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CAN "TELECOMMUTING" BE A REASONABLE ACCOMMODATION?

What if a disabled employee asks to work at home as an accommodation under the Americans with Disabilities Act? Is an employer required to consider this request? In October, 2002 and February, 2003, the EEOC issued guidance on the issue of telecommuting. In the EEOC's view, employers are at least required to consider whether telework is a reasonable accommodation within the context of the employee's essential job functions, particularly in light of modern technologies that permit easy access and communication with the workplace from home. "Several factors should be considered in determining the feasibility of working at home, including the employer's ability to supervise the employee adequately and whether any duties require use of certain equipment or tools that cannot be replicated at home. Other critical considerations include whether there is a need for face-to-face interaction and coordination of work with other employees; whether in-person interaction with outside colleagues, clients, or customers is necessary; and whether the position in question requires the employee to have immediate access to documents or other information located only in the workplace." Ultimately, the EEOC does not consider working at home to be per se unreasonable and advocates the same interactive process an employer would use to consider any other accommodation. The EEOC's guidance can be found at www.EEOC.gov.

Courts are also addressing the issue. In fact, just this month the Tenth Circuit ruled a disabled employee's request to work from home was unreasonable. In *Mason v. Avanya Communications Inc.*, the court rejected an employee's request to telework as a reasonable accommodation. The plaintiff was a service coordinator, a job that required supervision and teamwork. The court determined that the plaintiff could not perform either of these essential job functions if she worked from home. "[A] request to work at home is unreasonable if it eliminates an essential function of the job," the court explained. The Tenth Circuit joined the Fourth, Fifth, Sixth, and Seventh circuits in holding it will be an "unusual" and "extraordinary" case where telecommuting does not interfere with an employee's ability to perform the essential functions of the position. Still, as the court explained, a case-by-case analysis of the reasonableness of an at-home accommodation must be made in situations where physical presence is not an essential function of the job at hand.



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