



## Adopting an Integrated Telework Policy for Employees With and Without Disabilities

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In response to the COVID-19 pandemic, many employers are adopting and/or updating their employment policies and practices to meet new operational realities. One issue receiving significant attention is teleworking. In broad terms, telework denotes a flexible work arrangement under which employees perform their duties and other authorized activities from home or approved sites other than their usual worksites. This policy brief provides a framework for adopting an integrated telework policy applicable to *all* employees, including employees with disabilities.

As a general matter, telework is considered discretionary with an employer. However, for employees with disabilities, access to telework *may* be required as a reasonable accommodation under the Americans with Disabilities Act (ADA) and other federal and state disability nondiscrimination laws.

According to ADA regulations issued by the Equal Employment Opportunity Commission (EEOC), a reasonable accommodation is considered any modification or adjustment to a job or work environment that enables a qualified person with a disability to apply for or perform the essential functions of a job. The term also encompasses alterations to ensure a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities. When requested, employers covered by the ADA are required to provide such reasonable accommodations for qualified employees with disabilities, unless doing so would impose an undue hardship.

Often, employers have a general telework policy and a separate reasonable accommodation policy that lists telework as a specific example of a reasonable accommodation. In other words, an employer's general telework policy applicable to its workers might not be integrated with its specific policies related to its workers with disabilities, which may result in confusion and inefficiencies for all parties involved.

This policy brief is organized as follows:

- Section 1 clarifies the interrelationship between a general telework policy and a disability-specific telework policy (including telework as an example of a reasonable accommodation).
- Section 2 includes a framework for adopting policies related to telework as a reasonable accommodation that takes into consideration applicable policies included in general telework policies with certain modifications and adjustments, as necessary.
- Section 3 includes links to relevant resources.
- Appendix A provides a general telework policy checklist.
- Appendix B provides a reasonable accommodation/telework policy checklist.

## SECTION 1: CLARIFICATIONS TO THE GENERAL TELEWORK POLICY

Often an employer's telework policy includes a statement of purpose identifying:

- The intended benefits of the program;
- The discretionary and voluntary nature of the program; and
- That the terms and conditions of employment, worker protections (including nondiscrimination laws), and disciplinary procedures are unaffected by the program.

One strategy for integrating an employer's telework policy for all workers, including workers with disabilities, is to specify how the ADA applies to the general telework policy for workers with disabilities. Under federal law, employers are not required to offer a telework program to all employees. If telework is offered, however, employees with disabilities must have an opportunity to participate in such a program that is as effective and meaningful as that provided to nondisabled workers.

This obligation means that employees with disabilities in certain positions should not be held to a different standard or subjected to additional requirements in order to gain access to the benefit or privilege simply because the request to telework is for a disability-related reason. Thus, employees with disabilities may not be required to provide any particular documentation to gain access to telework if nondisabled employees are not required to do the same. In this circumstance, modifications are not necessary to the employer's general telework policy.

This obligation might also require an employer to offer a reasonable accommodation by modifying certain eligibility and participation requirements or otherwise modify its telework program for someone with a disability who needs to work at home. For example, an employer may generally require that employees work at least one year before they are eligible to participate in a telework program. If a new employee needs to work at home because of a disability, and the job can be performed at home, then an employer may need to waive this rule for this individual in order to comply with the ADA. The employer may also need to modify other policies related to, among other things, equipment and supplies, training, technical support and assistance, terminations, and withdrawals.

In addition, permitting an employee to work at home may be a reasonable accommodation under the ADA, *even if* the employer has no telework program, or limits its telework program to specific jobs. Changing the location where work is performed may fall under the ADA's reasonable accommodation requirement of modifying workplace policies, even if the employer does not allow other employees to telework.

