UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-62115-CIV-SINGHAL

SANDY HARRIGAN,

Plaintiff,

v.

DIAZ, ANSELMO, & ASSOCIATES, P.A., f/k/a SHD LEGAL GROUP, P.A., a Florida corporation,

Defendant.
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ORDER

THIS CAUSE is before the Court upon Defendant Diaz, Anselmo, & Associates, P.A.'s ("Defendant" or the "Law Firm") Motion for Summary Judgment (DE [47]). In the motion, the Law Firm seeks summary judgment on each of the six claims in Plaintiff Sandy Harrigan's ("Plaintiff" or "Harrigan") First Amended complaint. For the reasons set forth below, the motion is denied.

I. BACKGROUND

The Court begins with the relevant facts, taken in the light most favorable to Harrigan, the non-moving party. Harrigan was employed at the Law Firm as the Human Resources Manager from February 2019 until her termination in November 2019. (DE [48] ¶ 1). In March 2019, Harrigan found out she was pregnant and promptly informed her direct supervisor Kathleen Guerrette-Mitchell ("Guerrette-Mitchell" or "supervisor") and the CEO, Roy Diaz ("CEO" or "Diaz"). (DE [28] ¶ 14). Throughout her pregnancy, Harrigan requested reasonable time off to attend her doctor's appointments, which were approved by the Law Firm. (DE [48] ¶¶ 9–11).

On July 24, 2019, because of certain pregnancy-related complications, Harrigan's doctor advised her to "work from home as much as possible to allow for lateral rest time." (DE [52-2]) (Doctor's Note). Harrigan subsequently asked her supervisor, Guerrette-Mitchell, if she could work from home for the remainder of her pregnancy; she also provided her doctor's note along with her request. (DE [48] ¶ 12); (DE [52] ¶ 13).

Instead of allowing her to work from home for the remainder of her pregnancy, the Law Firm reduced Harrigan's schedule. While she previously had to arrive at work at 8:30 AM and leave at 5:00 PM, Harrigan would now be permitted to leave at 3:00 PM. (DE [48] ¶¶ 13-15). The Law Firm claims that at that time, employees with the "Manager" title were not permitted to work from home. (DE [48-1] ¶ 42).[1] Despite Harrigan's reduced work schedule, she routinely worked past 3:00 PM. (DE [52] ¶ 58).

One month before her due date and while she was present at the Law Firm's office, Harrigan prematurely went into labor. (DE [52] at ¶ 59). As far as the record is concerned, Harrigan delivered a healthy baby on October 18, 2019. (DE [28] at ¶ 23). While the record does not state how long Harrigan was initially supposed to spend on maternity leave, the Law Firm contacted her asking her to return to work early from her leave. (DE [52-1] ¶ 22). Harrigan said yes, with the two parties agreeing that she would return November 19, 2019. (DE [28] ¶¶ 23–24).

On November 14, 2019, just a few days before she was set to return from maternity leave, the Law Firm fired Harrigan. (DE [48] ¶ 21). When it fired Harrigan, the Law Firm provided six reasons why it was "left with no alternative" but to terminate Harrigan's employment. (DE [48-1]) (termination letter). Harrigan disputes the veracity of the termination letter, primarily because she "never received any write-ups or reprimands

[1] It is undisputed that the Director of IT, the Director of Operations, and at least one attorney were permitted to work from home at that time. (DE [52] ¶ 40).

related to her job performance," and "[n]one of the issues listed in her termination letter were ever addressed to [her] while she was employed with the Law Firm." (DE [52] ¶ 60).

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 56(a), summary judgment "is appropriate only if 'the movant shows that there is no genuine [dispute] as to any material fact and the movant is entitled to judgment as a matter of law.'" *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014) (per curiam) (quoting Fed. R. Civ. P. 56(a));[2] *see also Alabama v. North Carolina*, 560 U.S. 330, 344 (2010). A factual dispute is "genuine" if a reasonable trier of fact, viewing all of the record evidence, could rationally find in favor of the nonmoving party in light of his burden of proof. *Harrison v. Culliver*, 746 F.3d 1288, 1298 (11th Cir. 2014). And a fact is "material" if, "under the applicable substantive law, it might affect the outcome of the case." *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1259–60 (11th Cir. 2004).

