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Question of the Day: Remote Work Disability Accommodations

Legal Update

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Question

Given the prevalence of remote work during the pandemic, is working from home now presumed to be reasonable disability accommodation?

Answer

Although any inquiry into the reasonableness of a disability accommodation is fact-specific, we do not expect remote work to become the new standard.

Analysis

The federal Americans with Disabilities Act and the Minnesota Human Rights Act require Minnesota employers to reasonably accommodate employees' physical and mental disabilities. Unfortunately for employers, there is not clear guidance that informs this decision. Rather, the reasonableness of an accommodation will depend on a variety of circumstances including, for example, the essential functions of the job, the extent of the employee's disability-related restrictions or impairments, and business and operational needs. A separate, but related, issue is if the proposed accommodation causes undue hardship upon the employer, which the employer is obligated to prove.

Against this backdrop, the question presented is whether providing pandemic-related remote work makes the same disability-related accommodation automatically reasonable. In other words, have employers' practices altered the legal standard. The answer is (likely) no. The fact that an employer is permitting remote work during a national health emergency does not mean working from home is presumed reasonable when confronted with a request for a disability-related accommodation in a traditional in-person workplace setting. Employers are allowing work from home for a variety of legal and/or business reasons including: the practice is required by Executive Order or the Families First Coronavirus Response Act; the business is only operating at partial capacity; or the employer is simply giving employees more latitude during these difficult times. Of course, post-pandemic, there may be

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circumstances where remote work is truly reasonable. However, that will depend on the facts and, most importantly, the essential functions of the employees' job. The essential functions will drive the analysis of what is or is not reasonable. For employees who truly need to be on the job to perform the essential functions of the position, remote work is not going to be reasonable and, separately, may rise to the level of an undue hardship on the business.

Takeaway

If your business is currently allowing (or mandating) remote work and intends to reinstate in-person workplace practices, make clear to your employees that the practice is temporary and in direct response to the unique business conditions stemming from the pandemic. And, if presented with a disability-related request to work from home, handle the request as you would in any other circumstance. Consider the facts, the employee's essential job duties and always try to be creative to find a workable solution.

If you have questions regarding these obligations or others related to COVID-19, contact your Fredrikson & Byron Employment & Labor attorney.

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