

# JAN

Job Accommodation Network

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## Accommodation and Compliance Series

# Accommodation and Compliance Series: Telework

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## JAN'S Accommodation and Compliance Series

### Introduction

Alternative work arrangements, like telework, can expand employment opportunities for many workers, but particularly for employees with disability-related limitations that affect commuting to work or performing job duties at a traditional worksite. The Equal Employment Opportunity Commission (EEOC) says that telework/work at home may be a form of reasonable accommodation under the Americans with Disabilities Act (ADA), because changing the location where work is performed may be a form of modifying a workplace policy. For information about telework and the ADA, see [Work At Home/Telework as a Reasonable Accommodation-Fact Sheet](#). Federal agencies can access information about telework through the Office of Personnel Management site, [telework.gov](http://telework.gov).

Telework is often suggested as an accommodation solution to address a variety of [impairments](#), [limitations](#), and [work-related barriers](#). Examples of work-related barriers can 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, like using the restroom, taking medication, or receiving treatment
- Rigid work schedule
- Exposure to viruses and bacteria
- Workplace distractions affecting concentration

Choosing telework as an accommodation requires a collaborative effort to determine what is reasonable, on a case-by-case basis. Answering the following questions may be useful when exploring telework as a reasonable accommodation.

#### **Are other employees in the same position permitted to work at home?**

Telework is often considered a benefit of employment that is available to all or some employees within an organization. Remember, if employees have access to telework, by virtue of the benefits and privileges available to employees in certain positions, then employees with disabilities should not be held to a different standard, or be required to jump through additional hoops, to gain access to the benefit or privilege simply because the request to telework is for a disability-related reason.

What this means for employers is, if employees are not required to provide any particular documentation or justification to gain access to telework, then employees with disabilities who are seeking access to this benefit should be treated in the same manner. However, if telework is not available as a benefit of employment, or if telework beyond what is generally available as a benefit of employment is being requested, then the request to work at home may be handled as a request for reasonable accommodation under the ADA.

### **How frequently will telework be needed, and for what duration?**

The frequency and duration of the need to work at home may impact the feasibility of allowing telework as a reasonable accommodation. For example, it's useful to know if the employee will need to work at home as-needed, a few hours a week, a few days a week, or maybe every day. Also, if telework is necessary on a temporary or short-term basis, it is possible the accommodation may be more feasible than a long-term or indefinite arrangement.

### **Can the essential job functions of the position be performed outside of the traditional work environment?**

When exploring telework, it's necessary to identify and review all of the essential job functions. The essential functions are tasks that are fundamental to performing a specific job. Employers are not required to remove essential job duties to permit employees to work at home as an accommodation. For some jobs, the essential duties can only be performed in the workplace, but in many jobs, some or all of the essential duties can be performed at home. Evaluate each situation case-by-case to determine if, and to what extent, it is feasible to perform essential duties at home. For example, in some situations, an individual may be able to perform only specific duties from home, on occasion, but in others, all duties might be performed at home, fulltime.

### **Will the employee have access to the equipment needed to perform the essential duties of the position?**

Working at home often requires accessing electronic information, or communicating with others in a remote way, which means it is often necessary to use electronic devices (e.g., laptop, cell phone, etc.) to perform essential job duties. Many employers permit employees to take a laptop computer from the job site to work at home and to remotely access information systems outside of the traditional work environment. The equipment that may be needed to enable an employee to telework will depend on the specific facts of the situation, and may be impacted by whether telework is a benefit of employment or a reasonable accommodation.

When employers do not provide workstation equipment, like desks and chairs, in order for employees to work at home as a benefit of employment, then the employee, not the employer, will generally be responsible for providing his or her own workstation equipment. In this case, working at home is not a reasonable accommodation because it is a benefit of employment available to all eligible employees. In other words, the

employee is not asking to telework because of the disability, but is only trying to gain access to a benefit of employment provided to all employees, and when accessing the benefit, employees choose their own workstation equipment.

When employees request to work from home as an accommodation, the issue of what equipment employers must provide is not clear-cut. While the ability to work from home can be justified by limitations from a disability, the lack of equipment is not usually something related to the disability. If it's specialized equipment that a person is unlikely to have at home, then an argument could be made that an employer may need to provide the equipment. The ADA and the Rehabilitation Act do not address this question, and to date, neither has the EEOC. This does not necessarily mean recreating the office at an employee's home, but it might require providing some of the equipment necessary to enable the employee to perform essential functions. The bottom line is that this issue must be approached on a case-by-case basis.

