

TELEWORK

Home / Topics

Accommodation and Compliance: Telework

Introduction

Alternative work arrangements, like telework, can expand employment opportunities for many workers, but particularly for employees with disability-related limitations that affect commuting to work or performing job duties at a traditional worksite. The Equal Employment Opportunity Commission (EEOC) says that telework/work at home may be a form of reasonable accommodation under the Americans with Disabilities Act (ADA), because changing the location where work is performed may be a form of modifying a workplace policy. For information about telework and the ADA, see [Work At Home/Telework as a Reasonable Accommodation-Fact Sheet](#). Federal agencies can access information about telework through the Office of Personnel Management site, telework.gov.

Telework is often suggested as an accommodation solution to address a variety of impairments, limitations, and work-related barriers. Examples of work-related barriers can include:

- Difficulty commuting to and from work due to disability-related reasons
- Limited access to accessible parking
- Limited worksite or workstation accessibility
- Environmental issues (e.g., construction activities, exposure to chemicals/irritants, temperature sensitivity, problematic lighting, etc.)
- Lack of privacy to manage personal/medical needs, like using the restroom, taking medication, or receiving treatment
- Rigid work schedule
- Exposure to viruses and bacteria
- Workplace distractions affecting concentration

Choosing telework as an accommodation requires a collaborative effort to determine what is reasonable, on a case-by-case basis. Answering the following questions may be useful when exploring telework as a reasonable accommodation.

Are other employees in the same position permitted to work at home?

Telework is often considered a benefit of employment that is available to all or some employees within an organization. Remember, if employees have access to telework, by virtue of the benefits and privileges available to employees in certain positions, then employees with disabilities should not be held to a different standard, or be required to jump through additional hoops, to gain access to the benefit or privilege simply because the request to telework is for a disability-related reason.

What this means for employers is, if employees are not required to provide any particular documentation or justification to gain access to telework, then employees with disabilities who are seeking access to this benefit should be treated in the same manner. However, if telework is not available as a benefit of employment, or if telework beyond what is generally available as a benefit of employment is being requested, then the request to work at home may be handled as a request for reasonable accommodation under the ADA.

How frequently will telework be needed, and for what duration?

The frequency and duration of the need to work at home may impact the feasibility of allowing telework as a reasonable accommodation. For example, it's useful to know if the employee will need to work at home as-needed, a few hours a week, a few days a week, or maybe every day. Also, if telework is necessary on a temporary or short-term basis, it is possible the accommodation may be more feasible than a long-term or indefinite arrangement.

Can the essential job functions of the position be performed outside of the traditional work environment?

When exploring telework, it's necessary to identify and review all of the essential job functions. The essential functions are tasks that are fundamental to performing a specific job. Employers are not required to remove essential job duties to permit employees to work at home as an accommodation. For some jobs, the essential duties can only be performed in the workplace, but in many jobs, some or all of the essential duties can be performed at home. Evaluate each situation case-by-case to determine if, and to what extent, it is feasible to perform essential duties at home. For example, in some situations, an individual may be able to perform only specific duties from home, on occasion, but in others, all duties might be performed at home, fulltime.

Will the employee have access to the equipment needed to perform the essential duties of the position?

Working at home often requires accessing electronic information, or communicating with others in a remote way, which means it is often necessary to use electronic devices (e.g., laptop, cell phone, etc.) to perform essential job duties. Many employers permit employees to take a laptop computer from the job site to work at home and to remotely access information systems outside of the traditional work environment. The equipment that may be needed to enable an employee to telework will depend on the specific facts of the situation, and may be impacted by whether telework is a benefit of employment or a reasonable accommodation.

When employers do not provide workstation equipment, like desks and chairs, in order for employees to work at home as a benefit of employment, then the employee, not the employer, will generally be responsible for providing his or her own workstation equipment. In this case, working at home is not a reasonable accommodation because it is a benefit of employment available to all eligible employees. In other words, the employee is not asking to telework because of the disability, but is only trying to gain access to a benefit of employment provided to all employees, and when accessing the benefit, employees choose their own workstation equipment.

When employees request to work from home as an accommodation, the issue of what equipment employers must provide is not clear-cut. While the ability to work from home can be justified by limitations from a disability, the lack of equipment is not usually something related to the disability. If it's specialized equipment that a person is unlikely to have at home, then an argument could be made that an employer may need to provide the equipment. The ADA and the Rehabilitation Act do not address this question, and to date, neither has the EEOC. This does not necessarily mean recreating the office at an employee's home, but it might require providing some of the equipment necessary to enable the employee to perform essential functions. The bottom line is that this issue must be approached on a case-by-case basis.