## SECTION 2: ADAPTATIONS TO THE DISABILITY-SPECIFIC REASONABLE ACCOMMODATION/ TELEWORK POLICY

Often an employer's reasonable accommodation policy simply lists telework as an example. An employer may want to consider expanding its reasonable accommodation policy to include specific explanatory statements about telework, using guidance set out in the Equal Employment Opportunity Commission (EEOC) guides, [Work at Home/ Telework As a Reasonable Accommodation](#) and [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#), and the Job Accommodation Network guide, [Accommodation and Compliance: Telework](#). [See Appendix B for a more detailed description of the content of these guides.] In addition, the employer may want to incorporate some (or all) of these policy explanations into its general telework policy.

Together, the guides address topics such as determining:

- Whether someone may need to work at home;
- Whether a particular job can be performed at home;
- Whether essential job functions may be performed outside of the traditional work environment;
- Whether the employee will have access to equipment needed to perform the essential duties;
- How the employee will be supervised;
- Whether the work requires in-person interaction with colleagues, clients, or customers, and whether communication can occur in an alternative way;
- The frequency and the duration an employee may work at home; and
- Whether an employer may make other accommodations that enable an employee to work full time in the workplace rather than at home.

In addition, an employer may want to include policies from its general telework program in its reasonable accommodation/telework policy. Telework program requirements may address, among other things, expectations/communications; location, work hours, and schedule; equipment and supplies; expenses; technical support and assistance; and security, privacy, and confidentiality.

Along with policies related to the telework program requirements, many employers include policies and standard operating procedures governing the program's administration and operation/implementation. Employers may want to consider including (or incorporating by reference) in their reasonable accommodation/telework policies implementation methods and strategies such as:

**Designation of telework coordinator and centralized office:** appointment of an individual to oversee the implementation of the telework program. This individual could serve as an advisor for company leadership and a resource for managers and supervisors. A centralized office could manage implementation, develop and provide training and technical assistance, and adopt data collection and recordkeeping.

**Recordkeeping and reporting:** inclusion of various types of information important to understanding progress in the telework program.

**Data collection, tracking, and evaluation:** measures used to report success, including participation, employee satisfaction, increased productivity, more efficient use of office space, and supervisor satisfaction.

### SECTION 3: RESOURCES

Equal Employment Opportunity Commission: Regulation Implementing Title I of the Americans with Disabilities Act: [29 CFR Part 1630](#)

Equal Employment Opportunity Commission: [Work At Home/Telework as a Reasonable Accommodation](#)

Equal Employment Opportunity Commission: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) (FAQs: A8, B7, B8, D14, D15, and D16)

Job Accommodation Network: [Accommodation and Compliance: Telework](#)

Office of Personnel Management: [Telework Webpage](#)

## APPENDIX A: GENERAL TELEWORK POLICY CHECKLIST

Employers may want to consider using the following checklist to facilitate the adoption of an integrated telework policy for employees with and without disabilities. This checklist may help employers expand and improve their general telework policy applicable to all employees as well as make it more inclusive of people with disabilities. The checklist may also help employers modify their organization's reasonable accommodation/telework policy for employees with disabilities to reflect and be more consistent with the policies included in their general telework policy.

