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Handling COVID-19-Related Accommodation Requests During Return to Work

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AGENDA

- 1 — Preparing For & Processing Requests
- 2 — Disability-related Accommodation Requests
- 3 — Personal Protective Equipment & Health Screenings
- 4 — Childcare and Pregnancy
- 5 — Remote Work
- 6 — Addressing Employees' Fear
- 7 — Key Steps



Handling COVID-19-Related Accommodation Requests During Return to Work

Preparing For and Processing Requests

HR professionals, managers and other business leaders need to know how to respond to requests for accommodations related to COVID-19.

Employee requests may be based on disabilities, higher risk factors, family needs or fear.

The task is made more complex due to frequently evolving guidance.

As part of the return-to-work plan, employers need to consider which employees:

- Are currently provided a reasonable accommodation.
- Have a current request for reasonable accommodation pending.
- May need a reasonable accommodation in order for them to return to the office.

Handling COVID-19-Related Accommodation Requests During Return to Work

Preparing For and Processing Requests

According to updated EEOC guidance, it is best practice for employers to make information available *in advance* to all employees about who to contact to request accommodation for a disability.

The information may be provided even if no date has been announced for employees return.

If requests are received in advance, the employer may begin the interactive process.

Ensure that accommodations inquiries and requests are handled consistent with the different federal employment nondiscrimination laws that may apply (e.g., due to a medical condition, religious belief or pregnancy).

Handling COVID-19-Related Accommodation Requests During Return to Work

Preparing For and Processing Requests

The first sign of a need for accommodation may be when an employee refuses to return to work. It is important to find out why.

Ask the employee to share the reason(s) in writing, and then determine which approach for handling the reason best applies:

- Do any federal, state or local leave laws apply?
- Is a disability accommodation indicated?
- Do any employer policies or practices apply?
- Is an unpaid leave of absence appropriate?

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Poll Answers #1

Have you received any requests for COVID-19-related accommodations?

- Yes
- No

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Disability-related Accommodation Requests

The law regarding reasonable accommodation for a disability is the same regardless of the phase of reopening.

If an employee with a disability or who is at high risk requests an accommodation the employer may discuss with the employee:

- How the disability creates a limitation, and request medical documentation of a disability that isn't obvious.
- How the requested accommodation will effectively address the limitation.
- Whether another accommodation could solve the issue.
- How the proposed accommodation will enable the employee to continue performing the job's essential functions.

Remember: It is important to document at every stage of the interactive process.



Handling COVID-19-Related Accommodation Requests During Return to Work

Disability-related Accommodation Requests

If an employee requests a reasonable accommodation, engage in the interactive process. This may include taking the following steps:

- Verify the employee has a disability;
- Verify that an accommodation is needed;
- Obtain recommendations of the types of accommodation needed;
- Consider whether the employee's request is reasonable; and
- Consider whether an employee's request for a reasonable accommodation imposes an *undue hardship* on the employer's business (i.e., a significant expense or difficulty to the employer's business operations under current circumstances).

An employer is not required to wait for an employee to make a request to begin the engagement process if the disability is clear or the employer is aware of a potential disability.

Current circumstances during the pandemic may affect whether a requested accommodation creates an “undue hardship.”

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Disability-related Accommodation Requests

CDC guidance emphasizes the importance of providing accommodations or flexibilities to employees who are at higher risk for severe illness. Vulnerable populations include:

- People 65 years and older
- People who live in a nursing home or long-term care facility
- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease

Some states may have additional definitions of at-risk or vulnerable populations.

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Disability-related Accommodation Requests

Flexibility by employers and employees is important in determining if an accommodation is possible in an employee's circumstances.

Often accommodations are simple or low-cost and may be achieved with materials already on hand or easily obtained.

Work adaptations that permit an individual to safely perform essential job functions while reducing the risk of exposure may include:

- Temporary job restructuring of marginal job duties;
- Temporary transfers to a different position; or
- Modifying a work schedule or shift assignment.