When an employer's operations are completely virtual, this may give the employer a stronger argument that providing furniture or home accessories, or modifications to such things as desks, chairs, lamps or other lighting, carpeting, or window treatments is not a reasonable accommodation. These may all be viewed as equivalent to personal use items. Reasonable accommodation is a legal obligation because employers, intentionally or unintentionally, create workplace barriers by making decisions that adversely impact a person because of a disability. An employer purchases workplace furniture; because the employer controls that process it may unintentionally create a workplace barrier when a specific piece of furniture creates problems for an employee because of a disability. But, the employer does not create a barrier if furniture purchased by an employee to use at home now causes a problem.

How will the employee be supervised and performance be measured?

Employers are often leery about allowing employees to work at home because there is no on-site supervision, and performance management may require additional effort. It may be useful to prepare a telework plan that includes performance expectations and the means by which communication and supervision will occur. Communication is key. Conduct daily video chats to check-in, exchange emails frequently, hold regular video or conference calls, visit the employee at home, or ask the employee to come into the office periodically. Set clear performance expectations, agree on the tasks to be completed from home, and create measurable goals. Task/project-management software might be used to track productivity and progress and to work collaboratively with colleagues.

Does the work require in-person interaction with colleagues, clients, or customers, and can communication occur in an alternative way?

Some jobs require in-person interaction with others as an essential function. For example, food servers, on-site receptionists, and cashiers, must perform their essential duties on-site, and in-person. Many jobs do not require in-person interaction, or the interaction can occur in a different way. According to the EEOC, a request to work at home as a reasonable accommodation should not be denied

solely because a job involves some contact and coordination with other employees. Collaboration, brain-storming, weekly meetings, etc., can often be conducted effectively through remote or electronic means of communication (e.g., video chat, conference call, email, etc.).

May an employer provide accommodations that enable an employee to work full-time in the workplace rather than granting a request to work at home?

According to the EEOC, the employer may select any effective accommodation, even if it is not the one preferred by the employee. An employer can provide accommodations that enable an employee to remain in the workplace, so long as accommodations are effective. The EEOC states that if more than one accommodation is effective, the preference of the individual with a disability should be given primary consideration, but the employer does have the ultimate discretion to choose between effective accommodations.

Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.



A bill and account collector had trouble concentrating due to Huntington's disease.

[Read more](#)



A temporary agency provides computer programmers for companies

[Read more](#)



An employee with asked to telework request was denied

[Read more](#)

JAN Publications & Articles regarding Telework

Publications

Consultants' Corner Articles

Accommodations Related to Commuting To and From Work

[View All Publications](#)

Articles

A Practical Approach to Telework as a Reasonable Accommodation During the Pandemic

Accommodating Deaf and Hard of Hearing Employees in Virtual Meetings

Make Telework Work

Supporting Employees with Mental Health and Cognitive Conditions while Teleworking

Telework Accommodation Request Tool

Winter Weather Woes? Accommodations Can Help!

Workin' 9 to 5 - Not the Only Way to Make a Living

[➔ View All Articles](#)

Blog Posts

Telework Week 2014 Begins with a March Snowstorm

[➔ View All Blog Posts](#)

Events Regarding Telework

Upcoming Events

Past Recorded Module

Past In-person Training

Past Exhibit Booths

Past Remote Monthly Series Training

Upcoming Events

No Upcoming Events for Telework.

[➔ View All Upcoming Events](#)

Past Recorded Module

No Past Recorded Modules for Telework.

[➔ View All Recordings](#)

Past In-person Training

No Past In-Person Trainings for Telework.

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Past Exhibit Booths

No Past Exhibit Booths for Telework.

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Past Remote Monthly Series Training

No Remote Monthly Series Training for Telework.

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Other Information Regarding Telework


External Links

[Age of Small Business](#) 

[Choosing Telework](#) 

[Disability-Inclusive Telework for States](#) 

[EARN's Adopting an Integrated Telework Policy for Employees With and Without Disabilities](#) 

[EEOC's Work At Home/Telework as a Reasonable Accommodation](#) 

[International Homeworkers Association](#) 


[PEAT's Telework & Accessibility Toolkit](#) 

[PEAT's Telework Accessibility and the Law](#) 

[SHRM's Managing Flexible Work Arrangements Toolkit](#) 

[Software Development Telecommuting & Part-Time Jobs](#) 

[TelCoa](#) 

[Telecommuting becomes a more reasonable ADA accommodation every year](#) 

[telework.gov](#) 

Organizations

[Job Accommodation Network](#)

[Office of Disability Employment Policy](#)

[Office of Personnel Management](#)

[Small Business Administration](#)

[U.S. Equal Employment Opportunity Commission](#)