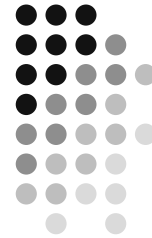


Work at Home/Altered Work Schedules as an Accommodation

ADA Audio Conference Program
January 27, 2009



Program Outlines

- Defining Telework – Telecommuting
- Telework as an Accommodation
- Case Law
- Best Practice in Telework as an Accommodation
- Altered Work Schedules
- Questions and Answers



Telecommuting/Telework



- Definition: Telecommuting and telework are synonyms for the use of telecommunication to work outside the traditional office or workplace
 - Land Phone/Mobile Phone
 - Computer/Internet/Wireless Technology
 - Video Conferencing
 - Fax/Email/Instant messaging

Fundamentals



- Reasonable Accommodation
 - Individual must be “qualified” to perform the essential functions of a job with or without a reasonable accommodation
 - Employers are not required to remove an essential function of a job in order to accommodate a telework/work-at-home schedule
 - Employers are required to provide an effective accommodation, not a preferred accommodation
 - There may be other accommodations available that would allow the individual to stay in the workplace



- Accommodations include but are not limited to:
 - Modifying Policies and Procedures
 - Modifying eligibility requirements
 - Modifying when things are done during the day/week
 - Modifying where or how a job task or series of tasks is performed
 - Home Office, Telecommuting Center, etc.
 - By phone versus face-to-face, etc.



- Interactive Process Necessary
 - Employer and Employee should engage in an interactive dialog regarding the need for an accommodation including the exploration of various types of accommodation that may address the issue
 - The need for an accommodation may be identified during the disciplinary process
 - Employer may need to suspend the disciplinary process to address an accommodation that may apply to the disciplinary issue



- Undue Hardship
 - An employer is not required to provide an accommodation that would result in an undue hardship
 - Financial Hardship
 - Cost of providing equipment/services in the phone
 - Administrative Hardship
 - Impact of supervision, etc.




Some Considerations When Determining whether Telework is “Reasonable”

- The employer's ability to supervise the employee adequately;
- Whether any duties require use of certain equipment or tools that cannot be replicated at home;
- Whether there is a need for face-to-face interaction and coordination of work with other employees;
- Whether in-person interaction with outside colleagues, clients, or customers is necessary;
- Whether the position in question requires the employee to have immediate access to documents or other information located only in the workplace;

Things to think about..



- Consideration of whether or not the employer has a policy and/or practice of allowing employees to “work at home”
 - Equal opportunity/consideration for individuals with disabilities, even if it is not an accommodation
- Work at home or telecommute as an accommodation is not necessarily an all or none situation
 - There may be situations or circumstances where it would be considered “reasonable” and others where it is “unreasonable”
- Work at home may only be necessitated to the extent that a disability necessitates it:
 - One day per week
 - Two half-days per week
 - Everyday for a particular period of time (i.e. during recovery from a surgery or other treatment related to the disability)

- 
- Can a part-time at home and part-time in the office schedule work in situations where face-to-face interaction is necessary with co-workers and/or customers/clients?
 - Work at home on an “as needed basis”
 - When the effects of a disability become particularly severe on a periodic but irregular basis

What is happening nationally?



- **STRIDE – Strategic Telework Research In Disability Employment (2006)** (Midwest Institute for Telecommuting Education and Humphrey Institute of Public Affairs) (436 Employers Surveyed)
 - 25% of employers that currently practice telework offered the option to employees with disabilities, with 46% of these employers reporting this practice scattered throughout the organization.
 - 71% of teleworkers with disabilities were full-time employees and 37% of employers reported teleworkers had exempt employee status.
 - Current employees with disabilities teleworked under various conditions such as isolated employee situations (45%), only with supervisor approval (46.2%), and only certain types of jobs (32.3%).



- 56.8% of employers indicated telework had been used as an option for short- term disability leaves.
- There was no significant difference in the incidence of teleworkers with disabilities in the government and non-government sectors, although more government employers (32%) had teleworkers with disabilities than non-government employers (24%).
- Employers with more than 500 employees had a higher prevalence of offering telework for employees with disabilities than employers with fewer than 500 employees.
- Employers that currently do not employ teleworkers with disabilities expressed a strong preference towards beginning a new employee with a part-time telework schedule.

Most Common Job Types



- Most prevalent job types for teleworkers with disabilities who had prior employment with an employer were:
 - Office functions (52.5%)
 - Administrative jobs (49.1%)
 - Research and analysis (45.9%)
 - Technician (36.1%)
 - Customer service (26.2%)
 - Claims review (24.6%)

Reported Challenges



- ***Employer Reported Challenges***
 - Identification of jobs that appropriately fit telework tasks (47.7%)
 - Difficulty in measuring performance (41.5%)
 - Lack of priority placed on telework by management (33.5%)
 - Supervisor resistance/uncertainty (32.3%)

Reported Benefits



- ***Employer Reported Benefits:***
 - Increased ability to respond to a particular employee's needs
 - Retain valued employees
 - Reduce employee turnover and recruitment costs
 - Control the rising cost of disability benefits

What have the Courts Said?



