

EPLI News Update

Telework as a Reasonable Accommodation Under the ADA

The EEOC recently released a fact sheet for employers — Work at Home/Telework as a Reasonable Accommodation — providing guidance for the exploration of telework as a potential solution for an employee or applicant with a disability.

Employers are not required to have telework programs, but your organization may be required to waive or modify certain requirements of an existing telework program as a reasonable accommodation. For example, if your organization requires an employee to work for one year before applying for your telework program, you may be required to waive that requirement.

If your organization has no telework program in place, you may still need to allow an employee to telework as a reasonable accommodation.

To determine if a job can be performed at home, identify and review all the essential job functions. You do not have to remove any essential job functions for the employee to work at home. However, you may need to reassign minor job duties or marginal functions if they (a) can be performed only in the workplace, and (b) are the only obstacles to the employee performing the job at home. You may ask the employee working at home to do other minor tasks that can be performed at home to keep the workloads evenly distributed.

Your organization may consider a number of factors in determining the feasibility of telework:

- Can the employee be adequately supervised at home?
- Do any duties require the use of equipment or tools that cannot be replicated at home?
- Is there a need for face-to-face interaction and coordination of work with other employees?
- Is in-person interaction with outside colleagues, clients and/or customers necessary?
- Does the employee need immediate access to documents or information stored at the workplace?

Today's technology (email, teleconferencing, etc.) may remove many of the obstacles to working from home. It may also be reasonable for an employee to work part of the time from home and part of the time in the workplace.

Bottom Line:

Permitting an employee or applicant to telework (all of the time or part of the time) may enable your organization to retain or hire a stellar employee (and comply with the ADA). For the employee, it may be the difference between being a productive member of the workforce and not working at all. For further information, the full text of the fact sheet is available at www.eeoc.gov.