

Work at Home as Reasonable Accommodation in Disability Cases with COVID-19

Technology has made working at home/remotely more accessible. With Zoom, Microsoft Teams, and other video conferencing based software, working at home or remotely will likely become more and more popular. Over 65% of employers offer work at home options, with some even requiring it.

The California Fair Employment and Housing Act (FEHA) along with the federal Americans with Disabilities Act (ADA) prohibit discrimination against individuals and employees based on physical and/or mental disabilities. The FEHA and ADA require employers to provide reasonable accommodations to disabled workers.

Courts have not been as receptive to finding work at home as a reasonable accommodation. Some courts have been hostile to requests for work at home on an indefinite basis or for an entire workweek as a reasonable accommodation, as opposed to on a limited or partial basis. The issue is generally an employer's claim it would be an undue hardship to permit work at home as a reasonable accommodation.

COVID-19 may likely result in more courts finding work at home accommodations for disabled workers as reasonable. Issues may arise regarding the length of the work at home accommodation. Flexibility concerning periodically and regularly assessing whether the accommodation is reasonable may be required. However, the claim work at home creates an undue hardship because physical presence at the workplace is necessary will be more difficult to sustain given the widespread use of work at home for all employees, disabled and non-disabled, for non-essential businesses under COVID-19.

Employers will need to develop job descriptions where physical presence at the company or job site is an essential function. For example, construction workers need to be on the job site to perform his or her duties. On the other hand, customer support representatives working through a call center may not necessarily need to be physically present at the business to perform the essential functions of the job.

Both employer and employee are required, under federal and state law, to engage in a timely, good-faith interactive process to determine what reasonable accommodations exist that enable the employee to remain in his or her original position, whether it means working on-site or remotely. Communication is key.

Often employers are concerned about supervision and productivity. Employees with disabilities who propose work at home as an accommodation should articulate how those concerns, among others, can be adequately addressed and explain why the accommodation is reasonable.