

Working From Home Post-COVID: What Employers Need to Know

Americans With Disabilities Issues

Working from home can be a reasonable accommodation under the ADA, and many disabled employees have been permitted to work from home as an ADA accommodation both before and during the pandemic. That raises the question of whether working from home has been established as a reasonable accommodation such that an Employer must allow such employees to continue to work from home after the pandemic ends. As a general proposition the answer is “no,” but it depends on specific facts. A disabled employee working from home because of the pandemic is not necessarily entitled to keep working from home as an accommodation once the Employer reopens its worksite. If an Employer otherwise reasonably can accommodate a disability at the workplace it may elect to do so rather than continue to permit telework.

If an Employer allows a disabled employee to continue to work from home after the pandemic must the Employer otherwise accommodate the employee in the home setting? For example, if the Employer permits an employee to work from home and the employee requires a special non-glare screen for a computer that the Employer was or would provide in the workplace, must the Employer provide that screen for the home-office?

Reasonable accommodations are changes to a job, workplace, or the way a job is performed that allows employees with a disability to perform a job for which they are qualified. If the employee is working from home for the benefit of the Employer (e.g., the Employer is enabled to rent a smaller office) a strong argument can be made that the Employer would be required to provide a reasonable accommodation in the home office. If the employee is permitted to work from home for the benefit of the employee, that argument is weakened especially because the Employer can refuse to permit the employee to work from home if a reasonable accommodation can be provided at the workplace. Best practices suggest that when an Employer permits an employee to work from there be a conversation in advance about whether and what accommodations the employee might require to work from home.

If you have any questions, or would like additional information, please contact Bob Small, Partner in Reger Rizzo & Darnall's Employment Practices Group, at 215.495.6541, or via email at rsmall@regerlaw.com.

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