The moving party bears the initial burden of showing, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party's burden can be discharged either by showing an absence of evidence to support an essential element of the nonmoving party's case or by showing the nonmoving party will be unable to prove their case at trial. *Celotex*, 477 U.S. at 325; *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). In determining whether the moving party has met this burden, the court must consider the facts in the light most favorable to the nonmoving party. *See Robinson v. Arrugueta*, 415 F.3d 1252, 1257 (11th Cir. 2005).

[2] The 2010 Amendment to Rule 56(a) substituted the phrase "genuine dispute" for the former "'genuine issue' of any material fact."

III. DISCUSSION

The Law Firm, in its Motion, seeks summary judgment on the entire First Amended Complaint. It claims it is entitled to summary judgment on Count I, Count II, Count III, and Count V because the Law Firm did not take any adverse employment action against Harrigan because of her pregnancy or pregnancy related disability, and on Count IV and Count VI because it never denied her a reasonable accommodation as a result of her disability. The Court disagrees, principally because genuine disputes of material facts permeate each of the Law Firm's arguments.

a. Unlawful Discrimination

Count I, Count II, Count III, and Count V of the First Amended Complaint bring claims of intentional discrimination against the Law Firm for firing Harrigan based on her pregnancy, her pregnancy-related disability, and because she was denied a reasonable accommodation. She brings these claims under Title VII (Count I), FCRA (Count II and Count V), and the ADA (Count III). The Law Firm moved for summary judgment on these counts for two reasons. First, because Harrigan cannot identify a similarly situated comparator that did not belong to her protected class who was treated more favorably than Harrigan. And second, because Harrigan was fired for legitimate, non-discriminatory reasons. Because genuine disputes of material facts abound, summary judgment is denied.

Title VII,[3] FCRA, and the ADA[4] all prohibit discrimination based on a woman's pregnancy status. 42 U.S.C. § 2000e-2(a)(1); Fla. Stat. § 760.10(1)(a); 42 U.S.C. §

[3] The Pregnancy Discrimination Act clarified that Title VII's prohibition against sex discrimination applied to discrimination based on pregnancy. *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 210 (2015); 42 U.S.C. § 2000e(k).

[4] The Law Firm's arguments concerning Harrigan's intentional discrimination claims are not relevant to the elements of a prima facie claim of discrimination under the ADA. To make out a claim for intentional discrimination under the ADA, a plaintiff must show she (1) is disabled, (2) is an "otherwise qualified" individual, and (3) was discriminated against by way of the Defendant's failure to provide a reasonable

12112(a). Discrimination claims under FCRA are analyzed under the same framework as Title VII, so Harrigan's FCRA claims do not require a separate analysis.[5] Working together, these three statutes prohibit employers from discriminating against an employee with respect to "compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." *E.g.*, 42 U.S.C. § 2000e–2(a)(1). To effectuate Congress's explicit desire to eliminate racial discrimination, courts should be wary to issue any opinion that "signals one inch of retreat from Congress' policy to forbid discrimination in the private, as well as the public, sphere." *Patterson v. McLean Credit Union*, 491 U.S. 164, 188 (1989).

Plaintiffs seeking to bring discrimination claims can do so in one of three ways: 1) by presenting direct evidence of discriminatory intent; (2) by satisfying the burden–shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); or (3) by producing a "convincing mosaic" of circumstantial evidence warranting an inference of intentional discrimination. *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1220 & n.6 (11th Cir. 2019) (en banc) (citation omitted). Since employers generally do not blatantly discriminate against its employees, employees frequently turn to the *McDonnell Douglas* framework or attempt to produce a convincing mosaic of circumstantial evidence of discrimination to support intentional discrimination claims.

