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**EEOC ISSUES GUIDANCE REGARDING TELECOMMUTING
AS A REASONABLE ACCOMMODATION
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Summary

The U.S. Equal Employment Opportunity Commission (EEOC) has released a new Americans with Disabilities Act (ADA) guidance memorandum advising employers that they must at least *consider* telecommuting as a reasonable accommodation option for certain individuals with disabilities, even if the employer does not have a telecommuting program in place for other employees. The EEOC notes that the fact that adjustments may have to be made in the way an employee is supervised or that there is an increased burden on communications with co-workers or others is not, by itself, sufficient to justify failing to consider telecommuting as an accommodation option. However, employers are not required to adopt telecommuting where an equally effective alternative exists, or if it would otherwise create an undue hardship or expense, or if it would necessitate the lowering of production standards.

Details

The ADA requires covered employers to provide reasonable accommodation to qualified individuals with disabilities, unless such accommodation would cause an undue hardship, *i.e.*, significant difficulty or expense. Whether this reasonable accommodation obligation requires an employer to permit an individual to telecommute (referred to as “teleworking” by the EEOC) is an issue that had not been specifically addressed by the EEOC in the past. Thus, on February 3, 2003, the EEOC sought to express its opinion on this issue by posing and answering several questions regarding telecommuting. (<http://www.eeoc.gov/facts/telework.html>).

1. Does the ADA require employers to have telecommuting programs?

No. However, if an employer does offer telecommuting, it must allow employees with disabilities to participate. In addition, employers may be required to waive eligibility requirements or otherwise modify an existing program for employees with disabilities.

2. May permitting an employee to work at home be a reasonable accommodation, even if the employer has no telecommuting program?

Yes. Telecommuting must be *considered* as a reasonable accommodation option. However, an employer is not obligated to adopt such an option if an alternate accommodations would be equally effective.

3. How should an employer determine whether someone may need to work at home as a reasonable accommodation?

The ADA always requires the employer to engage in an "interactive process" with the person to evaluate what reasonable accommodation may be available and effective. The employer may request reasonable medical information and may wish to discuss other types of accommodations that would allow the person to remain in the workplace, if possible.

4. How should an employer determine whether a particular job can be performed at home?

An employer should identify and review all of the essential job functions and duties for the specific position and determine whether some or all of them can be performed at home. *An employer does not have to remove any essential job duties to permit an employee to work at home*, but may need to reassign or substitute some minor, non-essential job duties or marginal functions.

Factors to consider in determining the feasibility of working at home include the extent to which:

- the employer can adequately supervise the employee;
- the use of certain equipment or tools is required;
- in-person interaction with supervisors, co-workers, outside colleagues, clients, or customers is necessary;
- immediate access to documents or other information located only in the workplace is required; and
- working part-time at home and part-time in the workplace can meet the needs of the individual and the employer.

5. How frequently may someone with a disability work at home as a reasonable accommodation?

It varies to the extent that the disability necessitates it. The nature of the disability may require working at home full-time, part-time, temporarily, or on a sporadic "as needed" basis. Moreover, an employer need not provide such an accommodation where it creates an undue hardship and is not required to lower production standards for individuals with disabilities who are working at home.

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

Yes. The employer may select any effective accommodation, even if it is not the one preferred by the employee.

What This Means

The EEOC's guidance is consistent with its prior statements regarding reasonable accommodation, the thrust of which is that employers must consider all possible alternatives even if they are a departure from their usual policies or practices. In light of this guidance (which is not law, but is often followed by the courts), employers should: (1) review their job descriptions to ensure that they contain all essential functions and duties, including specifying any work that must be done on-site, if applicable; (2) examine their current telecommuting and any related policies and procedures to make sure they are consistent with the EEOC's position on working at home; and (3) include telecommuting as one of the options to be considered on any reasonable accommodation checklist you may use.

This E-Update was authored by [Deborah J. Tibbetts](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney.

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