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Back to Business After COVID-19: Addressing Disability Accommodation Requests in New York

By Alexander Bogdan

Though the Equal Employment Opportunity Commission (EEOC) has yet to find that a COVID-19 diagnosis, in and of itself, would be considered a disability under the Americans with Disabilities Act (ADA), the New York City Commission on Human Rights has stated that in many cases a COVID-19 infection would meet the definition of a disability under the New York City Human Rights Law. Accordingly, under the ADA and the New York State and City Human Rights Laws, employers must provide employees who have a disability with reasonable accommodations to allow those employees to perform the essential functions of their jobs unless doing so would cause an undue hardship. As employees return to the workplace, employers should anticipate an increase in accommodation requests, directly and indirectly related to COVID-19.

There are a number of concerns that employers should address as they prepare to reopen for business. In our [prior alert](#), we addressed issues related to rehiring employees. But employers should also prepare now for increased requests from employees for reasonable accommodations related to COVID-19.

Leave as a Reasonable Accommodation

Courts have generally found that unpaid leave may be a reasonable accommodation for an employee's disability that will not place an undue burden on an employer. This requirement to provide unpaid leave as an

accommodation applies even after an employee has used any leave that may be available to them for absences related to COVID-19 under new or existing federal, state or local laws. If an employer is covered by the federal Families First Coronavirus Response Act, employees will be immediately eligible for emergency sick leave upon rehire, and eligible for up to 10 weeks of expanded Family and Medical Leave 30 days after rehire, or immediately if the employee was terminated on or after March 1 and had worked for the employer for at least 30 of the prior 60 days before termination. Employees will also be eligible for leave under New York State's COVID-19 leave law upon rehire. New York City employees who are rehired within six months of termination must be provided with whatever time they had accrued under the Earned Safe and Sick Time Act prior to their termination, unless the employees were paid out for such time upon termination.

Remote Working as an Accommodation

Prior to the COVID-19 pandemic, employees frequently requested to work from home as an accommodation for a wide variety of disabilities. Employers that have denied these requests in the past need to be prepared to reconsider them, and anticipate new requests for remote work, after their physical workplaces reopen. COVID-19 has forced employers to come up with creative solutions to allow their businesses to continue. These solutions have

included figuring out ways to allow employees to perform jobs remotely out of necessity that, just a few months ago, many employers would have said could not be done away from the workplace. When these employees ask to work remotely as a reasonable accommodation after the workplace reopens, employers will have a more difficult time arguing that those employees cannot perform the essential functions of their jobs while working from home.

Employers should anticipate new requests to work remotely from employees for disabilities or conditions directly and indirectly caused by COVID-19. Employees who are diagnosed with COVID-19 may ask to work from home as an accommodation while they recover from their illness. Employees with pre-existing disabilities or medical conditions that place them at a higher risk from COVID-19 may also request teleworking as an accommodation. Pregnant employees or employees with weakened immune systems may request to continue working from home to reduce their risk from COVID-19 exposure. Employees with mental health disabilities may also request accommodations because of COVID-19. In fact, the EEOC has specifically noted that employees with anxiety may require accommodations because of increased stress related to COVID-19. Employers should not dismiss out of hand an employee's request to work remotely because of their concern of exposure to COVID-19 in the workplace or through commuting without considering whether the employee's request arises out of a disability or other condition, such as pregnancy, that would potentially require an accommodation.

COVID-19 Accommodations in the Workplace

Employers also should prepare for changes they may need to make to the workplace to address accommodation requests. The EEOC has

identified "low-cost" accommodations that employers should be prepared to make in their workspace in response to requests from disabled employees. Such accommodations include reducing contact with other employees, designating one-way aisles or using Plexiglass, tables or other barriers to ensure minimum distances between customers and coworkers. Businesses should begin planning now for how they could potentially make changes to their workspace if employees request accommodations that could reduce their risk of COVID-19 exposure. The EEOC has also suggested that employers could consider temporary restructuring of marginal job duties, temporary transfers to different positions, or modifying an employee's work schedule or shift assignments as accommodations to reduce potential COVID-19 exposure.

Businesses also need to ready themselves for accommodation requests relating to protective gear worn in the workplace or increased infection control procedures. Where employees are required to wear face coverings in the workplace, employers need to be prepared to address accommodation requests from employees with hearing difficulties who may communicate through lip reading. If employees are now required to wear gloves or protective coverings, employers need to be ready to accommodate employees who request non-latex gloves, or employees in wheelchairs who may need modified gowns or protected coverings. Anticipating and planning for these issues now will allow employers to avoid problems that could hinder their ability to return to business as soon as possible.

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