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accommodation. *J.A.M. v. Nova Se. Univ., Inc.*, 2015 WL 4751149, at *3 (S.D. Fla. Aug. 12, 2015). An employer unlawfully discriminates, in violation of the ADA, when it fails to provide a reasonable accommodation. *Holly v. Clairson Industries, LLC*, 492 F.3d 1247, 1262 (11th Cir. 2007). Since the Law Firm's arguments do not speak to the elements of an ADA discrimination claim, it has not even made a *prima facie* case for granting summary judgment in its favor as to Count III.

[5] *Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1152 n.4 (11th Cir. 2020) (noting that "since FCRA is modeled after Title VII, . . . we use the same framework to analyze claims under it"); *see also Alvarez v. Royal Atl. Developers, Inc.*, 610 F.3d 1253, 1271 (11th Cir. 2010) ("Because the FCRA is modeled after Title VII, and claims brought under it are analyzed under the same framework, the state-law claims do not need separate discussion and their outcome is the same as the federal ones." (citations omitted))

i. McDonnell Douglas

Under the *McDonnell Douglas* framework, a plaintiff must first show that: (1) she belongs to a protected class, (2) she was subjected to an adverse employment action, (3) she was qualified to perform the job in question, and (4) her employer treated "similarly situated" employees outside her class more favorably. *McDonnell Douglas*, 411 U.S. at 802. "Once the plaintiff establishes a *prima facie* case of discrimination, the burden of production shifts to the employer . . . to introduce evidence of some legitimate, nondiscriminatory reason for its employment decision." *Dagnesses v. Target Media Partners*, 711 F. App'x 927, 931 (11th Cir. 2017) (citations and internal quotations omitted). "Should the employer make such a showing, the plaintiff must then show that the seemingly legitimate reason the employer gave was pretextual, i.e., the proffered reason was not the true reason for the employment decision." *Kidd v. Mando Am. Corp.*, 731 F.3d 1196, 1202 (11th Cir. 2013).

Making out a discrimination claim under the *McDonnell Douglas* framework is not difficult. *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 228 (2015) (citing *Texas Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253 (1981)). The burden is not as arduous as attempting to show simple employment discrimination and neither does it "require the plaintiff to show that those whom the employer favored and those whom the employer disfavored were similar in all but the protected ways." *Young*, 575 U.S. at 228.

1. Similarly Situated Employee

The Law Firm only contests the fourth prong of the *McDonnell Douglas* framework: that Harrigan has not shown that the Law Firm treated similarly situated employees outside Harrigan's class more favorably. It argues that Harrigan has failed to identify another firm employee "who was not pregnant or allegedly disabled as Plaintiff claims to

be, and who was treated more favorably than Plaintiff." (DE [47] at 11). Harrigan, however, has. In fact, she has identified two.

Harrigan alleged, and discovery confirmed, that two non-pregnant Law Firm employees were permitted to work from home: IT Director Ray Brunetti, and Operations Director Keli Heisey.[6] Harrigan has therefore identified two similarly situated employees outside of her class who were treated more favorably than her. There is therefore sufficient evidence in the record to flip the burden to the Law Firm to show that it had legitimate, non-discriminatory reasons for firing Harrigan.

That Harrigan had a different title than the two identified employees is irrelevant. *Young* is clear that a plaintiff does not have to show that she differed from the favored employee in all but the protected way. *Young*, 575 U.S. at 228. Harrigan can have a different job function than an employee and still use that individual to meet the "similarly situated prong" of the *McDonnell Douglas* framework. Moreover, Harrigan has explained that, as a manager, she was functionally the same level as the directors (Brunetti and Heisey) who were permitted to work from home. In light of this record and *Young's* direction that the *McDonnell Douglas* framework presents a low bar to hurdle, the Law Firm's contention that the record is indisputably devoid of a similarly situated employee is incorrect. Rather, there is clearly enough in the record to shift the burden to the Law Firm to present evidence that Harrigan was fired for legitimate reasons.

[6] Attorney Nazish Shah was also permitted to work from home when she was pregnant. But since she belongs to Harrigan's protected class, this point is not relevant to Harrigan's intentional discrimination claims.