### Statement of Policy

- ✔ **Definitions and terminology** explaining what is and is not considered telework.
- ✔ **Statement of purpose** identifying the intended benefits of telework from different perspectives and outcomes, such as emergency preparedness, workforce efficiency, work/life balance, and cost savings.
- ✔ **Key principles**, such as:
  - The telework program is *discretionary* (does not create an employee right) except for people with disabilities for whom telework is considered a reasonable accommodation (absent undue hardship for employer).
  - The telework program is *voluntary* for the employee.
  - The *terms and conditions of employment, worker protections, disciplinary procedures, and drug and alcohol policies* are unaffected by the telework program.
  - *Specifications* of what telework *may* and *may not* be used for, subject to reasonable modifications for people with disabilities for whom telework is considered a reasonable accommodation (absent undue hardship for employer).
- ✔ **Goals:** setting participation goals.
- ✔ **Emergencies:** ensuring the performance of essential functions during emergencies.
- ✔ **Eligibility and participation criteria** specifying which individuals may not be considered eligible under any circumstances, recognizing modifications for individuals with disabilities for whom telework is considered a reasonable accommodation (absent undue hardship).
- ✔ **Security and confidentiality** protocols to ensure the security of data and other information handled while teleworking and taking appropriate safeguards to secure confidential data and information.
- ✔ **Equipment and supplies** clarity that explains that equipment provided to an employee by the employer remains the property of the employer and will be returned upon termination of an employee's participation in a telework program.
- ✔ **Processes related to the telework agreement**, including:
  - Training;
  - Self-assessments;
  - Negotiations;
  - Approval/denials;
  - Review; and
  - Accommodations, terminations, and withdrawals.

- ✔ **Responsibilities of personnel**, including that of:
  - Personnel authorized to administer the telework program; and
  - Managers and supervisors responsible for negotiating written telework agreements with employees and maintaining effective communication.
- ✔ **Responsibilities of employees**, including that employees are responsible for entering into and complying with the terms and conditions of a written telework agreement.

## Content of Telework Agreement

- ✔ **Expectations/communications**: assumptions such as work location, frequency, modes of communications, and expectations for emergency telework.
- ✔ **Location of the telework**: e.g., employee's home or telework center.
- ✔ **Work hours and schedule**: including availability.
- ✔ **Report to official worksite**: procedures to be followed regarding reporting to the official worksite to meet business-related needs, such as meetings and training.
- ✔ **Job performance**: clear and consistent performance standards that are comparable to those employees who are not teleworking, are result-oriented, describe the quality and quantity of expected work products and a method of performance evaluation.
- ✔ **Designated work area, equipment, and supplies**: specification of equipment and supplies the employee is expected to provide, and the equipment, supplies, technical assistance, and support the employer is expected to provide.
- ✔ **Expenses**: set forth expenses that are and are not reimbursable.
- ✔ **Technical support and assistance**: including collaboration tools.
- ✔ **Workplace safety**: self-certification safety checklist is used as a guide.
- ✔ **Liability and compliance with local zoning ordinances** explaining the employer is not responsible/liable for damages to the teleworker's personal or real property while the teleworker is working at the remote workplace; however, employee remains covered by workers compensation.
- ✔ **Data and information security, privacy, and confidentiality** protocols.
- ✔ **Emergencies**: whether an employee would be expected to work in the case of inclement weather or an emergency that may result in a disruption to normal office operations.

## Implementation Methods and Strategies

- ✔ **Designation of lead office**: roles and responsibilities, including adopting a telework policy, managing the implementation, developing and providing training and technical assistance, and adopting data collection and recordkeeping requirements.
- ✔ **Designation of telework coordinator**: appointment of an individual to oversee the implementation of the telework program. In addition, responsibilities could include serving as an advisor for company leadership and a resource for managers and supervisors.
- ✔ **Education and training for managers, supervisors, and employees** to ensure all stakeholders can make informed decisions regarding the use to telework as a viable option.

- ✔ **Technical assistance** to employees regarding the effective and efficient functioning of information and communication technology.
- ✔ **Recordkeeping and reporting:** inclusion of various types of information important to understanding progress in the telework program.
- ✔ **Data collection, tracking, and evaluation:** measures used to report success, including participation, employee satisfaction, increased productivity, more efficient use of office space, and supervisor satisfaction.

## APPENDIX B: REASONABLE ACCOMMODATION/TELEWORK POLICY CHECKLIST

Employers may want to use the following checklist as a framework for adopting policies related to telework as a reasonable accommodation under the ADA and other federal or state disability nondiscrimination laws. The framework takes into consideration guidance provided by the Equal Employment Opportunity Commission (EEOC) and policies included in general telework policies adopted by employers, with certain modifications and adjustments, as necessary.

