

Publications

The EEOC Provides Further Guidance on Managing Disability and Accommodation Issues in the Age of COVID-19 (Part II)

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While the COVID-19 pandemic has caused employers to cease or reduce operations, their legal obligations generally continue. The EEOC made clear in a recent webinar that “in this extraordinary time, the laws enforced by the EEOC -- Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act, the Genetic Information Nondiscrimination Act -- continue to apply.” At the same time, these laws “do not hinder employers from following the COVID-19 guidance from the Centers for Disease Control and Prevention (the CDC) and from state or local public health authorities.” Below, we summarize the EEOC’s most recent guidance on employers’ ADA obligations concerning reasonable accommodation and telework. Importantly, the EEOC notes that the answers to these questions may change as the risks presented by COVID-19 decrease.

Reasonable Accommodation

If a job may only be performed at the workplace, are there [reasonable accommodations](#) for individuals with disabilities that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19?

Yes. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer. For example, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to safely perform the essential functions of the job while reducing exposure to others in the workplace.

If an employee has a preexisting mental illness or disorder that has been exacerbated by COVID-19, may he now be entitled to a reasonable accommodation?

The EEOC notes that, although many people feel significant stress due to COVID-19, employees with certain preexisting mental health conditions (e.g., anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder) may have more difficulty handling the disruption to daily life. As with any accommodation request, employers may: ask questions to determine whether the condition is a disability; discuss how the requested accommodation would assist and enable him to keep working; explore alternative, effective accommodations; and request medical documentation if needed.

What if an employee was already receiving a reasonable accommodation before the COVID-19 pandemic and now requests an additional or altered accommodation?

An employee who was already receiving a reasonable accommodation may be entitled to an additional or altered accommodation, absent undue hardship. The employer should engage in an interactive process to determine what, if any, accommodation is appropriate.

Teleworking

In a workplace where all employees are currently required to telework, should an employer postpone discussing a request from an employee with a disability for an accommodation that will not be needed until he returns to the workplace when mandatory telework ends?

Not necessarily. An employer may give higher priority to discussing requests for reasonable accommodations that are needed while teleworking, but the employer may begin discussing this request now. The employer may be able to acquire all the information it needs to make a decision and may be able to make some arrangements for the accommodation in advance.

If an employer permits telework during the COVID-19 pandemic, does it automatically have to permit telework as a reasonable accommodation when employees return to the workplace?

According to the EEOC, “the answer is of course no.” Any time an employee requests a reasonable accommodation, the employer is entitled to understand the disability-related limitation that necessitates an accommodation. If there is no such limitation that requires teleworking, then the employer does not have to provide telework as an accommodation. If there is one, but the employer can effectively address the need with another form of accommodation at the workplace, then the employer can choose that alternative to telework.

If an employer excuses an employee from performing an essential function while teleworking, must it continue to do so once the employee returns to the workplace?

No. The fact that an employer temporarily excused performance of one or more essential functions to enable employees to telework for the purpose of protecting their safety, or otherwise chose to permit telework, does not mean that the employer has permanently changed a job's essential functions, or that telework is a feasible accommodation, or that it does not pose an undue hardship. These are fact-specific determinations. The employer has no obligation under the ADA to refrain from restoring all of an

employee's essential duties after the immediate crisis has passed, or at such time as it chooses to restore the prior work arrangement, and then evaluating any requests for continued or new accommodations under the usual ADA rules.

Contact your Vorys lawyer if you have questions about the interaction between the ADA (and similar state laws) and COVID-19.

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Vorys COVID-19 Task Force

Outside of this new law, employers continue to face myriad issues as COVID-19 continues to spread and impact communities and workplaces (some of these issues are addressed in our prior alerts [located here](#)). We will continue to keep you posted on any important developments. In the meantime, if you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.