Frequently Asked Questions from the Federal Sector about Telework Accommodations for Disabilities

The President has instructed executive agencies to "return to work in-person . . . on a full-time basis . . . consistent with applicable law."**[1]** Many agencies have requested assistance from the EEOC and OPM to ensure their implementation of the President's instruction remains consistent with the Rehabilitation Act of 1973. The Rehabilitation Act (the "Act"), as relevant here, provides equal employment opportunities for covered Federal employees with disabilities, including through reasonable accommodation.**[2]** Prior to the President's return-to-office order (and continuing after), many Federal employees with disabilities have requested and received telework. Among other topics, this FAQ aims to assist agencies in identifying when they are required to grant or continue telework accommodations, when they are permitted to rescind, modify, or deny telework accommodations, and how they can more effectively structure their processes for telework accommodations moving forward.**[3]**

1. **What is telework and what are the different types of telework?**

   Neither the Rehabilitation Act nor the Americans with Disabilities Act references or defines telework. In practical terms, "telework" refers to work performed at a location other than the employer-controlled worksite.**[4]** Very often telework will be performed at the employee's home.

This FAQ touches on three common types of telework: full-time telework, recurring or routine telework, and situational telework. Full-time telework, unsurprisingly, means the employee teleworks full-time (also referred to as remote work). Recurring or routine telework means the employee teleworks on a regularly scheduled (but less than full-time) basis, for example one day a week, two days a week, and so on. Situational telework refers to temporary telework in response to extenuating circumstances, for example allowing an employee with a disability to work from home for a set duration while they recover from a medical procedure. Situational telework has a foreseeable end and is by its nature infrequent and conditional.

2. **What is a reasonable accommodation? And when does telework constitute a reasonable accommodation?**

Both the Rehabilitation Act and the Americans with Disabilities Act use the phrase "reasonable accommodation." But neither defines it. The statutes do, however, provide examples of certain reasonable accommodations, and from these it can be inferred that reasonable accommodations entail "change[s] in the work environment or in the way things are customarily done" that provide equal employment opportunity for individuals with disabilities.**[5]** As to when an employer is required to make these changes, the EEOC has long recognized that "[t]here are three categories of reasonable accommodations [under the Act]."**[6]** These are (1) accommodations that enable applicants with disabilities to participate in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of their positions; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.**[7]**, **[8]**

Whether telework constitutes a possible reasonable accommodation depends on whether it serves one of these purposes. Telework that does not serve one of these purposes, such as telework that is primarily for the employee's personal benefit, is not a recognized reasonable accommodation under the Act. **[9]** This FAQ focuses primarily on recurring or full-time telework as an accommodation to enable an employee to perform essential job functions.

3. **Does the Rehabilitation Act require agencies to continue all previously granted recurring or full-time telework accommodations?**

   No. After an accommodation has been granted, agencies are allowed to "assess whether there continues to be a need for reasonable accommodation based on individualized circumstances [including] whether alternative accommodations might meet those needs."**[10]** It remains the case that "the employer providing the accommodation has the ultimate discretion to choose between effective accommodations."**[11]** This means an employee is not necessarily entitled to their preferred accommodation in perpetuity.**[12]** An agency may therefore reevaluate a previously granted telework accommodation and replace it with an effective alternative reasonable accommodation.**[13]**

   Revisiting previously granted accommodations allows agencies to adjust to changed circumstances. And it avoids disincentivizing agencies from going beyond the bare minimum required by the Act. An agency may voluntarily exceed the Act's base-line standard for any number of reasons. We have observed agencies exceed their reasonable accommodation obligations from a desire to be a supportive employer for disabled individuals or in response to the COVID-19 pandemic. But, "[when] an employer has voluntarily provided accommodations to the employee historically, that employer is not obligated to continue providing them and can discontinue such when they exceed what is legally required under the [Act]."**[14]** To hold otherwise would see an agency "punished for its generosity"**[15]** and "discourage[d] . . . from treating disabled employees in a spirit that exceeds the mandates of federal law."**[16]**

4. **Does the Presidential Memorandum require agencies to rescind all existing recurring or full-time telework accommodations? Does it require agencies to deny all pending and future requests for telework accommodations?**

   No. Agencies should not take a blanket approach to rescind and deny all recurring or full-time telework accommodations. Per the Presidential Memorandum itself, decisions related to telework must be "consistent with applicable law."**[17]** This includes remaining consistent with the legal obligation to provide reasonable accommodation under the Rehabilitation Act which may, in some cases, still require recurring or full-time telework or an effective in-office alternative to recurring or full-time telework.

