

KEEPING YOU INFORMED

U.S. Department of Labor Guidance on Telework as a Reasonable Accommodation

The Office of Disability Employment Policy funded Job Accommodation Network published “A Practical Approach to Telework as a Reasonable Accommodation During the Pandemic.” The article, written by Linda Carter Batiste and Tracie DeFreitas, provides practical suggestions about telework as an accommodation during and after the COVID-19 pandemic.

They are as follows:

1. Apply Your Usual Policies First

If an employee asks to telework as an accommodation for a disability-related reason, make sure to check if your usual telework policy covers the request. Even if you inadvertently made employees with disabilities take extra steps to access a benefit of employment that is available to all employees, it could violate the ADA. For more information, see [Workplace Flexibility, the ADA, and Requesting Medical Information](#).

2. Apply Appropriate Laws

Employees may request telework because they are at-risk or concerned about exposing an at-risk family member. If you are not allowing all employees to telework as requested, you must apply the appropriate law to each request. JAN has a [Telework Accommodation Request Flowchart](#) to help comply with the ADA for requests related to an employee’s disability.

3. Don’t Deny Telework Solely to Avoid Providing Accommodations

Employers who are allowing returning employees to work part-time in the workplace and part-time at home, may not deny employees with disabilities the option of working part-time from home if they need accommodations in both locations. Denying access to telework solely to avoid providing accommodations in both locations could violate the ADA. For more information, click [here](#) and go to D.14.

4. Think Outside the Box

If you are unable to provide the same accommodation for employees with disabilities in the workplace and at home, [JAN](#) can help you think outside the box and explore creative alternative accommodations.

5. Business as Usual?

An employer changing or removing essential job functions to enable employees to telework during the pandemic, does not mean that a job's essential functions permanently changed. Evaluate requests for continuing telework under your usual ADA rules by examining the essential duties of a job to assess whether they can be satisfactorily performed at home. You may consider allowing at-risk employees to continue teleworking temporarily. The alternative would likely be leave or termination, which can be costly. For more information, see [Providing Temporary or Trial Accommodation Solutions](#).

6. Vaccinated But No Masks? Still Consider Telework

Employers who do not have masking or vaccination requirements may consider allowing immunocompromised or at-risk employees to continue teleworking if possible without undue hardship for the employer. They may not build the same level of immunity to the vaccine and may not be adequately protected by vaccination alone.

7. Count Temporary Telework Experience as a Trial Accommodation

If an employee with a disability was denied telework as an accommodation prior to the pandemic asks to continue teleworking, the temporary telework could be used as evidence of whether or not teleworking is an effective solution that may actually enable some employees with disabilities to maximize productivity and performance.

8. Conclusion

Accommodation requests for telework may seem overwhelming, but employers can follow their usual ADA procedures and take a practical approach to simplify the process. If employer provides temporary accommodations, they can revisit them in the future as rules may change.

Please contact our office if you have any questions regarding accommodations.

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