Handling COVID-19-Related Accommodation Requests During Return to Work

Disability-related Accommodation Requests

Other accommodations may include:

- Additional protective equipment such as gowns or gloves
- Changes to the work environment such as plexiglass, tables or other barriers
- Increasing the space between an employee with a disability and others
- Moving where an employee performs work to increase social distancing
- Allowing or continuing remote work
- Leave

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Disability-related Accommodation Requests

States and localities may provide greater or additional rights to reasonable accommodations.

For example, the New York City Human Rights Law is more protective than the ADA or the New York State Human Rights Law.

- It does not require an employee to prove that a reasonable accommodation is readily achievable, necessary or does not pose an undue hardship.
- All accommodations are assumed “reasonable” unless the **employer** shows the requested accommodation would cause an “undue hardship.”
- Employers must engage in a more detailed “Cooperative Dialogue” to assess the reasonable accommodation.

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Poll Answers #2

For which reason(s) have accommodations been requested? (Check all that apply)

- Disability
- At-risk or vulnerable for infection
- Childcare
- Pregnancy
- Fear of returning
- Other

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Personal Protective Equipment & Health Screenings

In order to limit the spread of the coronavirus in the workplace, an employer may require employees to wear personal protective equipment (PPE).

An employer may need to provide modified or alternative equipment to provide a reasonable accommodation based on disability and/or religion.

The employer should discuss the request and provide the accommodation, or a reasonable alternative, if there is no undue hardship.



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Personal Protective Equipment & Health Screenings



Modified equipment and gear may include:

- Non-latex gloves (for employees with allergies);
- Modified face masks (to accommodate religious needs and those who are hard of hearing);
- Gowns designed for individuals who use wheelchairs; and
- Modified equipment (to accommodate religious dress).

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Personal Protective Equipment & Health Screenings

The EEOC considers a request for an alternative testing or screening method to be a request for reasonable accommodation.

If the requested change is easy to provide and inexpensive, the employer might voluntarily choose to make it available to anyone who asks, without going through an interactive process.

Employers should not put employees through medical screening without evidence they have been exposed to the virus or are exhibiting symptoms.

All medical information must be kept confidential and private.

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Childcare Needs and Pregnancy

Employees with childcare needs may qualify for paid leave under certain federal laws (such as the FFCRA), or state or local laws, including emergency laws.

Some states or localities also provide for protected leave to care for a child.

Other laws also may provide employees rights in regards to caring for their children. For example:

- San Francisco's Family Friendly Workplace Ordinance (FFWO) prohibits caregiver discrimination and gives employees a right to request “flexible” or “predictable” working arrangements to assist with caregiving responsibilities for children, covered family members with serious health conditions or parents 65 years or older.

Handling COVID-19-Related Accommodation Requests During Return to Work

Childcare Needs and Pregnancy

Employers that provide accommodations to employees with school-age children due to school closures or distance learning must not treat employees differently based on sex or other EEO-protected characteristics.

When reviewing accommodation requests based on childcare needs, consider the effect on employee morale:



- Employees may feel in a no-win scenario of working or providing care while many childcare options are closed due to the pandemic.
- Without flexibility or a reasonable accommodation to provide care, employees at work may be stressed and distracted from work worrying about their children.
- Not being flexible sends a negative message to other employees about the employer's priorities and values.

Handling COVID-19-Related Accommodation Requests During Return to Work

Childcare Needs and Pregnancy

- Pregnancy itself is not an ADA disability, but pregnancy-related medical conditions may be.
- If an employee makes a request for reasonable accommodation due to a pregnancy-related medical condition, the employer must consider it under the usual ADA rules.
- The Pregnancy Discrimination Act specifically requires that women affected by pregnancy, childbirth and related medical conditions be treated the same as others who are similar in their ability or inability to work.
- Includes job modifications such as telework, work schedule or assignments changes and leave.



Handling COVID-19-Related Accommodation Requests During Return to Work

Remote Work

Remote work may be used as a reasonable accommodation. However, employees who work remotely also may need to request accommodations.