The contours of an agency's legal obligation to provide reasonable accommodation will always be fact specific. And a distinction must be made between cases where telework is the *only* effective reasonable accommodation for a qualified employee with a disability and cases where telework is just one of several effective options. When there are several reasonable and effective options, an agency may choose an accommodation other than telework.

We strongly caution agencies against revoking previously granted telework without first making an individualized determination in each case. Many of the ensuing entries in this FAQ provide assistance on how to conduct such an individualized assessment.

If an agency takes a blanket approach and revokes previously granted telework without first making an individualized assessment, it risks liability in those cases where an individualized assessment would have shown that telework was either the only possible effective accommodation or that an in-office alternative was necessary to maintain an effective accommodation in lieu of telework. Since the agency is already on notice of the employee's need for accommodation, it would not be reasonable or effective for the agency to revoke a previously granted telework accommodation and simply tell the employee to submit a new accommodation request.

We recognize that making individualized determinations on all previously granted telework accommodations will take time and effort. It is impracticable, and likely impossible, for a large agency to make simultaneous decisions in all cases. Decisions will likely be made on a rolling basis. This means some employees may have telework accommodations rescinded or modified earlier than others. We recommend agencies apportion this task with an eye towards minimizing disruption. An agency could reevaluate telework accommodations in tranches based on geographic location or organizational unit so that all employees in the same location or within the same unit receive decisions around the same time.

5. **When and how may an agency reevaluate and modify a previously granted recurring or full-time telework accommodation?**

Reevaluation and modification of a reasonable accommodation are important steps in the on-going interactive process. An agency may, for example, find it helpful to reevaluate a significant accommodation such as recurring or full-time telework once a year to confirm the accommodation remains effective and manageable. And agencies should situationally reevaluate in response to material changes, such as a change in the employee's condition, a change in job requirements, a change in operational needs, a change in law, etc. The President's return-to-office instruction is a major change to agencies' operational circumstances, and when circumstances change, agencies may wish to reevaluate previously granted recurring and full-time telework accommodations to ensure compliance with the President's instruction.

After reevaluation, and if supported by the individualized assessment, an employer may allow the employee to continue on telework if doing so is necessary to ensure continued compliance with the Rehabilitation Act. If, however, reevaluation and individualized assessment demonstrate that telework is not necessary under the Act, the agency may replace a previously granted recurring or full-time telework accommodation with a reasonable and effective in-office option (or combination of options). This can include, but is not limited to, assistive devices, modified equipment, environmental modifications (sound, smell, light, etc.), job restructuring, modified or flexible work scheduling, etc. It can also include a reduction in telework, combined with in-office accommodations, provided the net result is still reasonable and effective.

It may happen that reevaluation demonstrates an employee is no longer, or perhaps was never, entitled to any reasonable accommodation. This can happen when intervening changes in the employee's condition or work circumstances obviate the original need for accommodation. Or the agency previously was unaware of or misapprehended the Act's scope. Or the agency may have voluntarily granted an over-generous accommodation even though the Act did not require it. Regardless, if an employee is not *presently* entitled to any reasonable accommodation, an agency may rescind a previously granted telework accommodation without offering any alternative.

6. **What medical documentation can be requested when reevaluating a previously granted telework accommodation?**

Accommodation decisions, whether on an original request or on revaluation, must be evidence based. Agencies are therefore entitled to sufficient information to make their decisions. Sufficiency is a flexible standard, and what amounts to sufficient information will vary from case to case. At one end of the spectrum, an agency is unlikely to need much if any additional information from an employee when the disability, functional limitations, or need for accommodation are obvious.**[18]** In the telework context, however, some requestors may have functional limitations or accommodation needs that are not obvious. It is foreseeable, then, that telework accommodations may entail in-depth inquiries from an agency before a sufficiently informed decision can be made.

When it comes to reevaluating telework, in the best-case scenario ample information was already gathered through the original request, and this information will be sufficient to decide on reevaluation whether telework should be continued, modified, or replaced. In this case, all agencies may have to do is confirm with the employee that the previously supplied information is still accurate. But it is also possible that agencies may find that many original decisions to grant telework were made without sufficient information. In these cases, an agency likely will need to make new inquiries, including requests for updated medical documentation, to obtain sufficient information for a reevaluation decision.

That the agency was previously satisfied with an insufficient record does not forfeit its option to revisit the issue and make a new decision based on a sufficient one. As we discussed above, there are any number of operational or policy reasons an agency may have previously gone above and beyond the statute's requirements, including by refraining from making medical inquiries or by exempting employees from supporting their requests with sufficient information. The law does not now punish these agencies for their previous largesse.

7. **May an agency ask an employee's health care professional about mitigating measures or self-accommodations the employee could take that would permit the employee to work in the office?**

Yes. “Determining the need for a reasonable accommodation . . . can take into account both the positive and negative effects of a mitigating measure.”**[19]** An agency may ask a health care professional about such measures and whether they would permit the employee to work in the office.

