

Is Telework Forever-Work?

By: Daniel Burke on September 9, 2020 on graydon.law

The Equal Employment Opportunity Commission (EEOC) delivered some welcome news for employers this week in the form of guidance clarifying that an employer that permits employees to telework temporarily during the COVID crisis is not automatically locked into allowing telework once the workplace reopens.

As we commented in a prior blog post, “Working in a Socially-Distant World” (see link [here](#)), employers who provide telework in response to the COVID crisis are rightly concerned that doing so will obligate them to broadly allow employees to telework once the workplace reopens.

In guidance released yesterday, the EEOC clarified the following points:

- The fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework does not mean (i) that the employer permanently changed a job’s essential functions, (ii) that telework is always a feasible accommodation, or (iii) that telework does not pose an undue hardship - all of which are fact-specific determinations.
- An employer has no obligation under the Americans with Disabilities Act (ADA) to refrain from reinstating all of an employee’s essential duties when it chooses to restore the prior work arrangement. The employer may then evaluate any requests for continued or new accommodations under the usual ADA framework.
- When an employer does evaluate requests for continued or new accommodations after the prior work arrangement has been restored, however, an employee’s temporary telework experience, *e.g.* the employee’s ability to satisfactorily perform all the essential functions of their job while working remotely, may be relevant.

In light of this fresh EEOC guidance, it’s all the more important for employers who allow employees to telework during this crisis to clarify that this arrangement is temporary, with language such as this: *“Because of the extraordinary situation in the workplace caused by the coronavirus, you will be working remotely for a temporary period. We understand that you might not be able to perform all of your job’s essential functions during this temporary period because you will be working remotely.”*

For more information or questions, please reach out to [Graydon’s Labor & Employment](#)

Team.