

Featured Professionals

Teresa M. Thompson

Related ServicesEmployment, Labor &
Benefits

Question of the Day: Accommodation Obligations

Legal Update

06.29.2020

By Teresa M. Thompson

Question

Is an employee entitled to an accommodation to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition?

Answer

Many businesses have been faced with requests for accommodations from employees who are personally at high risk for contracting COVID-19, such as continuing to work remotely, limiting contact with customers or moving workstations to increase social distancing. However, employees are increasingly raising concerns about returning to the workplace not because of their own disability or high-risk condition, but because they do not wish to expose members of their families who are at high risk of severe illness from COVID-19.

This raises the question – does an employer have an obligation to provide an accommodation because of a family member's health condition? On June 11, 2020, the EEOC answered that question in additional guidance issued on accommodation obligations under the Americans with Disabilities Act (ADA). The EEOC concluded there is no obligation to provide an accommodation to the employee to avoid exposure to a high-risk family member. The EEOC stated: “[t]he ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.”

In doing so, the EEOC provided the following now common example:

[A]n employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure.

As noted by the EEOC, while not required to do so, an employer may choose to provide some flexibility to employees under these circumstances. So, what are your options when an employee will not come back to work out of fear of exposing a family member to COVID-19 should you decide to provide some kind of flexibility? Depending on the nature of the employee's position, you have several options:

- Determine if the employee's job can be performed remotely. If so, offer to have the employee continue to work from home.
- Determine if there are modifications that you can make to the employee's job that might limit that employee's exposure to other employees or customers in the workplace.
- If the employee cannot perform work remotely and/or will not come back even with modifications to the worksite, offer the employee a personal leave of absence until the employee feels comfortable coming back to work. This may not work for all positions and you may not be able to guarantee the employee a job at the end of the leave – but you can consider the employee for open positions when they are ready to return to work. The employee may or may not be eligible for unemployment under these circumstances.
- Consider a temporary layoff with instructions that the employee could apply for unemployment – but be sure to let them know that you, as the employer, do not make eligibility determinations for unemployment compensation purposes.

When engaging in conversation with your employee about options, be transparent. If you are going to need to fill the employee's position during any time away from work to ensure continued business operations, be clear with employees that you cannot guarantee them a position when they are ready to come back to work. Also, should you choose to exercise flexibility for employees in this situation, be sure to apply those decisions consistently and use objective measures.

If you have questions regarding your accommodation obligations, please reach out to your Fredrikson & Byron employment law attorney.

[View All: COVID-19 Employment Question of the Day](#)