

How to Handle an Influx of Accommodation Requests

By Allen Smith, J.D.

June 17, 2021

As the pandemic subsides and many employees return to the worksite, some workers are resisting and inundating HR with accommodation requests. These requests must be handled on a case-by-case basis, even if the requested accommodations all are for continued remote work.

During the height of the COVID-19 pandemic, many employers asked employees to work from home. "Now, employers are starting to transition back to the office or consider hybrid models. Not everyone may be excited about the change," said Courtney Blanchard, an attorney with Nilan Johnson Lewis in Minneapolis. "As a result, employers are seeing an increase in the number of requests to continue teleworking as a reasonable accommodation for a disability or medical condition."

In normal times, these requests probably would have been made over an extended period of time, but now will be received all at once when a target date for reopening is set, said Jonathan Mook, an attorney with DiMuroGinsberg in Alexandria, Va.

There are several reasons employers are seeing an increase in accommodation requests, said Caroline Larsen, an attorney with Ogletree Deakins in Phoenix. These reasons include:

- Linger concerns about exposure to COVID-19, particularly for employees who have not been vaccinated.
- The convenience of working from home or feeling more productive telecommuting.
- The unavailability or cost of child care.
- Wanting to avoid the daily commute.

"An employer needs to do what it's always done. Analyze each case as it comes up—whether there's a disability and a reasonable accommodation," said David Fram, director of ADA (Americans with Disabilities Act) services with the National Employment Law Institute, headquartered in Golden, Colo.

Companies may need to have more people involved to review the accommodation request.

"Just as the requirements for the interactive process remain the same, so do the reasons that an accommodation may be denied," noted Michael Futterman, an attorney with MARC Law in Florham Park, N.J. These reasons include if the employee does not have an ADA disability, if the employee can perform the essential job functions without a reasonable accommodation or the accommodation would pose an undue hardship on the business.

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Assess Accommodation Requests

Employers should plan ahead, said Laurie Baddon, an attorney with McDermott Will & Emery in Los Angeles.

"Before reopening and requiring in-person attendance, share your policies with the workforce well in advance to give your HR and legal teams sufficient time to process and assess all accommodation requests," she said.

"Even if there is an influx of accommodation requests, it is important for employers to evaluate each request on a case-by-case basis and engage in an interactive process with the employee to determine whether a reasonable accommodation can be provided," Baddon said.

Evaluate requests based on several factors, including:

- The type of accommodation requested.
- The job position.
- The duration of the request.
- Whether the requested accommodation would sufficiently mitigate a direct threat to the workplace.
- Whether the requested accommodation would create an undue burden on the business.

"To guard against discrimination claims, employers should treat similar requests similarly," Baddon said. "If a request for accommodation would create an undue burden or impose a direct threat to the employee or others in the workplace, these are signs that the accommodation request may need to be denied."

An accommodation also may be required for an employee with a sincerely held religious belief, so long as the accommodation doesn't pose an undue hardship, noted Amber Rogers, an attorney with Hunton Andrews Kurth in Dallas and Houston.

The burden for the employer in satisfying undue hardship under Title VII of the Civil Rights Act of 1964 is considerably lower than under the ADA, said Lori Armstrong Halber, an attorney with Fox Rothschild in Philadelphia, Warrington, Pa., and Princeton, N.J.

"There will be situations where an employer cannot accommodate an employee's request—for example, where job functions cannot be done at home or where the employee is requesting indefinite leave—and in those cases the request can be denied," she said. "An employer is also generally not obligated to accommodate someone's philosophical, political or generalized fear in returning to the workplace."

"The increase in the number of employees seeking accommodations may influence this analysis, since granting an accommodation to one employee might not impose an undue hardship but granting accommodations to numerous employees might," Larsen said.

When an employee requests a popular accommodation, such as telework, HR may wish to explore other effective alternatives so that the employer does not have so many employees working from home that it would negatively impact the nature or culture of the workplace and the work being done, Mook said.

Employers should explain the difference between reasonable accommodation requests that are directly related to a medical condition or personal health and those that aren't, said Kristen Gallagher, an attorney with McDonald Carrano in Las Vegas.

"The latter type of requests could include challenges relating to availability of child care, health issues of others in the home environment or general personal concerns about working onsite or in an office setting," she said. "While all requests must be evaluated on a case-by-case basis, these latter types of requests are unlikely to qualify as an ADA disability."

Document the conversations with employees about accommodations, especially when the employer ultimately finds the accommodation request is unreasonable and denies it, said September Rea, an attorney with Polsinelli in Los Angeles.

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Disciplined Process

"With any accommodation request, employers need to follow a disciplined process of looking to the essential job functions, which shift over time, evaluating the employee's particular needs and work-related limitations, and the employer's operational capacities," said Peter Petesch, an attorney with Littler in Washington, D.C.

"There will be times when employees cease to be qualified or able to perform the essential functions of their old jobs," he said. "Reassignment may need to be considered."

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