Reasonableness is the cornerstone of the accommodation process. And the need to consider mitigating measures is baked into the concept of reasonableness. “Reasonable” is a relational term and invites a comparison of relative costs and cost-avoidance capabilities between an employer and employee.**[20]** Assessing the relative costs and cost-avoidance capabilities requires considering mitigating measures. And in some cases, the comparison will show that it is unreasonable for an employer to provide a high-impact accommodation like telework when the employee could effectively and reasonably self-accommodate.

To illustrate, in the case of an employee requesting full-time or recurring telework due to a mobility impairment, the agency may ask a health care professional whether a mobility assistance device would be suitable for the employee’s condition and whether such device would enable them to work in the office. If the health care provider agrees the device would be suitable and would enable the employee to work in the office, then a reasonable approach could be for the employee to obtain the device and for the agency to ensure that the workplace is accessible to the device.

An agency should not, however, deny an accommodation because an employee has declined to pursue a particular medical treatment, such as medication or surgical procedure, that might mitigate their condition. The right to make personal health choices and the right to receive reasonable accommodation are not mutually exclusive.

Agencies are further reminded that the underlying determination whether an employee’s condition constitutes a disability must be made “without regard to the ameliorative effects of mitigating measures.”**[21]**

8. **What should an agency do if it is aware of evidence that appears to conflict with an employee’s need for a telework accommodation?**

An agency may consider conflicting or contradictory evidence. In doing so, an agency should take care to base its decisions on the best available evidence. An agency should give due weight to contradictory evidence that is reliable.**[22]** And it should discount contradictory evidence that is unreliable.

Further, an agency may consider evidence from sources other than the employee or the employee's health care provider. For instance, if an employee and their health care professional are unable to produce sufficient reliable information, the agency may, in limited circumstances, require a medical examination or record review by the employer's own designated health care professional, provided the inquiry remains job related and consistent with the business necessity of making a well-informed decision on the reasonable accommodation request.**[23]** Agencies should be mindful of the limitations at 5 C.F.R. Part 339 when offering or requiring employees to undergo an examination.

Though an agency is not necessarily limited in the kinds and sources of evidence it may consider, this is not a license to engage in fishing expeditions to undermine an employee's request for accommodation. An agency's evidence gathering must be undertaken with a reasonable purpose and through reasonable means. Evidence gathering that is unreasonably broad or invasive may unlawfully interfere with an employee's right to seek and enjoy an accommodation.**[24]**

That being said, an agency is not required to turn a blind eye to evidence tending to show that an employee is not entitled to an accommodation or that an employee acted in bad faith. Agencies have reported instances when employees assert they cannot drive to commute to work but are routinely observed doing so for personal activities. In other cases, employees assert they cannot perform work functions involving walking or other biomechanical motions, yet their public social media shows them routinely engaging in strenuous physical activity outside of work. An agency may follow-up on these incongruities. And if the follow-up persuasively shows the employee is not entitled to accommodation or acted in bad faith, the employer may deny or rescind the accommodation.

9. **Who within an agency should be responsible for reevaluating telework accommodations?**

   As a general matter, we encourage flexibility in the reasonable accommodation decision making process. On the one hand, this can mean allowing for decentralized decision making by front-line supervisors when the underlying request is straightforward and low impact. But flexibility can also mean adopting a centralized model when appropriate. Agencies can choose, for example, to centralize review for high impact or other significant accommodations, including telework. A centralized review process helps ensure uniform compliance with the Presidential Memorandum. And it provides consistent results for similarly situated employees. An agency may also choose to require centralized SES-level sign-off for certain categories of accommodations, including for recurring or full-time telework or for accommodations with an anticipated cost above a certain threshold. Any centralized review and approval process should still include an individualized assessment of each accommodation request, and should not result in or excuse unreasonable delays.**[25]**

10. **What are an agency's options when a previously granted recurring or full-time telework accommodation removed essential functions?**

    Many newly teleworking employees stopped performing essential functions when their workplaces were closed and their jobs upended during the COVID-19 pandemic. Even in workplaces that stayed open, many employers, after considering the unique exigencies related to the pandemic, voluntarily granted telework accommodations which included removing essential functions.