2. Legitimate, Non-Discriminatory Reasons

As discussed above, "[o]nce the plaintiff establishes a *prima facie* case of discrimination, the burden of production shifts to the employer . . . to introduce evidence of some legitimate, nondiscriminatory reason for its employment decision." *Dagnesses*, 711 F. App'x at 931. If the Law Firm is capable of demonstrating this, the burden then shifts back to Harrigan to demonstrate that the facially legitimate reason was actually pretextual. *See id.*

Here, the Law Firm has presented six reasons for terminating Harrigan:

1) Mismanagement of the Firm's enrollment into a health benefits program;
2) Mishandling of an unemployment claim;
3) Mishandling of an employee's retirement and subsequent replacement;
4) Failure to escalate/report any issues or concerns she had about her training to her supervisors;
5) Misrepresentations about her ability to use technology; and
6) Failure to follow Firm policies related to building access for compliance with client regulations.

(DE [48] ¶¶ 22-34). These facially legitimate reasons suffice to flip the script back over to Harrigan for her to prove that they are pretextual. If there is then at least a genuine dispute of material fact, Counts I, II, III, and V must be sent to the jury.

3. Evidence of Pretext

To show pretext, a plaintiff must "cast sufficient doubt on the defendant's proffered nondiscriminatory reasons to permit a reasonable factfinder to conclude that the employer's proffered 'legitimate reasons were not what actually motivated its conduct.'" *Combs v. Plantation Patterns*, 106 F.3d 1519, 1538 (11th Cir. 1997) (citing *Cooper-Houston v. Southern Ry. Co.*, 37 F.3d 603, 605 (11th Cir. 1994)). Here, Harrigan has done just that.

The context surrounding Harrigan's termination casts doubt on the legitimacy of the Law Firm's six reasons for firing her sufficient to allow this case to go to a jury, and

this is true for two reasons. First, none of the six communicated reasons for firing Harrigan, even if they were true, were ever presented to Harrigan prior to her termination. Moreover, prior to her termination Harrigan never received any write-ups or reprimands related to her job performance. If the Law Firm truly had this many issues with Harrigan's performance that it was considering terminating her, there would be a stronger record of it in her personnel file. But there is not. The absence of such record in her file therefore casts doubt on the legitimacy of the six reasons and whether they truly motivated the Law Firm to fire her.

Second, the timing of her firing casts doubt on its legitimacy. Just a few days before Harrigan was set to return from maternity leave, and after she was specifically requested to return early from her maternity leave, the Law Firm elected to fire her. This was the case even though, in the Law Firm's own words, Harrigan's "most significant" misstep that led to her firing occurred in July and early August, a few months before her termination date. (DE [48] ¶ 24). Had the Law Firm truly wanted to fire Harrigan because of this misstep, there would either be a closer temporal relationship between the misstep and Harrigan's termination or at least some sort of formal review taken shortly after it occurred. But, again, there is not. In light of this peculiar timing and the absence of any recorded issues with Harrigan's performance prior to her termination date, there is certainly a question as to whether the Law Firm's stated reasons for firing Harrigan were pretextual.[7] Accordingly, this issue should go to the jury.[8]

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[7] Harrigan also provides individual reasons why each of the Law Firm's stated reasons for firing her are pretextual. Though these reasons are persuasive, the Court need not address them since there is sufficient other evidence to show that the Law Firm's reasons for firing her were pretextual.

[8] In deciding whether discrimination claims should be sent to the jury, it is important to remember that discriminatory acts are rarely overt and frequently are subtle or hidden. Because of this reality, "plaintiffs are often obliged to build their cases entirely around circumstantial evidence." *Combs v. Plantation Patterns*, 106 F.3d 1519, 1537 (11th Cir. 1997). It is why the Supreme Court developed solutions in *McDonnell Douglas* and its progeny to allow plaintiffs the opportunity to vindicate their claims in front of a jury. *See, e.g., Price Waterhouse v. Hopkins,* 490 U.S. 228, 271, 109 S.Ct. 1775, 1801–02, 104 L.Ed.2d

ii. Mosaic

Though there are sufficient questions of material facts to send this case to the jury under the *McDonnell Douglas* standard, Harrigan has presented a convincing mosaic of circumstantial evidence warranting an inference of intentional discrimination that this case would still go to the jury if she failed under the *McDonnell Douglas* framework.