Working from home has its own challenges. It can mean:

- Lack of dedicated space or equipment;
- Trying to focus on completing work; and
- Dealing with multiple e-mails, Zoom meetings and Skype calls.

All while having children, spouses or roommates active in the background.

Disabilities at home necessitate the same obligation to engage in the interactive process and provide a reasonable accommodation as at the worksite.



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Remote Work

An obligation to engage in an interactive process and provide an accommodation for a remote worker may result from disabilities such as:

- Attention-Deficit/Hyperactivity Disorder (ADHD)
- Autism Spectrum Disorder (Autism)
- Arthritis or Back Pain
- Post-Traumatic Stress Disorder (PTSD)
- Depression or Anxiety
- Other Physical or Mental Health Issues

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Remote Work

Accommodations may involve:

- Flexible work hours
- Ergonomic equipment such as chairs, keyboards or monitors
- Technical solutions such as noise-reducing headsets, digital assistant apps
- Additional training or coaching
- Use of captions in Zoom meetings or providing transcripts afterwards
- Return to the office instead of requiring remote work

An employee who is working from home may need a different type of accommodation than one used in the workplace.

As always, best practice is to talk directly to employees about their individual needs.

Handling COVID-19-Related Accommodation Requests During Return to Work

Poll Answers #3

What type(s) of accommodations have you provided? (check all that apply)

- Protective personal equipment or modified PPE
- Changes to work environment
- Modified work schedule or shift assignment
- Temporary job restructuring or assignment
- Relocate workspace
- Remote work
- Leave
- Other

Handling COVID-19-Related Accommodation Requests During Return to Work

Addressing Employees' Fears

- Employees may feel uncertain about the risks involved with returning to work.
- Employees' concerns regarding safety, health and financial security must be addressed before things can return to a semblance of normalcy.
- Understanding the specific needs of each employee and being creative and understanding can go a long way in improving employee morale and the company's reputation.



Handling COVID-19-Related Accommodation Requests During Return to Work

Addressing Employees' Fears

If the employee has safety concerns, discuss them with the employee and advise them of the safety protocols and policies the company has put in place, such as:

- Increased cleaning and disinfecting measures;
- Temperature screening;
- Wearing gloves, masks and other personal protective equipment (PPE);
- Social distancing;
- Frequent handwashing;
- Reporting any COVID-19 symptoms; and
- Periodic COVID-19 testing.

Handling COVID-19-Related Accommodation Requests During Return to Work

Addressing Employees' Fears

Did You Know?

- Updated EEOC guidance does not **require** an employer to accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom the employee is associated.
- Of course, an employer **may** provide such flexibilities if it so chooses. If so, an employer should be careful not to engage in disparate treatment on a protected EEO basis.

Handling COVID-19-Related Accommodation Requests During Return to Work

Key Steps

- Evaluate accommodation requests on a case-by-case basis
- Engage in a timely, good-faith and meaningful interactive discussion
- Ensure job descriptions are accurate and detail essential duties
- Ensure managers understand that they may not retaliate or discriminate
- Train the persons who facilitate and engage in the interactive process
- Document each step of the interactive process
- Keep medical information confidential
- Monitor and evaluate the employee's progress with the accommodation

Handling COVID-19-Related Accommodation Requests During Return to Work

Key Resources

- [Coronavirus \(COVID-19\): Discrimination and Accommodation Considerations](#)
- [Determine if an Employee Is Entitled to a Reasonable Accommodation Under the ADA](#)
- [How to Engage in and Properly Document the Interactive Process Under the ADA](#)
- [ADA Reasonable Accommodation Interactive Process Letter](#)
- [ADA: Managing an Employee With a Disability - Supervisor Briefing](#)
- [Coronavirus \(COVID-19\): Health and Safety](#)
- [Coronavirus \(COVID-19\): Remote Work](#)
- [Families First Coronavirus Response Act: COVID-19 Paid Sick Leave and Expanded Family and Medical Leave Requirements](#)
- [Coronavirus \(COVID-19\): Anticipating and Addressing Employees' Return-to-Work Concerns Post-Pandemic](#)



Thank you

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