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EEOC Provides Welcome Clarity on Telework Requests and Accommodations

In response to President Trump's directive that executive agencies return to work in-person, on a full-time basis, as "consistent with applicable law," the Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management recently released comprehensive guidance, in the form of "[Frequently Asked Questions](#)" (FAQs), addressing telework as a disability-related accommodation for federal employees. While focused on the federal sector, the FAQs provide valuable insight for private employers navigating, and struggling with, telework accommodation requests under the Americans with Disabilities Act (ADA). For ease in review, this advisory tracks the relevant questions contained in the FAQs.

Telework May Qualify as a Reasonable Accommodation

- The FAQs focus on telework as an accommodation to enable an employee to perform essential job functions. The EEOC does not recognize a telework request primarily for an employee's personal benefit as a reasonable accommodation.

Employers May Reevaluate Previously Granted Telework Accommodations

- Employers can revisit a current telework accommodation (which may exceed what the employer legally must provide) and replace it with an effective alternative.
- Employees are not entitled to their preferred accommodation in perpetuity. Employers can adjust due to changed circumstances.

- When telework is one of several effective options, an employer may choose an accommodation other than telework.
- Reevaluation may be triggered by material changes (e.g., the employee's medical condition, job requirements, operational needs, change in current law).
- Employers may replace full-time telework with a reasonable and effective in-office or hybrid option. The in-office option can include: assistive devices; modified equipment; environmental modifications (e.g., sound, smell, light); job restructuring; and modified/flexible work scheduling — provided the net result is still reasonable and effective.
- If the employee is not **presently** entitled to a telework accommodation, then the employer may rescind that previously granted accommodation without offering any alternatives.

Employers May Seek Medical Documentation When Reevaluating Previously Granted Telework Accommodations

- Employers are entitled to sufficient information for this purpose. Sufficiency is a flexible standard. Employees simply may confirm the previously supplied information is current. If, however, an employer realizes it granted the original telework request without sufficient information, it may request new information.
- Employers do not forfeit their ability to request additional information simply because they granted the original telework request without sufficient information or went over and above what they were legally required to provide. The EEOC stated, "The law does not now punish [employers] for their previous 'largesse.'"

Employers May Ask Healthcare Professionals About Mitigating Measures or Self-

Accommodations Employees Could Take That Would Permit Them to Work in the Office

- Employers can explore both the positive and negative effects of a mitigating measure. Mitigating measures are baked into the concept of reasonableness.
- Reasonableness invites a comparison of relative costs and cost-avoidance capabilities between an employer and an employee. For example, a mobility assistance device may enable an employee to work on-site.
- The EEOC cautioned that employers should not deny an accommodation because an employee declined to pursue a particular medical treatment (e.g., surgery or medication) that may mitigate their condition. It noted, “The right to make personal health choices and the right to receive reasonable accommodation are not mutually exclusive.”
- Additionally, the EEOC reminded employers that the underlying determination whether the employee’s condition constitutes a disability must be made “without regard to the ameliorative effects of mitigating measures.”

Verification of the Employee’s Medical Documentation

- Employers can consider conflicting evidence and discount unreliable or contradictory evidence.
- Employers can consider sources other than from employees or their healthcare providers — including from their own designated healthcare professional. That examination must be job-related and consistent with business necessity.
- Employers are “not required to turn a blind eye” to evidence showing employees are not entitled to an accommodation or acted in bad faith (e.g., cannot commute to/from work but are observed driving for personal activities). When the above occurs, the employer may deny or rescind the accommodation.

Employers Can Restore an Employee's Essential Job Duties

- An employer's **temporary** carve-out of one or more essential functions (e.g., permitting telework during COVID-19) does not mean that: it **permanently** changed a job's essential functions; telework is always a feasible accommodation; or it does not pose an undue hardship.
- Nothing prevents an employer from restoring all essential functions when it chooses to restore the prior (on-site) work arrangement. It then must evaluate any requests for continued or new accommodations.
- The employer can consider its present operations and needs.

Employees Cannot Simply Allege (Without More) That an In-Office Accommodation Will Be Ineffective

- The employer can insist the employee return to the office and try the new arrangement. If the employee returns and credibly shows all in-office accommodations are ineffective, then the EEOC recommends that employers consider placing the employee back on a hybrid or full-time telework schedule — "provided doing so does not remove essential functions or result in a demonstrated undue hardship on [its] operations."

Refusal to Report to the Office Is Absence Without Leave

- Employers should first confirm employees accurately understand their on-site decision and rationale (e.g., why their in-office measures will reasonably accommodate them).
- Employers should let the employee suggest additional or alternative in-office reasonable and effective accommodations, if any.

- If the employee still refuses to comply, the employer can implement discipline.

Employers Are Not Required to Provide Telework for Reasons Unrelated to Performance of the Job's Essential Functions

- The obligation to provide reasonable accommodations does not extend to providing adjustments or modifications that are primarily for the personal benefit of the disabled employee.
- The law does not require accommodations that only mitigate symptoms without also enabling the performance of essential functions.
- Possible symptom mitigation does not, by itself, establish an entitlement to telework as a reasonable accommodation.

The Law Does Not Create a General Right to Be Free from All Discomfort and Distress in the Workplace

- When disability-related symptoms arise in the workplace, employers should determine whether the symptoms impose a material barrier to the employee's ability to work in the office or enjoy a benefit or privilege of employment. If not, accommodation is not at issue.
- The employer should observe the employee's job performance. For example, if an employee with anxiety can perform to the employer's satisfaction, then anxiety is likely not a material barrier. The EEOC explained, "In the run of cases, common anxiety, without more, is unlikely to impose a material barrier."
- If there is a demonstrated material barrier, the employer must consider a reasonable accommodation, "but not necessarily telework."

Employers Are Not Required to Provide Telework to Disabled Employees with Difficult or Lengthy Commutes

- Where the length and means of the commute are outside the employer's control, it is unreasonable to require the employer to excuse the employee from commuting.
- It is the employee's responsibility to arrange how they will get to and from work.
- The employer, however, may need to make some workplace modifications, such as flexible work scheduling, to enable the employee to effectively accomplish their commute and access the worksite.
- Telework of limited duration may be reasonable if used to give the employee time to relocate closer to the worksite or secure different means for their commute.

Situational Telework May Be a Reasonable Accommodation

- Limited situational telework may be considered where an employee has treatment or convalescence of a defined duration.
- While the need for accommodation also could be met through a leave of absence, situational telework is often the superior option for the employer because the employee continues to work.

Employers Are Not Required to Grant Situational Telework During a Periodic Flare-Up

- For periodic flareups, leave can be a reasonable and effective option.
- Granting paid time off or leave without pay during a flare-up gives the employee time to recover without interference from work duties.

- In some cases, allowing an employee to telework instead of granting leave would stymie their recovery and delay the healing process.

Cautionary Note

The EEOC emphasizes the FAQs are not binding and courts may not defer to their views. Indeed, after the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), which overruled the long-standing *Chevron* deference doctrine, courts no longer must defer to a federal agency's interpretation of a statute simply because it is ambiguous.

Private employers also should consider how federal courts in their jurisdiction have ruled on the various EEOC positions contained in the FAQs. Moreover, various local and state jurisdictions have disability laws that may be stricter than the ADA. Telework accommodation situations are very fact specific. As telework requests continue to proliferate, understanding federal and state/local laws and court cases, in conjunction with the positions taken in the FAQs, will assist private employers in minimizing their legal risks under the ADA.

If you have any questions about telework requests or accommodations, please contact the authors or any member of FBT Gibbons' Labor and Employment practice group.

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