When plaintiffs cannot satisfy the *McDonnell Douglas* framework, typically because they cannot find a comparator, they can still resort to producing a "convincing mosaic" of circumstantial evidence warranting an inference of intentional discrimination. *See Lewis*, 918 F.3d at 1220. On summary judgment, the analysis is "whether the plaintiff has offered sufficient evidence to establish a genuine issue of discrimination." *Quigg v. Thomas County School Dist.*, 814 F.3d 1227, 1240 (11th Cir. 2016) (citing *Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011)). "[T]he plaintiff will always survive summary judgment if [s]he presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent." *Id.*

Here, for the reasons discussed above, Harrigan has done that. The circumstances surrounding her firing are, at minimum, peculiar. There is no record of the Law Firm being unsatisfied with her performance prior to her termination, and Harrigan was not reprimanded or warned about her performance before she was fired. As to the timing, the Law Firm waited until just a few days before she was to return from maternity leave to let her go. This circumstantial evidence creates a triable issue concerning the

268 (1989) (O'Connor, J., concurring) ("[T]he entire purpose of the *McDonnell Douglas prima facie* case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by."). When plaintiffs present sufficient evidence to show that their employer's actions were possibly pretextual, it is incumbent upon the court to let a jury decide.

employer's discriminatory intent that warrants Harrigan's claims surviving summary judgment.[9]

b. Failure to Accommodate

Count IV and Count VI of the First Amended Complaint raise claims against the Law Firm for failing to provide Harrigan with a reasonable accommodation for the complications she experienced as a result of her high-risk pregnancy. She brings these claims under the ADA (Count IV) and FCRA (Count VI). The Law Firm moved for summary judgment on these two counts because, it claims, (1) Harrigan cannot show that she is a qualified individual or (2) that the Law Firm failed to provide her with a reasonable accommodation for her disability. Since the Court finds, at minimum, that there is a genuine dispute of material facts as to these issues, granting summary judgment on these two counts would be inappropriate.

A district court assesses a disability discrimination claim under the FCRA using the same framework as ADA claims. *Holly v. Clairson Indus. LLC*, 492 F. 3d 1247, 1255 (11th Cir. 2007). The Court can therefore evaluate whether Counts IV and Count VI survive summary judgment under the same legal framework.

To establish a *prima facie* case of discrimination under the ADA and FCRA, a plaintiff must show: (1) she is disabled; (2) she is a qualified individual; and (3) she was subjected to unlawful discrimination because of her disability. *Id.* at 1255–56. The Law Firm does not appear to contest the first or third elements; instead, it contends that Harrigan is not a qualified individual and that it did not deny her a reasonable accommodation. *See* (DE [47] at 2-3).

[9] Because the Court finds that Harrigan's discrimination claims should go to the jury, her mixed-motive allegations should proceed as well.

A qualified individual is someone "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). To put it slightly differently and in more clear terms, to make out a prima facie case of ADA discrimination, a plaintiff must either show (1) "[s]he can perform the essential functions of h[er] job without accommodation" or (2) that she "can perform the essential functions of h[er] job with a reasonable accommodation." *Holly*, 492 F.3d at 1256 (citing *D'Angelo v. ConAgra Foods, Inc.,* 422 F.3d 1220, 1229 (11th Cir. 2005)). If a plaintiff cannot perform the essential functions of the job even with a reasonable accommodation, an employer is not required to eliminate an essential function of the job in order to meet plaintiff's needs. *Davis v. Fla. Power & Light Co.,* 205 F.3d 1301, 1305 (11th Cir. 2000).

i. **Essential Functions**

The essential functions of a job are "the fundamental job duties of a position that an individual with a disability is actually required to perform." *Earl v. Mervyns, Inc.*, 207 F.3d 1361, 1365 (11th Cir. 2000). Essential functions, however, do not include the marginal functions of the position." 29 C.F.R. § 1630.2(n)(1). Whether a job function is truly essential will be evaluated on a case-by-case basis. *D'Angelo*, 422 F.3d at 1230. Considerable, but not dispositive, weight is given to the "employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description . . . , [it] shall be considered evidence of the essential functions of the job." 42 U.S.C. § 12111(8); *see also* 29 C.F.R. § 1630.2(n)(3)(i); *Holly*, 492 F. 3d at 1256.