When an employer's operations are completely virtual, this may give the employer a stronger argument that providing furniture or home accessories, or modifications to such things as desks, chairs, lamps or other lighting, carpeting, or window treatments is not a reasonable accommodation. These may all be viewed as equivalent to personal use items. Reasonable accommodation is a legal obligation because employers, intentionally or unintentionally, create workplace barriers by making decisions that adversely impact a person because of a disability. An employer purchases workplace furniture; because the employer controls that process it may unintentionally create a workplace barrier when a specific piece of furniture creates problems for an employee because of a disability. But, the employer does not create a barrier if furniture purchased by an employee to use at home now causes a problem.

### **How will the employee be supervised and performance be measured?**

Employers are often leery about allowing employees to work at home because there is no on-site supervision, and performance management may require additional effort. It may be useful to prepare a telework plan that includes performance expectations and the means by which communication and supervision will occur. Communication is key. Conduct daily video chats to check-in, exchange emails frequently, hold regular video or conference calls, visit the employee at home, or ask the employee to come into the office periodically. Set clear performance expectations, agree on the tasks to be completed from home, and create measurable goals. Task/project-management software might be used to track productivity and progress and to work collaboratively with colleagues.

### **Does the work require in-person interaction with colleagues, clients, or customers, and can communication occur in an alternative way?**

Some jobs require in-person interaction with others as an essential function. For example, food servers, on-site receptionists, and cashiers, must perform their essential duties on-site, and in-person. Many jobs do not require in-person interaction, or the

interaction can occur in a different way. According to the EEOC, a request to work at home as a reasonable accommodation should not be denied solely because a job involves some contact and coordination with other employees. Collaboration, brainstorming, weekly meetings, etc., can often be conducted effectively through remote or electronic means of communication (e.g., video chat, conference call, email, etc.).

**May an employer provide accommodations that enable an employee to work full-time in the workplace rather than granting a request to work at home?**

According to the EEOC, the employer may select any effective accommodation, even if it is not the one preferred by the employee. An employer can provide accommodations that enable an employee to remain in the workplace, so long as accommodations are effective. The EEOC states that if more than one accommodation is effective, the preference of the individual with a disability should be given primary consideration, but the employer does have the ultimate discretion to choose between effective accommodations.

## **Situations and Solutions:**

### **A bill and account collector had trouble concentrating due to Huntington's disease.**

JAN suggested and the employer ended up moving the employee's cubical, using higher cube walls, providing noise absorbing paneling and noise canceling headphones, designating time that is phone-free and visitor-free, changing work hours to quieter times of day, and permitting telework.

### **A temporary agency provides computer programmers for companies**

Once the programmers are assigned to a company, the company sets their schedules and production standards and provides all necessary equipment and supplies. The temp agency pays the programmers and addresses any issues that come up. One programmer was diagnosed with cancer and needed a flexible schedule, telework, and leave. Because both the temp agency and the company qualified as an employer of the programmer, they worked together to provide the necessary accommodations and to cover the work load when the programmer needed leave.

### **An employee with a disability asked to telework full time, but the request was denied.**

The employer stated that the employee's job could not be done effectively if she worked at home full time, but allowed the employee to telework two times a week. The employee disagreed with the employer's decision and filed a complaint for failure to accommodate. In response, the employer discontinued allowing the employee to telework at all. This action constituted retaliation for filing a complaint.

### **A graphic arts professional whose company was in the process of remodeling was having some difficulty working in the building due to paint fumes and construction materials.**

It was too far into the process to change the products that were being used so the company needed some other way to accommodate. The employee was able to work from home on a temporary basis during the remodeling phase of her portion of the building. The employee already had a computer at home so the employer provided all of the necessary software, modem, and a new telephone line to be used for business purposes only. The company also provided a fax machine so the employee could fax materials back and forth between the work-site and her home office. To monitor her work performance, the employee was required to respond to e-mails in a given time period and to keep a log of all work completed. The employee attended weekly meetings by speakerphone.

### **A customer service representative at a financial institution couldn't sit in a vehicle for any length of time due to a newly acquired leg impairment, preventing her from being able to commute to work.**

The employer called JAN to learn about its responsibilities as an employer for

commuting issues. The employer permitted the employee to telework from home as a reasonable accommodation.

**A therapist with chronic fatigue had difficulty maintaining the stamina needed to work full time**

Part of the problem was that she had a difficult commute to and from work every day. She asked her employer if she could telework two times a week and do her paperwork on those days. Her employer had never had an employee telework before so decided to allow it on a trial basis to determine whether it would work. After trying it for a month, the employer agreed to allow the employee to continue teleworking.

**An editor with Raynaud's syndrome experienced flare ups when their shared workspace was too cold.**

This made it hard to concentrate on the task at hand. The employer and employee agreed that telework would be the best accommodation as it would permit the employee to continue working while controlling the temperature.

