**OVERVIEW**

For purposes of slowing the spread of COVID-19, state agencies were initially encouraged in March 2020 to authorize employees to work from home, to the extent possible. After several months, agencies were slowly able to return employees to their brick-and-mortar workplaces by implementing mitigating measures such as: facial coverings; social distancing; installation of plexiglass barriers; limiting in-person meetings; sanitizing high touch surfaces; and, contact tracing and quarantine protocols.

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**APPLYING THE ADA ACCOMMODATION LENS**

Given the above, the most common request that employees now have related to COVID-19 is to telework from home. It is important to view such teleworking requests through the lens of an accommodation request in accordance with the Americans with Disabilities Act (ADA). To conduct an appropriate analysis:

1. **Determine whether the employee has a condition that qualifies under the ADA as a disability.[[1]](#footnote-1)**  If no, the employee is not a “qualified” individual under the ADA and thus, the agency is not required to accommodate the employee.
2. **If so, determine what accommodations can be provided.**
* For purposes of evaluating teleworking as an accommodation, is the employee’s job truly conducive to such? How would productivity and accountability be ensured? Did the employee previously telework related to the pandemic and, if so, was the employee able to satisfactorily perform all of the essential functions of the job?
* Consider whether other alternative accommodations would be equally effective. The Job Accommodation Network (JAN) has a helpful resource titled, “Accommodation Strategies for Returning to Work During the COVID-19 Pandemic” (<https://askjan.org/blogs/jan/2020/08/accommodation-strategies-for-returning-to-work-during-the-covid-19-pandemic.cfm>) that provides accommodation ideas related to limiting the risk of exposure to COVID-19, addressing physical distancing needs, and addressing communication needs.

**EEOC GUIDANCE**

While navigating through accommodation requests, it is important to apply the guidance provided by the U.S. Equal Employment Opportunity Commission (EEOC), which oversees enforcement of the ADA. Recently, the EEOC issued, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>). Several important takeaways include:

1. COVID-related accommodations may be approved on an interim or trial basis, with an end date, for purposes of responding to changes in the COVID environment and/or while awaiting receipt of medical documentation.
2. The ADA does not require an employer to accommodate an employee who has no disability based on the disability-related (high risk) needs of a family member or other person with whom the employee resides.
3. The fact that an employee may have been temporarily authorized to work from home due to COVID-19 does not automatically mean the agency is required to grant teleworking as a long-term or permanent accommodation.
* If there is no disability-related limitation that warrants teleworking, the employee is not a “qualified” individual under the ADA and thus, the agency is not required to accommodate the employee.
* If the employee has a disability-related limitation, but the agency can effectively address the need with another form of workplace accommodation that is reasonable, the agency may choose that alternative to telework.
1. An employee’s vaccination status does not have a bearing on accommodation requests. When an employee asks for a reasonable accommodation, whether the employee is fully vaccinated or not, the agency should engage in the interactive process to determine if there is a disability-related need for reasonable accommodation.

ADA Coordinators are encouraged to fully read the EEOC guidance for more information.

**FURTHER ASSISTANCE**

For further assistance navigating the ADA in light of COVID-19, please feel free to contact Rikki Nicole David, State ADA Coordinator, at (225) 342-1243 or rikki.david2@la.gov.

1. ##  Refer to 29 CFR §1630.2 at <https://www.ecfr.gov/cgi-bin/text-idx?node=pt29.4.1630&rgn=div5> for definitions of disability; physical or mental impairment; major life activities; and, substantially limits. “Substantially limiting” is not meant to be a demanding standard.

 [↑](#footnote-ref-1)