- 9th Circuit Court of Appeals (*Humphrey v. Memorial Hospitals Assoc.*, 239 F.3d 1128 (2001))
 - Transcriptionist with Obsessive-Compulsive Disorder was disciplined for attendance problems associated with her disability.
 - Employer telecommuting policy indicated that individuals were ineligible if they had disciplinary action against them.
 - Court ruled that "It would be inconsistent with the purposes of the ADA to permit an employer to deny an otherwise reasonable accommodation because of past disciplinary action taken due to the disability sought to be accommodated."



- 7th Circuit - *Vande Zande v. Wisconsin Dep't of Admin.*, 44 F.3d 538 (1995)
 - Individual with disability recovering from medical complications associated with disability
 - Requested telework as an accommodation following an extended medical leave
 - Employer denied request for telework as an accommodation
 - Court cited “[m]ost jobs in organizations public or private involve team work under supervision rather than solitary unsupervised work, and team work under supervision generally cannot be performed at home without a substantial reduction in the quality of the employee’s performance.”



Case Studies – Best Practices

- ***Dataserv/WANG (Technology Maintenance Provider)***
 - Call Center that operates 24 hr day/7 days week
 - High Employee turnover (30%)
 - Motivated to look at work at home options in order to increase employee retention



- Duplicated Telecommunication and Office Equipment in the workers home.
- Training conducted at the Corporate Site to ensure consistency and identify problems/needs of individual employees
- Employees are required to be on-site periodically for meetings and additional training



- Proven Success/Benefit:
 - 30 foot snowstorm made it impossible for on-site dispatchers to get into the Corporate office in Minnesota. The telework employees handled all calls for 30 hrs straight, enabling the company to remain in business and avoid potential disaster with customers.



- ***ChimneySweeps (Furnace and air conditioning maintenance)***

- Sole proprietor who worked from his home
- Hired teleworker with a disability to handle his appointments/scheduling and customer service calls
- Employer forwarded his office phone line when he was not in the office 9am-5pm daily and occasionally on weekends.
- This model enabled the employer avoid renting office space and enabled his customers to have contact with his business, even when he was working on other customers projects



- ***Law Firm***

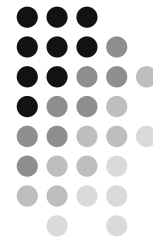
- Hired individual with disability as teleworker to answer phones from 5pm-10pm, forwarding calls from their offices to the teleworker.
- This arrangement was important as the Law Firm ran television advertisements and needed someone to respond to callers after hours.



- **Resources, Inc. (Non-profit organization)**

- Secretary who has significant disability related pain-fatigue
- Responsible for maintaining database, mailings, handling customer service calls and orders.
- Attends regular staff meetings in person and maintains daily contact with co-workers via telephone and email
- Resources, Inc. installed additional telephone line in employees home and supplies all office equipment.


Altered Work Schedules As An Accommodation



What can constitute an Altered Work Schedule?



- **Flextime** –An employee begins and ends work at non-standard times. The employee typically works the same number of days/hours per week or pay period
- **Flexible Scheduling** – An employee may take scheduled breaks at different times than other employees or extended breaks. The employees work day may be adjusted to accommodate the additional break time needed.

- 
- **Compressed Work Schedule** – Employee works a full time schedule in less than a traditional 5 day workweek.
 - **Reduced Work Hours** – Employee reduces the number of hours worked below full time (this may effect pay and benefits)



- **Job Sharing** – A form of regular part-time work, where 2 people share the responsibilities of one position by splitting the hours and responsibilities either evenly or unevenly



Why would it be needed?

- Accommodate Transportation Needs
 - Unreliable paratransit scheduling
 - Shared rides/travel assistance
- Accommodate Medications
 - Accommodate Side Effects
 - Accommodate administration of medications
- Accommodate periodic treatment
 - Medical appointments, therapies, etc.
- Accommodate episodic manifestations of disability
 - Fatigue, pain, etc.
- Impact of weather related situations
 - Rain, snow or cold weather impact on mobility, transportation, etc.

Considerations



- **Employer Policy**
 - Employer may need to modify existing policy as needed
 - The lack of a flexible or alternative work schedule policy would not be a defense for denying a request
- **Getting the Job Done**
 - Ability to carry out the essential functions of the job
 - Quality Control and Supervision
 - Ability to meet performance standards (Quality/Quantity)
 - Impact on business operations

Steps for HR Managers/Employers to Consider



- **Identify/review existing policies regarding flexible scheduling/ telecommuting**
 - Do you have existing policies? If not, could your organization benefit from having one?
 - Review existing policies/procedures to ensure that they would include reasonable accommodation requests
- **Review job descriptions and identify essential functions**
 - Can these functions be carried out through telework and/or flexible scheduling



- Educate managers/supervisors regarding telework and altered work schedules as potential reasonable accommodations
 - What information is available to employees about requesting telework and/or flexible schedules as accommodations?
 - What is the process for requesting an accommodation?
 - How to determine if telework or a flexible work schedule would be “reasonable”

More Questions?

Contact:
DBTAC-Regional ADA Center
800-949-4232 (V/TTY)
www.adata.org