Here, the Law Firm contends that in-person attendance was an essential function of Harrigan's job; accordingly, it could not be performed if Harrigan was permitted to work from home. The Human Resources Manager's job description, Harrigan's job while

employed at the Law Firm, states the following: "ATTENDANCE: Must be able to report to work regularly per the assigned schedule; . . . work steadily through the workday; and maintain an attendance record in compliance with company policies and procedures." (DE [48-1] at 16). The Law Firm contends that this language requires the Human Resource Manager to work in-person Monday through Friday from 8:30 AM to 5:30 PM. Since considerable weight is given to the employer's job description and that it calls for Harrigan to work in person, as a matter of law the Law Firm claims it is entitled to judgment on this issue.

Harrigan, of course, disagrees. She claims that while the job description requires her to "report to work," it does not state that she is required to report to work in-person. According to her, the job description either contemplates reporting to working remotely or is sufficiently unclear to create a dispute of material fact that the issue should be left to the jury to resolve. Though the Court is unpersuaded by Harrigan's counterarguments, it nevertheless finds that a genuine dispute of material fact exists as to whether in-person attendance is an essential function of Harrigan's former job.

There are two reasons why a jury should resolve whether working in-office is an essential function of the Human Resources Manager at the Law Firm. The first reason takes us to the Law Firm's job description for the Human Resources Manager position. On the first page, there is a section for "Essential Duties and Responsibilities." (DE [48-1] at 14). That section lists thirteen different essential duties and responsibilities, including "responds to management and employee inquiries regarding policies, procedures and programs" and "conducts employee onboarding/offboarding in collaboration with hiring manager and IT department" as two of those responsibilities. Notably, nowhere under that section does it state that the Human Resources Manager

must attend work in-person. The attendance requirement only appears two pages later and under a completely different heading. If in-person attendance was truly an essential part of the Human Resources Manager position, one would expect it to be located under the section title "Essential Duties and Responsibilities." Its location elsewhere undermines the Law Firm's argument that in-person attendance is required.

The second reason the jury should decide whether in-person work is an essential element of Harrigan's former job is because, functionally, it appears that Harrigan could perform the job's thirteen "Essential Duties and Responsibilities" remotely. If in-person attendance was truly "essential," Harrigan would not be able to perform at least some of the job's listed essential roles and responsibilities remotely. But to use the two examples quoted in the previous paragraph, it appears that she can. Harrigan could seemingly respond to management and employee inquiries via email or by phone and she could conduct onboarding of new employees and offboarding of former employees via videoconference. Since someone can seemingly perform these job duties and the other eleven in the job description remotely, it is not clear that in-office attendance is an essential function of the Human Resources Manager position.

To be sure, the Law Firm's choice to classify in-person attendance as an essential function is given considerable weight. But that decision does not end the analysis, s*ee, e.g.*, *Holly*, 492 F. 3d at 1256, and the rest of the record evidence must be considered. That evidence undermines whether in-office attendance truly is an essential function of the job or perhaps just a strong preference of the Law Firm. In light of those competing plausible interpretations of the record, the Court cannot grant summary judgment on this issue.

ii. **Reasonable Accommodation**

Even if in-person attendance is not an essential function of Harrigan's former job position, the Law Firm contends that her request to work from home was not reasonable. Under the ADA, a reasonable accommodation is a "[m]odification[] or adjustment[] to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position." 29 C.F.R § 1630.2(o)(1)(ii). The plaintiff carries the burden to identify an accommodation and demonstrate that it is reasonable. *Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249, 1255–56 (11th Cir. 2001). Importantly, "[a]n employee with a disability is not entitled to the accommodation of his choice, but only to a reasonable accommodation." *McKane v. UBS Fin. Servs., Inc.*, 363 F. App'x 679, 681 (11th Cir. 2010).

