

Oswald Letter - HR Hero: Disability Accommodations in Post-Pandemic Work-from-Home World

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FULL TEXT

In years past, employees who requested remote working arrangements were often met with strong resistance from managers, who viewed such requests as excuses to shirk responsibilities. Holding firm to a “face time” mentality, many members of management believed employees simply couldn’t be efficient and focused if they routinely worked from home. Then, of course, the COVID-19 pandemic changed almost everything we know about how work gets done.

Now, many employers are faced with the reality that working from home is here to stay. In fact, many companies have reduced their real estate footprint in response to their workforces proving they can remain efficient in a work-from-home environment. That said, many employees (particularly those with mental disabilities such as anxiety or Attention-Deficit Hyperactivity Disorder (ADHD)) continue to struggle with how to work most efficiently and effectively in a long-term remote working environment. As employers navigate this new world of long-term remote working, a few principles are worth keeping in mind.

5 Key Principles

First, regardless of where employees work, if they work for companies with least 15 employees, the Americans with Disabilities Act (ADA) and Nevada’s state law equivalent (NRS 613.330) continue to apply. The laws require covered employers to provide reasonable accommodations to disabled employees, unless doing so would impose an undue hardship or a risk of safety to others. A disability is any physical or mental impairment that substantially limits one or more major life activities.

Second, among the reasonable accommodations you may need to provide to disabled employees are “modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed,” according to Equal Employment Opportunity Commission (EEOC) enforcement regulations. With many jobs becoming long-term work-from-home positions, this could mean engaging in an interactive process with employees to determine whether modifications to a home working environment are required.

Third, employees don’t always use legal buzzwords to communicate that they need an accommodation under the ADA. They don’t need to disclose their diagnosis to receive accommodations, nor do they need to cite the Act or explicitly request a “reasonable accommodation.”

Since you can be required to initiate the accommodation process when you know an employee is struggling at

work because of a disability, it's critical to avoid rushing to conclude that a failure to meet productivity or other performance benchmarks is simply a result of a lack of effort. Instead, you must listen carefully to what the remote employee is communicating to see if a potential disability is at play. For example, if an employee comments that they are feeling "panicked," "stressed out," and "distracted" and can't seem to "focus," you would be wise to assess whether ADHD, anxiety, or a similar disability is at play rather than rushing to assume the individual simply lacks motivation.

Fourth, even in a post-pandemic world, the normal process of exploring reasonable accommodations still governs. Once it has been determined the employee has a mental or physical condition that may arise to the level of a disability (and for which accommodations may be required), you are well advised to work cooperatively with the individual and his or her medical provider to determine what accommodations may be feasible and appropriate. For example, possible remote work accommodations could include:

Modified work schedules so disabled employees can work when they are likely to be less distracted;
Recording important work meetings so employees can access critical information later if they are unable to attend and remain focused when the session is originally held;
Noise reduction or white noise technology to reduce distractions;
Modifications to how work assignments are communicated (to address challenges with reading or, conversely, verbal communication); and
Employee training on issues such as effective task management and other executive functioning hurdles.

Finally, as with all ADA issues, you are wise to work with competent employment counsel, who can aid in the process of assessing the unique facts pertaining to each employee and help determine whether a disability is implicated (and if so, what your response should be).

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The post Disability Accommodations in Post-Pandemic Work-from-Home World appeared first on HR Daily Advisor.

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DETAILS

Subject: Americans with Disabilities Act 1990-US; Employers; Disabled workers; Handicapped accessibility; Disability; Employees; Employment; Pandemics; COVID-19

Business indexing term:	Subject: Employers Disabled workers Employees Employment
Location:	Nevada; United States--US
Company / organization:	Name: Equal Employment Opportunity Commission--EEOC; NAICS: 921190
Publication title:	Oswald Letter [Blog]
Publication year:	2022
Publication date:	Jun 14, 2022
Dateline:	Jun 14, 2022
Publisher:	Newstex
Place of publication:	Singer Island
Country of publication:	United States
Publication subject:	Law
Source type:	Blog, Podcast, or Website
Language of publication:	English
Document type:	Blogs
ProQuest document ID:	2675921735
Document URL:	https://www.proquest.com/blogs-podcasts-websites/oswald-letter-hr-hero-disability-accommodations/docview/2675921735/se-2?accountid=44910
Copyright:	Copyright Newstex Jun 14, 2022
Last updated:	2022-06-14
Database:	ABI/INFORM Collection

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