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EEOC ISSUES "FACT SHEET" ON TELEWORKING AS A REASONABLE ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT

The EEOC has issued a "fact sheet" that addresses when disabled employees should be permitted to "telework," or work from home, as a reasonable accommodation under the Americans with Disabilities Act ("ADA"). The EEOC's approach requires an employer to consider teleworking as a reasonable accommodation in those situations in which an employee's disability prevents him or her from performing their job on-site, and the job, or at least parts of it, can be performed at home without causing significant difficulty or expense for the employer.

The EEOC notes that while the ADA does not require that an employer have a telework program, the employer must be careful not to discriminate against individuals with disabilities who wish to telework if the option is provided to other able bodied employees. An employer, however, may require disabled employees to work on-site rather than at home, provided the employees' disabilities are accommodated effectively.

Before implementing a teleworking arrangement, a disabled employee and his or her employer must engage in a dialogue to ascertain whether the job's essential functions can be performed at home without any undue hardship. Of course, such an inquiry is fact intensive and must be done on an *ad hoc* basis. For example, the essential duties of a food server, cashier, or machine operator require that they be performed outside the home. On the other hand, telemarketing, data entry, or word-processing, may be suited for teleworking in some cases.



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As to those jobs whose suitability to teleworking is less than obvious, the EEOC suggests that the employer consider following factors:

- Whether an employer must supervise its employees directly;
- Whether an employee requires special tools and equipment to complete his or her job; or
- Whether face-to-face interaction among employees or with outside third parties is essential to the job.

Of course, the EEOC's position on teleworking is not the final word. So far, seven of the twelve federal courts of appeal have considered whether teleworking might be a reasonable accommodation under the ADA. Of these seven, however, only three have taken the position that teleworking may be required. The Eleventh Circuit, which covers Alabama, Florida, and Georgia, has yet to rule on this issue.

More and more employees are working from home. The International Telework Association and Council estimates that one employer in five allows some form of teleworking. This amounts to roughly 29 million employees. Therefore, more and more employers may soon need to address the issue of when and how to accommodate their disabled employees with teleworking arrangements.

The EEOC's fact sheet on teleworking may be found at:
<http://www.eeoc.gov/facts/telework.html>.



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LABOR AND
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