

Return-to-Office Policies Are Creating New ADA Risks for Employers

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As employers continue implementing return-to-office (RTO) policies, many Florida employers are experiencing increased accommodation requests involving remote work, hybrid schedules, modified start times, and intermittent flexibility. While many employers believed the end of the COVID-19 pandemic would reduce telework-related accommodation disputes, the opposite has often occurred.

Recent guidance from the Equal Employment Opportunity Commission (EEOC), while directed at federal employers' obligations under the Rehabilitation Act, provides useful insight into the agency's position on telework as a reasonable accommodation under the Americans with Disabilities Act (ADA), since the Rehabilitation Act incorporates the ADA's reasonable accommodation standards. The guidance reiterates that remote work may still constitute a reasonable accommodation under the ADA depending on the circumstances of the position and the employee's limitations. However, the greater litigation risk for many employers may not arise from whether telework accommodations are ultimately granted. Instead, the risk increasingly stems from how employers handle the accommodation process itself. Delayed responses, inconsistent enforcement, irritated manager communications, and poorly documented interactive process discussions frequently become central issues in ADA litigation.

RTO Policies Do Not Eliminate ADA Obligations

Many employers understandably implemented RTO policies following the COVID-19 pandemic to improve collaboration, supervision, productivity, training, and operational consistency. However, blanket RTO policies do not eliminate an employer's obligation to engage in the ADA interactive process when employees request accommodations related to disabilities. The EEOC's recent guidance reiterates that employers must generally conduct individualized assessments regarding accommodation requests rather than relying solely on generalized assumptions regarding remote work.

At the same time, the EEOC recognizes that employers are not automatically required to permit remote work merely because employees previously worked remotely during the pandemic. Employers may reevaluate whether in-person attendance is necessary based on current business operations, supervision needs, teamwork requirements, or changed workplace circumstances. For many Florida employers, the operational difficulty arises when attempting to apply RTO expectations consistently across departments, managers, and employees.

Prior Remote Work Arrangements Create Significant Litigation Challenges

One of the most difficult issues facing employers is that many employees now point to years of successful remote work as evidence that physical attendance is not truly essential. Employees increasingly argue that they previously performed their duties remotely without issue, productivity remained satisfactory, meetings were conducted virtually, and employers only began emphasizing in-person attendance after accommodation requests arose.

As a result, many employers now face the difficult task of demonstrating that physical presence is an essential job function after operating remotely for extended periods during and after the pandemic. These disputes become even more complicated where managers inconsistently permit hybrid schedules, certain employees receive informal flexibility, attendance expectations vary by department, or job descriptions do not clearly identify in-person responsibilities.

In litigation, plaintiffs frequently focus on those inconsistencies to argue that RTO requirements are discretionary rather than essential. Accordingly, employers should periodically review whether job descriptions, operational expectations, and actual workplace practices align regarding in-person attendance requirements.

The Interactive Process is Increasingly Becoming the Real Dispute

In many ADA cases involving telework requests, the accommodation process itself increasingly becomes the primary focus of litigation. For example, plaintiffs frequently allege that employers:

- Ignored accommodation requests;
- Delayed responses;
- Failed to engage in meaningful accommodation discussions;
- Abruptly rejected telework without analysis; or
- Became hostile once accommodation discussions began.

Similarly, litigation risk often escalates when supervisors become frustrated by attendance issues, schedule modifications, or productivity concerns after accommodation requests are raised. Employees may later rely on communications stating, for example, “this remote work issue is becoming a problem,” “we need someone physically present,” or “the team cannot continue accommodating this.” Even where employers ultimately possess legitimate operational concerns, those communications may later be framed as evidence of retaliatory motive or hostility toward the accommodation request itself. As a result, the retaliation claims often begin where the accommodation discussion deteriorates.

Employees Do Not Need “Magic Words” to Trigger ADA Obligations

One issue employers frequently encounter is determining when workplace conversations may trigger obligations under the ADA interactive process. In practice, employees often communicate workplace limitations informally rather than expressly stating that they are requesting a “reasonable accommodation” or otherwise identifying their requests as ADA accommodations. Instead, employees may say, for example,

- “My anxiety improves when I work remotely”;
- “My condition makes commuting difficult”;
- “I am struggling being in the office full time”;
- “I may need flexibility because of treatment appointments.”

Managers frequently create unintended risk by failing to recognize potential accommodation requests, failing to escalate concerns to HR, or responding to requests informally without documentation. Those failures can later become significant issues if discipline, attendance scrutiny, or termination follows accommodation discussions.

Documentation and Consistency Matter More Than Ever

In many telework accommodation disputes, the most important evidence ultimately involves documentation created during the interactive process itself. Employers frequently create avoidable problems when accommodation discussions are undocumented, decisions are communicated verbally only, operational concerns are not clearly explained, or documentation is created only after litigation becomes likely. Well-documented interactive processes should generally reflect:

- The employee's stated limitations;
- Follow-up discussions;
- Accommodations considered;
- Operational concerns analyzed; and
- The reasons underlying final decisions.

Consistency also remains critically important. Plaintiffs frequently compare how different employees, departments, or supervisors handled similar remote-work requests. Inconsistent flexibility, informal exceptions, or discretionary hybrid arrangements may undermine later arguments regarding essential in-person attendance requirements. Accordingly, employers should ensure supervisors receive training regarding:

- Accommodation escalation procedures;
- Documentation expectations;
- Appropriate workplace communications; and
- Consistent enforcement of RTO policies.

Conclusion

Telework accommodation requests remain one of the most difficult ADA issues facing employers following the pandemic-era shift toward remote work. However, the employers best positioned to defend those disputes are not necessarily those that grant every remote-work request. Rather, they are the employers that engage in the interactive process consistently, communicate professionally, document carefully, and apply RTO expectations objectively across the workforce. As remote-work litigation continues evolving, employers should recognize that the greatest legal risk often arises not from the accommodation decision itself, but from the process surrounding it.

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