requests will henceforth, be looked at from a different perspective. The advance of telecommuting has made such requests much more viable than when one of the first work-from-home accommodation requests was examined in court in 1995. Core in seeking redress has inadvertently provided cause to create new benchmarks in accommodation and telecommuting requests.