

A PRACTICAL APPROACH TO TELEWORK AS A REASONABLE ACCOMMODATION DURING THE PANDEMIC

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Processing telework accommodation requests

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According to the Equal Employment Opportunity Commission (EEOC), telework has long been considered a form of reasonable accommodation under the Americans with Disabilities Act (ADA). While the EEOC provides useful guidance about telework as an accommodation, the pandemic has created a multitude of new telework issues for employers to consider. For employers who are looking for guidance on how to address these issues, the Job Accommodation Network (JAN) offers the following practical suggestions.



Apply Your Usual Policies First

Any time an employee asks to telework as an accommodation for a disability-related reason, be sure to check whether your usual telework policy covers the request. It could violate the ADA to make employees with disabilities take extra steps to access a benefit of employment that is available to all employees. If employees can telework during the pandemic, then employees with disabilities should not have to go through the interactive process to do the same. For more information, see [Workplace Flexibility](#), the [ADA](#), and [Requesting Medical Information](#).

Apply Appropriate Laws

Employees may request telework for various reasons during the pandemic, such as being at-risk because of a disability, pregnancy, or age, or out of concern about exposing an at-risk family member. Unless you are allowing all employees to telework upon request, you must apply the appropriate law to each request. If the request is related to an employee's disability, JAN provides a [Telework Accommodation Request Flowchart](#) to help process the request under the ADA.

Don't Deny Telework Solely to Avoid Providing Accommodations

Employers who are implementing a hybrid approach to returning to work, with employees working part-time in the workplace and part-time at home, may be tempted to deny employees with disabilities the option of working part-time from home if they need accommodations (e.g., equipment, software, etc.) in both locations. The EEOC has noted that during the pandemic, if an employee with a disability needs the same reasonable accommodation at a telework site that was provided at the workplace, the employer should provide that accommodation, absent undue hardship ([What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws \(WYSK\), Question D.14.](#)). Denying access to telework solely to avoid providing accommodations in both locations could violate the ADA.

Think Outside the Box

If it's not possible to provide the same accommodation for employees with disabilities in the workplace and at home, explore creative alternatives. For example, instead of purchasing an adjustable workstation for the home office, it might be possible to create different height workstations using books or boxes or at the kitchen counter using a laptop. When using a laptop, it might be possible to add external input devices such as an ergonomic keyboard and mouse. JAN can help you think outside the box and explore creative alternative accommodations.

Business as Usual?

Whether you will allow employees to continue teleworking as a reasonable accommodation may depend on whether you changed or removed essential job functions to enable employees to telework during the pandemic. The EEOC notes that the fact that one or more essential functions were temporarily excused to permit or require telework in response to the pandemic does not mean that the employer permanently changed a job's essential functions (WYSK, Question D.15.). This means you can evaluate requests for continuing telework under your usual ADA rules. This process can include examining the essential duties of a job to assess whether they can be fully performed at home or perhaps partially as a hybrid arrangement. However, from a practical standpoint, you may decide to allow at-risk employees to continue teleworking temporarily, even if all essential functions cannot be performed from home. The alternative is often leave or termination, which can be costly if you must pay overtime to other employees or hire and train replacements. For more information, see [Providing Temporary or Trial Accommodation Solutions](#).

Vaccinated But No Masks? Still Consider Telework

Some vaccinated, at-risk employees may have a disability-related reason to continue teleworking. For example, someone who is immunocompromised may not build the same level of immunity to the vaccine as people who are not immunocompromised and may not be adequately protected by vaccination alone. This can be particularly relevant for at-risk workers in environments without masking or vaccination requirements who are in close contact with other workers or the public. Consider whether telework is a reasonable solution to avoid the risk of exposure to the virus for workers who remain at-risk even when vaccinated.

Count Temporary Telework Experience as a Trial Accommodation

Employers who were reluctant to allow telework as a reasonable accommodation prior to the pandemic may now recognize that it can be an effective solution that enables some employees with disabilities to maximize productivity and performance. The EEOC notes that if an employee with a disability who was denied telework as an accommodation prior to the pandemic asks to continue teleworking, the temporary telework experience can serve as evidence of whether the employee can satisfactorily perform the job while teleworking (WYSK, Question D.16.).

Conclusion

While it may seem overwhelming to balance incoming accommodation requests for telework with the reopening of the workplace, employers can follow their usual ADA procedures or maybe take a practical approach and streamline the process as much as possible. In addition, employers may want to consider providing temporary accommodations and revisiting them in the future when more information is available. During a pandemic, taking a practical, flexible approach may benefit employers and employees alike. For more information or accommodation ideas, [contact JAN](#).