    Even at the pandemic's height, the EEOC anticipated that employers would eventually need to recall employees from telework and restore previously excused essential functions. We then advised, and now reiterate:

    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, that telework is always a feasible

accommodation, or that it does not pose an undue hardship. These are fact-specific determinations. The employer has no obligation under the [Act] to refrain from restoring all of an employee's essential duties at such time as it chooses to restore the prior work arrangement, and then evaluating any requests for continued or new accommodations under the usual . . . rules.**[26]**

Now that the Federal workplaces are fully re-opened—and Federal employees restored to the full range of their pre-pandemic essential functions—agencies may find that regularly attending work on-site is essential to most jobs, especially the interactive ones."**[27]** This includes positions that require "supervision and teamwork."**[28]**

Still, "[d]etermining whether a specific job has essential functions that require in-person work [entails] a case-specific inquiry."**[29]** Rather than generalizing from the emergency conditions of the pandemic, that inquiry must take into account the employer's present operations and present needs.

11. **How should an agency respond if an employee, previously on recurring or full-time telework accommodation, asserts a new alternative in-office accommodation is or will be ineffective?**

    The agency should give the employee an opportunity to explain in detail why the new in-office accommodation is or will be ineffective and to provide evidence to back up the assertion. If the employee convincingly shows that the in-office accommodation is or will be ineffective, the agency should consider if different or additional in-office modifications would make it effective.

    A distinction can be drawn between an employee claiming *prospectively* that an accommodation will be ineffective, and one having tried it out. If the agency reasonable believes, and the available evidence supports, that an in-office accommodation will be effective, it is not enough for the employee to simply claim, without sufficient evidence of their own, that an in-office accommodation *will* be ineffective. Under these circumstances, an agency may insist that the employee report to the office and try the accommodation out first. If the employee has returned to the office, and if their experience having returned convincingly shows that all in-office accommodations are ineffective, then the agency should consider placing the employee back on recurring or

full-time telework, provided doing so does not remove essential functions or result in a demonstrated undue hardship on the agency's operations.

As at every point in the interactive process, the focus is on evidence-based decision making. When an agency has modified a previously granted recurring or full-time telework accommodation, the employee's first-hand account of how the modification is playing out will be highly relevant. However, an employee simply saying the accommodation is ineffective will not suffice. The employee's account needs to show the agency how, despite the accommodation, the employee is unable to adequately perform their essential functions or enjoy a benefit or privilege of employment.

12. **What are an agency's options if an employee refuses to comply with an agency's decision to modify or rescind a telework accommodation and order for the employee to report to the office?**

    An employee who refuses to comply with an instruction to report to the office is absent without leave. If the employee's refusal to comply follows modification or rescission of a previously granted telework accommodation, the agency should first confirm the employee accurately understands the modification or rescission decision and its rationale, including, if applicable, why the agency concludes the employee can be reasonably and effectively accommodated with in-office measures. And the agency should invite the employee to suggest additional or alternative in-office accommodations that would be reasonable and effective under the circumstances. If the employee thereafter still refuses to comply with the return-to-office instruction, the agency should mark them AWOL and proceed with any appropriate disciplinary action as it would for any other AWOL employee.

    An employee whose telework accommodation has been modified or rescinded has the right to file a complaint with the agency's Equal Employment Opportunity office. Filing a complaint does not entitle the employee to telework during the pendency of the complaint.

13. **Is an agency required to provide recurring or full-time telework to employees with disabilities for reasons unrelated to work?**

No. We reiterate that the EEOC has long recognized that "[t]here are three categories of reasonable accommodations [under the Act]."**[30]** These are (1) accommodations that enable applicants with disabilities to participate in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of their positions; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.**[31]** It follows that an accommodation that does not meet at least one of these categories would not be required under the Act. For instance, "th[e] obligation [to provide reasonable accommodation] does not extend to the provision of adjustments or modifications that are primarily for the personal benefit of the individual with a disability."**[32]**

The first category, accommodations that enable employees with disabilities to perform essential functions, is the most commonly implicated. But to say that an accommodation must *enable* an employee to perform essential functions does not mean that an agency is only required to provide those accommodations which are *strictly necessary* to perform essential functions. **[33]** What the law does not require, however, is accommodations that *only* mitigate symptoms without also enabling the performance of essential functions.

To illustrate, some employees who request full-time or recurring telework assert that telework would help them manage their condition, mitigate their symptoms, or improve their quality of life. But these employees often do not explain how telework would also enable them to perform essential functions of their jobs. Possible symptom mitigation does not, by itself, establish an entitlement to telework as a reasonable accommodation. To say that an agency as an employer must provide accommodations that only mitigate symptoms of a disability without also enabling the performance of essential functions is indistinguishable from requiring the agency to directly treat the disability, something courts and the EEOC have repeatedly stressed it need not do.**[34]**

14. **An employee asserts they experience anxiety or other disability-related symptoms when working in the office. Is the agency required to provide recurring or full-time telework as an accommodation?**

