



# BUSINESS IN 2026

WEEKLY WEBINAR SERIES



# Your Host



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# Remote Work as a Reasonable Accommodation Under the ADA, PWFA and NYSHRL



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# The Basics

- Employers must provide **reasonable accommodations** that enable employees with disabilities to perform the **essential functions** of their jobs.
- Employers must engage in a good-faith **interactive process** with employees in response to a request for an accommodation.

# The Basics

- An accommodation is not reasonable if it removes an **essential function** of a job.
- An accommodation is not reasonable if it creates an **undue hardship** on the employer.
- An employee is not entitled to their preferred accommodation.

# Shifting Landscape

“[T]here is general consensus among courts...that regular work-site attendance is an essential function of most jobs.”

*Credeur v. Louisiana*, 860 F.3d 785, 793 (5th Cir. 2017)

## Shifting Landscape

“[E]ven a few months before the COVID-19 pandemic forced many workers to work from home, we noted that technological advances have made working from home more feasible, so that employers cannot rely on an automatic presumption working from home is unreasonable. *Bilinsky v. American Airlines, Inc.*, 928 F.3d 565, 573 (7th Cir. 2019). The many lessons learned about working from home effectively during the pandemic have reinforced that point.”

*Kinney v. St. Mary's Health, Inc.*, 76 F.4th 635, 644 (7th Cir. 2023)

**Do we need to allow an employee to work from home simply because we allowed it during Covid?**

## Impact of Covid

“[T]he fact that NYCHA voluntarily modified the plaintiff's job duties from April 2020 to July 2021 does not render fieldwork a non-essential function of the plaintiff's position. That NYCHA temporarily accommodated the plaintiff's disabilities at the height of the pandemic...does not mean that NYCHA had an obligation to continue providing that accommodation to the plaintiff once the [employer] resumed its regular operations.”

*Balchan v. New York City Housing Auth.*, S.D.N.Y. Feb. 24, 2025

# Impact of Covid

“Plaintiff maintains that she can fulfill the essential functions of her job remotely because during the COVID-19 pandemic, she was told that ‘her job duties could be done remotely.’ However, ‘the fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework for the purpose of protecting their safety from COVID-19, or otherwise chose to permit telework, does not mean that the employer permanently changed a job’s essential functions or that telework is always a feasible accommodation.’”

*Downey v. N.Y. State Office for People with Developmental Disabilities*,  
N.D.N.Y. Oct. 25, 2024 (quoting EEOC Technical Assistance Guidance)

# Impact of Covid

“[T]he period of providing telework because of the COVID-19 pandemic could serve as a trial period that showed whether or not this employee with a disability could satisfactorily perform all essential functions while working remotely, and the employer should consider any new [post-Covid] requests in light of this information.”

*EEOC Technical Assistance Q & A, Updated May 15, 2023*

## Impact of Covid

“Moreover, the record contains evidence supporting [plaintiff’s] position that [her employer] could have provided her a reasonable accommodation [of remote work] that would not have resulted in undue hardship.... This evidence is ***bolstered by the fact that [plaintiff] worked remotely full time in 2020*** for several months without issue, and received two merit recognitions during that time.”

*McNeil v. Health Care & Rehab. Servs. Of Se. Vt., Inc.*,  
D.N.H. Oct. 24, 2024

# Key Considerations

- Does remote work eliminate an **essential function**?
  - Supervising employees (unless the team is also remote)
  - Leading in-person meetings
  - In-person customer/client interaction
  - Handling physical paperwork
  - External requirement requiring on-site files
  - Handling of sensitive information
- Do we need to hire another person to backfill in-person tasks?
- Is the nature of the work already remote in a sense?

# Key Considerations

- Is a **partial** or **temporary** remote work arrangement feasible?
- What are other ways we can accommodate this disability?
  - Leave of absence\*
  - Additional breaks; different hours
  - Special parking arrangements
  - Workstation adjustments
- Has the employee rejected reasonable alternatives?

# Key Considerations

- Are we prepared to prove undue hardship (significant difficulty or expense)?
  - Even if the technology is not currently in place, what would it take to implement?

# Key Considerations

- Does the medical documentation actually support the necessity of the request?
- Should we communicate with the medical provider to explore other alternatives?
- Is the request really related to the performance of essential functions?
- Or is the request, instead, related to enabling medical treatment?

# Pregnant Workers Fairness Act

- Remote work is explicitly recognized as a reasonable accommodation (29 CFR 1636.3(i))
- Employee is “qualified individual” even if they cannot perform the essential functions if inability is temporary or can be performed in the near future.
  - Presumption that a pregnant individual will be able to perform essential functions in the near future

# Avoiding and Defending Failure to Accommodate Claims

- Maintain clear and complete job descriptions.
- Engage in interactive process and be creative.
- Beware of all-or-nothing approach: avoid blanket policies.
- Show your work: was required technology or other change thoroughly investigated, evaluated and documented?
- Consider comparators: are others allowed to work remotely?
- Engage supervisor: will they support the denial when pressed?
  - Be alert to supervisors' personal preferences, which may influence their reactions.

# Closing Thoughts

- Highly fact-specific; each case requires individualized analysis
- Heavily litigated area
- Employees increasingly successful, especially on early motions to dismiss

# Questions?



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# Thank You

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