The Law Firm contends that Harrigan requested that she be able to work from home as a reasonable accommodation. But given the many different tasks that her job position required her to perform in-office, it claimed her request was not reasonable. (DE [47] at 6-7). Instead of granting Harrigan her requested accommodation, the Law Firm offered a different one, which it claims was reasonable. The provided accommodation only required Harrigan to work everyday in person until 3:00 PM instead of until 5:30 PM. Harrigan continued to work at the Law Firm with this accommodation until she gave birth.

In light of these facts, the Law Firm can succeed on summary judgment on the issue of reasonable accommodation in one of two ways. First, if the "reduced schedule" accommodation it provided Harrigan is reasonable as a matter of law, then the Law Firm fulfilled its obligations under the ADA and Harrigan's preferred accommodation is irrelevant. *See McKane*, 363 F. App'x at 681. The other way is if Harrigan's request to

work from home until she gave birth was not reasonable. Since Harrigan has the burden to procure a reasonable accommodation, if she failed to provide one, *see Lucas*, 257 F.3d at 1255–56, then the Law Firm is off the hook. But because there is a genuine dispute as to whether either of these accommodations are reasonable, the Law Firm is not entitled to summary judgment on this issue.

Starting with the Law Firm's reduced schedule accommodation, it argues it was reasonable because it reduced Harrigan's hours in office from nine hours to six and one-half hours. Considering that Harrigan's doctor's note stated that she should work from home "as much as possible to allow for lateral rest time," it contends that an approximate twenty-five percent reduction of her in-office requirement was reasonable.

Harrigan acknowledges the reduced hour schedule but contends that in practice it was not implemented. She claims that though her schedule called for her to leave at 3:00 PM everyday instead of 5:30 PM, she was "unable to leave at 3:00 on most days and was working far more hours than what her 'reduced schedule' suggested." (DE [51] at 3).

Construing the evidence in the light most favorable to Harrigan, there is a genuine dispute as to whether she was, in practice, provided a reduced schedule. While the Law Firm contends it reduced her hours, Harrigan contests that the reduced schedule was not adhered to in practice. This dispute of fact should be decided by a jury.

Moreover, even if she was provided a reduced schedule, there is still a question of fact as to whether the reduced schedule itself was a reasonable accommodation. It is not clear that allowing Harrigan to leave early was enough to accommodate her condition and provide her more lateral rest. Perhaps her condition required frequent moments of lateral rest that she would be unable to take while she was in office for six and one-half straight

hours. Thus, because there is also a question of fact as to whether the reduced schedule itself was a reasonable accommodation, this question belongs to the jury to decide.

There is also a genuine dispute as to whether Harrigan's proposed accommodation was reasonable. While the Law Firm characterizes her proposed accommodation as a request to permanently work from home, Harrigan only requested to temporarily work from home until after she gave birth. In other words, she would work from home and then return to working in-office following her completion of maternity leave. Because Harrigan received the doctor's note at the end of July and she gave birth on October 18, 2019, about a month earlier than her due date, Harrigan's request was to work from home for approximately three months.

The Law Firm argues this accommodation request was unreasonable because of the "numerous, in-office functions that were essential to Plaintiff's job." (DE [47] at 6). Harrigan contends her request was reasonable because she disputes whether it was essential for her to be in-office and because the Law Firm allowed other employees to work from home.[10] Moreover, she asserts that her request to work from home was only temporary and for a short duration of time. The parties' arguments here reflect a general dispute of material facts that should be decided by a jury.

In sum, the Court finds that there is a genuine dispute as to whether the two accommodations in this case are reasonable. In light of these disputes, it would be inappropriate for the Court to draw a conclusion and take the question away from the jury. The Law Firm's request for summary judgment on this issue is therefore denied. Accordingly, it is hereby

[10] As discussed above, at least three employees were permitted to work from home, including one attorney who did so while she was pregnant.

ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment (DE [47]) is **DENIED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 14th day of May 2024.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished counsel via CM/ECF