It is inevitable that some employees will experience disability-related symptoms in the workplace. For instance, many employees with mental health impairments assert they experience anxiety in the workplace. But the Act does not create a general right to be free from all discomfort and distress in the workplace, including anxiety.**[35]** Instead, the Act entitles disabled employees to a fair shot to do their jobs and enjoy the benefits and privileges of those jobs on comparable footing as their non-disabled peers. When disability-related symptoms arise in the workplace, the question is first whether the symptoms impose a material barrier to the employee's ability to work in the office or enjoy a benefit or privilege of employment. If not, then reasonable accommodation is not at issue.**[36]**

Simple observation can be the best approach to telework requests in this vein. If an employee requests telework due to anxiety or similar distress in the workplace, the employer should first observe the employee perform their duties in the workplace. If the employee is able to perform to the employer's satisfaction, then anxiety is likely not a material barrier to equal employment opportunity. In the run of cases, common anxiety, without more, is unlikely to impose a material barrier.

If there is a demonstrated material barrier, however, the employer must consider reasonable accommodation, but not necessarily telework. Many common situations can be reasonably and effectively accommodated with in-office measures.**[37]** Telework is mandatory under the Act only if all other options are demonstrably ineffective.

15. **Is an agency required to provide recurring or full-time telework to disabled employees with difficult or lengthy commutes?**

Generally, no. Where the length and means of the commute are outside of the employer's control, it is unreasonable to require the employer to excuse the employee from commuting. "[I]n most cases, an employer has no duty to help an employee with a disability with the methods and means of [their] commute to and from work, assuming the employer does not offer such help to employees without disabilities."**[38]** Rather, "it is the employee's responsibility to arrange how [they] will get to and from work."**[39]**

While an agency may not be required to altogether eliminate a disabled employee's commute through telework, it may need to make some workplace modifications, such as flexible work scheduling, to enable the employee to effectively accomplish their commute and access the worksite.**[40]** And telework of limited duration may be reasonable if used to give the employee time to relocate closer to the worksite or secure different means for their commute.

16. **When can an agency offer situational telework?**

The Presidential Memorandum still permits agencies to consider limited situational telework even in cases where situational telework would not be the *only* reasonable and effective accommodation.**[41]** An example illustrates the point. When an employee goes through a course of treatment or a convalescence of defined duration, situational telework is often just one reasonable and effective accommodation option. In many cases, the employee's need for accommodation could also be reasonably and effectively addressed through a leave of absence. But when the choice is between leave or situational telework, situational telework is often the superior option for the agency in efficiency terms since the employee while on telework continues contributing to the agency's operations. A leave of absence, while perhaps not amounting to an undue hardship, may nevertheless impose meaningful costs on the agency as it either must find a replacement for the employee or else tolerate a production shortfall during the employee's absence. Since the intent of the Presidential Memorandum is to promote efficiency in the civil service, it likely contemplates that agencies will continue to provide situational telework as a reasonable accommodation for disability when doing so promotes efficiency even if the Act would allow the agency to pursue a less efficient non-telework alternative such as leave.

17. **Is an agency required to offer situational telework when an employee has a periodic "flare-up" or elevated symptoms related to their disability?**

No, situational telework is not necessarily required. It remains the case that the agency as employe may choose between effective reasonable

accommodations. For periodic flare-ups, leave can be a reasonable and effective option which the agency may choose instead of situational telework. Federal employees receive a generous allotment of paid sick leave which is meant to provide security against illness, including periodic flare-ups. Granting sick leave (or other accrued paid time off or leave without pay) during a flare-up gives the employee time to recover without interference from work duties**[42]** . In some cases, it is possible that allowing an employee to telework in lieu of leave would stymie their recovery and delay the healing process.

Though an agency is not required to grant situational telework during a periodic flare-up, it may still want to do so when the result is a net efficiency gain. An agency should consider whether the flare-up would materially impair the employee from performing work while teleworking and whether there is a foreseeable operational benefit to having the employee telework in lieu of leave. A net efficiency gain is unlikely for employees performing routine or fungible duties, but one may exist if the employee is performing high-impact or unique work.

18. **Are individuals that have requested or received a telework accommodation protected from retaliation?**

Yes. It is "unlawful to coerce, intimidate, threaten, or interfere with any individual . . . on account of his or her having exercised or enjoyed [the right to request and receive reasonable accommodation for disability]."**[43]** Agencies must take a respectful and evenhanded approach when addressing new accommodation requests or reevaluating previously granted ones. And they may not target an employee for unfavorable treatment because the employee requested or previously received an accommodation.

19. **Is this document binding?**

No. The the EEOC is the agency tasked by Congress to coordinate the Federal government's antidiscrimination efforts, and as such it may properly offer assistance to other agencies. Our assistance is not itself binding. This document is limited as a Technical Assistance designed to point agencies to pre-existing EEOC guidance, as well as Federal case law, that bears on telework

accommodations.