**A tax preparer with renal disease had trouble getting to work on time due to toileting needs.**

They requested and was permitted telework to eliminate the need to commute daily. This enabled the employee to meet his toileting needs, but also perform the job effectively.

**An employee with agoraphobia works from home full-time as a benefit of employment.**

When new management comes on board, the whole telework program is scrapped and everyone is required to return to the office. The employee, who never had to disclose and ask for an accommodation, now asks for a policy modification that would allow him to continue to work from home. The new management considers his request and finds no hardship in allowing him to remain at home to complete his job tasks.

**An architect who works in a large, busy, open office space requested the accommodation of a private workspace to help her handle stress and emotions brought on by the open, crowded, and often noisy environment.**

The employer agreed to accommodate the employee with a more private working space. The option to telework was also provided, as well as flexible scheduling for when the employee was particularly stressed while under firm deadlines.

**An accountant with cerebral palsy could not walk long distances.**

His employer provided him with a reserved parking space close to the building and allowed him to work from home three days a week.

**A social media coordinator with preeclampsia was placed on bed rest during the last month of her pregnancy.**

She was restricted from climbing, walking, and standing for extended periods of time. She also required a reduced schedule of working no more than six hours per day. The majority of her job tasks could be completed on-line. She was permitted to reduce her

schedule and work from home for the duration of her pregnancy. She attended team meetings using a videoconferencing app.

**A service worker was having difficulty maintaining a full workday due to fatigue.**

The individual was accommodated with periodic rest breaks away from the workstation, a flexible work schedule, flexible use of leave time, parking close to the work-site, and periodic work from home.

**An employee recently had surgery, which was needed as a result of a bladder condition.**

She was not able to commute to work so she asked to telework. The telework policy was extended to only senior employees. The employer agreed to modify the telework policy for the employee, who was considered a new employee, on a temporary basis, to see how the accommodation works.

**A local government employee requested accommodations due to fragrance sensitivity.**

The employer purchased an air purifier, custodians were instructed to use non-scented janitorial products, and areas of a public facility were designated as non-scented/fragrance-free zones. The employer educated all employees on refraining from wearing fragrances on the job. The employee was also permitted to work from home one day per week.

**A computer programmer with Hepatitis B was experiencing fatigue and nausea, which resulted in problems commuting.**

The employer provided a modified schedule and gave the employee an option to work from home.

**A federal employee experience neuralgia from shingles when trying to sleep.**

His physician stated that the most severe effects should pass within two months. He was granted telework with a flexible schedule to accommodate his fatigue and lack of sleep.

**A reporter with ADD had a difficult time with distractions while working in a crowded, busy, and noisy newsroom.**

She asked for the accommodation of working from home when she was on a deadline. The employer was concerned about her being away from the other employees, as well as being further away from the downtown area where most of the news occurred., but offered her a trial accommodation of working from home, contingent upon her ability to get to the scene of breaking news quickly. She reported back later that the accommodation was so highly successful that the employer had decided to provide telework on a long-term basis.

**After receiving complaints from coworkers about an employee passing very smelly gas, the employer discussed the problem with the employee.**

The employee said he was aware of the problem, but did not know it was that bad. He indicated that he has a gastrointestinal disorder that had flared up recently. The

employer agreed to allow the employee to telework until the employee's condition was under control again.

**An office administrator at a university had mobility issues and used a cane.**

The elevator had been broken, so the employee was accommodated with telework on a part-time basis and a temporary office set up on the ground floor.

**An employee with avoidant personality disorder works as a vocational specialist for a disability insurance company.**

Originally, the employee's position allowed him to work from home full time. Recently, the company decides to begin transitioning some of its teleworking employees back into the office. The employee discloses his condition and requests he be allowed to continue working from home as an accommodation. The employee provides medical documentation explaining that he experiences intense feelings of inadequacy and discomfort when around others and would not be able to perform at the same level in an office environment as he would at home. As a result, the employer allows the employee to continue working from home.

**An employee recovering from surgery, which was needed as a result of gastroesophageal reflux disease (GERD), was not able to commute to work.**

The employee was able to perform most of their job from home but there was not enough work to support full time telework. The employee was able to find alternative transportation to the office two days a week and the employer agreed to provide telework three days a week.

**An educational consultant with epilepsy had driving restrictions.**

JAN suggested allowing another team member to drive to site-visit locations and telework whereby she could communicate via e-mail and submit paperwork electronically.

**An architect in a large, busy, open office space requested a private workspace (on the sunny side of the building) to help her handle stress and emotions brought on by the open, crowded, and often noisy environment.**

Her employer agreed to her requested accommodations for seasonal affective disorder (SAD), but also provided telework as an option as well as flexible scheduling for when the employee was particularly stressed while under firm deadlines.

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