It should be noted that the checklist does not create new legal requirements or change current legal requirements. Undertaking any or all of items included in the checklist does not ensure compliance with the reasonable accommodation requirement. Also, this checklist may be helpful to employers, regardless of whether they maintain a single telework policy or separate policies addressing telework as a reasonable accommodation and telework in general.

### CHECKLIST:

- ✔ Does the policy recognize that telework may be a form of reasonable accommodation because changing the location where work is performed may be a form of modifying a workplace policy?
- ✔ Does the policy recognize that telework is often suggested as an accommodation solution to address work-related barriers? These may include:
  - Difficulty commuting to and from work due to disability-related reasons;
  - Limited access to accessible parking;
  - Limited worksite or workstation accessibility;
  - Environmental issues (e.g., construction activities, exposure to chemicals/irritants, temperature sensitivity, problematic lighting, etc.);
  - Lack of privacy to manage personal/medical needs, such as using the restroom, taking medication, or receiving treatment;
  - Rigid work schedule;
  - Exposure to viruses, bacteria, or other contaminants; and
  - Workplace distractions affecting concentration.
- ✔ Does the policy recognize that the determination of whether telework is an appropriate reasonable accommodation for an employee with a disability should be made through the interactive process between the employer and the individual and that:
  - The employer is permitted to understand why the disability might necessitate the individual working at home;
  - The individual must explain what limitations from the disability make it difficult to do the job in the workplace, and how the job could still be performed from home;
  - The employer may request information about the individual's medical condition (including reasonable documentation) if it is unclear whether it is a "disability" as defined by the ADA;
  - The employer and employee may wish to discuss other types of accommodations that would allow the person to remain full time in the workplace. However, in some situations, working at home may be the only effective option for an employee with a disability;

- In order to determine whether a particular job can be performed at home, the employer and employee first need to identify and review all the essential job functions; and
- After determining what functions are essential, the employer and the individual with a disability determine whether some or all the functions can be performed at home?
- ✔ As part of the interactive process, does the policy specify that the employer should discuss with the individual whether the disability necessitates working at home full time or part time, or permanently or intermittently?
- ✔ Does the policy specify the factors that should be considered in determining the feasibility of working at home, including the employer's ability to supervise the employee adequately and whether any duties require use of certain equipment or tools that cannot be replicated at home, and consider:
  - Whether there is a need for face-to-face interaction and coordination of work with other employees;
  - Whether in-person interaction with outside colleagues, clients, or customers is necessary; and
  - Whether the position in question requires the employee to have immediate access to documents or other information located only in the workplace?
- ✔ Does the policy recognize that the employer should not deny a request to work at home as a reasonable accommodation solely because a job involves some contact and coordination with other employees (i.e., frequently, meetings can be conducted effectively by telephone and information can be exchanged quickly through email)?
- ✔ If the employer determines that some job duties must be performed in the workplace, does the policy specify that the employer and employee need to decide whether working part time at home and part time in the workplace will meet both of their needs?
- ✔ Does the policy recognize that the employer may select any effective accommodation, even if it is not the one preferred by the employee, and that:
  - Reasonable accommodations include adjustments or changes to the workplace, such as: providing devices or modifying equipment, making workplaces accessible (e.g., installing a ramp), restructuring jobs, modifying work schedules and policies, and providing qualified readers or sign language interpreters; and
  - The employer can provide any of these types of reasonable accommodations, or a combination of them, to permit an employee to remain in the workplace?
- ✔ Does the policy include or incorporate by reference applicable policies from the general telework program, including purposes, telework agreement, and implementation methods and strategies?
- ✔ Does the policy include or incorporate by reference implementation methods and strategies such as:
  - Designation of telework coordinator and/or centralized office; and
  - Continuous improvement of progress through recordkeeping and reporting, data collection, tracking, and evaluation.