Our pre-existing guidance on this topic are only "a body of experience and informed judgment to which courts and litigants may properly resort for guidance."**[44]** We remind agencies and other parties that courts might not defer to our views.**[45]** It also bears noting that court views can also change or evolve.

20. **Are there resources to help agencies identify and implement effective alternatives accommodations?**

Yes. Agencies can find additional information at:

ADA National Network (formerly Disability and Business Technical Assistance Centers – DBTACs)

Phone: 1-800-949-4232 (Voice/TTY)

The ADA National Network consists of ten federally funded regional centers that provide information, training, and technical assistance on the Americans with Disabilities Act (ADA). Each center partners with local business, disability, government, rehabilitation, and professional networks to deliver current ADA information.

Computer/Electronic Accommodations Program (CAP)

Website: **www.cap.mil (http://www.cap.mil)**

CAP provides assistive technology and devices free of charge to participating Federal agencies. Requests must be submitted by the employing agency. CAP does not accept direct requests from individual employees or applicants.

Job Accommodation Network (JAN)

Phone: 1-800-526-7234 (Voice) | 1-877-781-9403 (TTY)

Website: **http://askjan.org (http://askjan.org)**

JAN, funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), provides free, expert, and confidential guidance on workplace

accommodations and disability employment issues. JAN offers extensive resources on ADA requirements and practical accommodation options for a wide range of disabilities.

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[1] Presidential Memorandum, *Return to In-Person Work* (https://www.whitehouse.gov/presidential-actions/2025/01/return-to-in-person-work/) (Jan. 20, 2025).

[2] The Rehabilitation Act, as presently enacted, does not include stand-alone liability standards for employment discrimination claims brought by Federal employees. The Act instead incorporates the standards from the Americans with Disabilities Act (ADA), as amended, including the provisions related to reasonable accommodation. 29 U.S.C. § 791(g); 42 U.S.C. § 12112(b)(5). Federal court opinions and EEOC guidance discussing the ADA standards are therefore applicable to the Rehabilitation Act where appropriate we take into account Federal cases arising under state laws mirroring the ADA.

[3] Throughout this FAQ we will use the phrase "telework accommodations" to refer exclusively to accommodations related to disability. Unless specifically stated, this FAQ does not address telework given as an accommodation for reasons other than disability, such as for religion or pregnancy

[4] *See* 5 U.S.C. § 6501(3) ("The term 'telework' or 'teleworking' refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.").

[5] Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, General Principles (https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada), U.S. Equal Emp. Opportunity Comm'n (Oct. 17, 2002) (quoting 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997)).

[6] *Id*.

[7] 29 C.F.R. § 1630.2(o); 29 C.F.R. pt. 1630 app. § 1630.9 (2024); **EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act (https://www.eeoc.gov/laws/guidance/technical-assistance-**

manual-employment-provisions-title-i-americans-disabilities-act) , U.S. Equal Emp. Opportunity Comm'n, Section III(3) (Jan. 1, 1992).

[8] Several circuits list a fourth category: accommodations that enable a disabled employee to pursue therapy or treatment for their disability. *Sanchez v. Vilsack*, 695 F.3d 1174, 1181 (10th Cir. 2012); *Fedro v. Reno*, 21 F.3d 1391, 1395-96 (7th Cir. 1994); *Buckingham v. United States*, 998 F.2d 735, 740 (9th Cir. 1993). We do not think these courts' recognition of this additional category necessarily conflicts with our smaller enumeration. An accommodation to pursue treatment can, we think, fit under either the essential functions or benefits and privileges category, depending on the circumstances.

[9] 29 C.F.R. pt. 1630 app. § 1630.9.

[10] 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) , U.S. Equal Emp. Opportunity Comm'n, Question D.20 (May 15, 2023).

[11] 29 C.F.R. pt. 1630 app. § 1630.9.

[12] *See Mullin v. Sec'y, U.S. Dep't of Veterans Affs.*, 149 F.4th 1244, 1255 (11th Cir. 2025); *Noll v. Int'l Bus. Machines Corp.*, 787 F.3d 89, 95 (2d Cir. 2015); *E.E.O.C. v. Agro Distribution*, LLC, 555 F.3d 462, 471 (5th Cir. 2009); *Emerson v. N. States Power Co.*, 256 F.3d 506, 515 (7th Cir. 2001).

[13] Additional resources for identifying and implementing alternative accommodations are provided at the end of this FAQ.

[14] *D'Onofrio v. Costco Wholesale Corp.*, 964 F.3d 1014, 1022 (11th Cir. 2020).

[15] *Van Zande v. State of Wis. Dept. of Admin.*, 44 F.3d 538, 545 (7th Cir. 1995).

[16] *Myers v. Hose*, 50 F.3d 278, 284 (4th Cir. 1995); *see also Perdue v. Sanofi-Aventis U.S., LLC*, 999 F.3d 954, 961 (4th Cir. 2021) ("We applaud [the employer] for going beyond its legal obligations under the [statute] in accommodating [the employee's] recovery. . . . But its generosity and overall flexibility does not raise the legal standard.").

[17] Presidential Memorandum, *Return to In-Person Work* (https://www.whitehouse.gov/presidential-actions/2025/01/return-to-in-

person-work/) (Jan. 20, 2025).

[18] **Enforcement Guidance: Disability Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees)** , U.S. Equal Emp. Opportunity Comm'n, Questions 5 and 7 (July 26, 2000).

[19] **Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008 (https://www.eeoc.gov/laws/guidance/questions-and-answers-final-rule-implementing-ada-amendments-act-2008)** , U.S. Equal Emp. Opportunity Comm'n, Question 16 (Mar. 25, 2008) (cleaned up for grammar and clarity).

[20] *See Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 138 (2d Cir. 1995) (Calabresi, J.).

[21] 42 U.S.C § 12102(4)(E)(i).

[22] *Fryson v. Fla. Agency for Health Care Admin.*, 696 F. Supp. 3d 1123, 1130 (N.D. Fla. 2023) (employer did not fail to provide reasonable accommodation when "[it] had good reason to think that [the employee's] request for an indefinite continuation of her work-from-home status was premised on inaccurate, if not untruthful, information").

[23] **Enforcement Guidance: Disability Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees)** , U.S. Equal Emp. Opportunity Comm'n, question 7 (July 26, 2000) (within the reasonable accommodation process "it is job-related and consistent with business necessity for an employer to ask an employee for reasonable documentation about his/her disability and its functional limitations"); *id.* at question 11 (explaining that an employer may require an employee to go to a health care provider of the employer's choice where the employee provides insufficient documentation and does not provide the missing information in a timely manner after being alerted to the insufficiency).

[24] *See* 42 U.S.C. § 12203(b) (making it unlawful for an employer to interfere with an employee's exercise and enjoyment of their rights under the ADAAA).

[25] The individualized assessment does not have to be done exclusively by the centralized decision maker. The centralized decision maker may review and appropriately rely on recommendations from a subordinate's individualized assessment.

[26] **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)** , U.S. Equal Emp. Opportunity Comm'n, Question D.15 (May 15, 2023).

[27] *E.E.O.C. v. Ford Motor Co.*, 782 F.3d 753, 761 (6th Cir. 2015) (en banc) (punctuation cleaned up).

[28] *Mason v. Avaya Commc'ns, Inc.*, 357 F.3d 1114, 1122 (10th Cir. 2004); *see also Morris-Huse v. GEICO*, 748 F.App'x 264, 267 (11th Cir. 2018) (noting that physical presence is an essential function when "the job required [employee] to interact with, coach, and lead a team of associates on a daily basis").

[29] **What You Should Know About COVID-19 (https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws)** , Question D.15.

[30] *See* **Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, General Principles (https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada)** , U.S. Equal Emp. Opportunity Comm'n (Oct. 17, 2002).

[31] 29 C.F.R. §1630.2(o); 29 C.F.R. 1630 Appx. § 1630.9; **EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act (https://www.eeoc.gov/laws/guidance/technical-assistance-manual-employment-provisions-title-i-americans-disabilities-act)** , U.S. Equal Emp. Opportunity Comm'n, Section III(3) (Jan. 1, 1992).

[32] 29 C.F.R. pt. 1630 appx. § 1630.9.

[33] *See, e.g.*, *Bell v. O'Reilly Auto Enters., LLC*, 972 F.3d 21, 24 (1st Cir. 2020) (that employee could "with some difficultly" perform essential functions without accommodation did not preclude them from seeking accommodations that would help them perform those functions); *Stokes v. Nielsen*, 751 F. App'x 451, 454 (5th Cir.

2018) (“[O]ur circuit has explicitly rejected the requirement that requested modifications must be necessary to perform essential job functions to constitute a reasonable accommodation.”).

[34] *Brookins v. Indianapolis Power & Light Co.*, 90 F. Supp. 2d 993, 1004 (S.D. Ind. 2000) (finding that employer was not obligated to facilitate disabled employee’s treatment, such as by appointment scheduling, as a reasonable accommodation); *Burnett v. W. Res., Inc.*, 929 F. Supp. 1349, 1358 (D. Kan. 1996) (employer not required to provide rehabilitation services to disabled employee with knee impairment); *Schmidt v. Safeway Inc.,* 864 F.Supp. 991, 996 (D.Or.1994) (“The employer is not required to pay for the [medical] treatment ..., since the medical treatment benefits the employee both on and off the job, not just in his capacity as an employee.”); **Enforcement Guidance: The Americans With Disabilities Act and Psychiatric Disabilities (https://www.eeoc.gov/laws/guidance/enforcement-guidance-ada-and-psychiatric-disabilities)** , U.S. Equal Emp. Opportunity Comm’n, Question 28 (Mar. 25, 1997).

[35] *Gaul v. Lucent Techs., Inc.*, 134 F.3d 576, 581 (3d Cir. 1998) (rejecting disabled employee’s claim that the ADA entitles him to stress free work environment and noting “[i]t is difficult to imagine a more amorphous standard to impose on an employer”) (quotations omitted); *Gonzagowski v. Widnall*, 115 F.3d 744, 747–48 (10th Cir. 1997) (“[I]t is unreasonable to require an employer to create a work environment free of stress and criticism”); *Pesterfield v. Tennessee Valley Auth.*, 941 F.2d 437, 442 (6th Cir. 1991) (“It would be unreasonable to require that [an employer] place plaintiff in a virtually stress-free environment and immunize him from any criticism in order to accommodate his disability”).

[36] *Hopman v. Union Pacific Railroad*, 68 F.4th 394, 401 (8th Cir. 2023) (noting that working without pain is not a benefit or privilege of employment).

[37] *Ellis v. Tennessee*, 603 F. App’x 355, 360 (6th Cir. 2015) (accessible bathroom and parking space were effective accommodations for employee’s Crohn’s disease); *King v. McDonough*, 596 F. Supp. 3d 206, 222 (D. Mass. 2022) (noise canceling headphones were effective accommodation for workplace distractions related to employee’s ADHD); *Tadder v. Bd. of Regents of Univ. of Wisconsin Sys.*, 15 F. Supp. 3d 868, 888 (W.D. Wis. 2014) (flexible breaks and allowing employee to keep snacks at work were effective accommodations for employee’s Type II diabetes); *Chisholm v. D.C.*, 666 F. Supp. 2d 96, 112 (D.D.C. 2009) (periodic rest breaks were effective accommodation for employee’s tendinitis); *Hawkins v. Counseling Assocs., Inc.*, 504 F. Supp. 2d 419,

437 (E.D. Ark. 2007) (employer reasonably accommodated employee's allergies by, among other things, instructing employees to refrain from using scented products, changing cleaning products used by custodial staff, allowing employee to relocate office, and allowing employee to bring in air purifier).

[38] *E.E.O.C. v. Charter Commc'ns, LLC*, 75 F.4th 729, 738 (7th Cir. 2023).

[39] *Id.* (quoting *EEOC Informal Discussion Letter, ADA: Reasonable Accommodation* (June 20, 2001), **https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-47 (https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-47)**).

[40] *See, e.g., id.* at 738–39 (reasonable accommodation could include flexible scheduling to allow vision impaired employee to limit night-driving); *Colwell v. Rite Aid Corp.*, 602 F.3d 495, 505-506 (3d Cir. 2010) (reasonable accommodation could include allowing vision impaired employee to transfer to day-shift to avoid driving at night); *Lyons v. Legal Aid Soc.*, 68 F.3d 1512, 1516-1517 (2d Cir. 1995) (reasonable accommodation could include providing mobility impaired employee with closer parking spot); *but see Regan v. Faurecia Automotive Seating, Inc.*, 679 F.3d 475, 480 (6th Cir. 2012) (narcoleptic employee not entitled to flexible schedule after she moved 79 miles away from her job); *and Unrein v. PHC-Fort Morgan, Inc.*, 993 F.3d 873, 878 (10th Cir. 2021) (flexible schedule to accommodate commute was not reasonable when employee's essential job duties required a set and predictable schedule).

[41] Similarly, OPM has advised agencies that they can, and should, consider limited situational telework as a religious accommodation even when the employee could be accommodated with non-telework means. *See* **OPM Memorandum Re: Reasonable Accommodation for Religious Purposes (https://www.opm.gov/chcoc/latest-memos/reasonable-accommodations-for-religious-purposes.pdf)** , Office of Personnel Management, p. 3 (July 16, 2025).

[42] This document addresses the rights and obligations of agencies and employees under the Rehabilitation Act. More information on the entitlement to leave usage is available through OPM. *See* OPM's **guidance on leave administration (https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/)** . (**https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/ (https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/)**)

[43] 42 U.S.C. § 12203(b).

[44] *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

[45] *See generally Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).