



Tal K. Taylor, APC

Client Alert

September 13, 2021

1217 Wilshire Blvd. #3418
Santa Monica, CA 90403
Tel (424) 291-2727
tal@talktaylorlaw.com
www.talktaylorlaw.com

COMPANY SUED BY THE EEOC FOR DENYING EMPLOYEE REQUEST TO WORK REMOTELY

We knew it was just a matter of time before litigation related to COVID-19 workplace accommodations were initiated. On September 7, 2021, the Equal Employment Opportunity Commission (EEOC) filed a lawsuit based on a company's refusal to accommodate an employee's request to work remotely due to COVID-19. The suit, filed against ISS Facility Services, Inc., alleges that an employee working as a health and safety manager at their Georgia facility requested to work remotely 2 days per week after the worksite re-opened in June 2020 during the pandemic. The basis for the employee's request was a pulmonary condition that placed her at higher risk of contracting COVID-19, coupled with the fact that her position required her to be in close proximity to her co-workers. ISS denied the request, even though other employees were permitted to work remotely. The employee was terminated shortly thereafter based upon purported performance issues.

Since the onset of the pandemic, the EEOC has suggested that remote work should be provided as a disability accommodation under the Americans with Disabilities Act (ADA), unless the accommodation presents an undue hardship to the employer (meaning "significant difficulty or expense"). A key issue in the new litigation appears to be that ISS had previously authorized the employee and her co-workers to work remotely, calling into question the propriety of the company's denial of her request to stay remote in light of her medical condition.

This leads to a question many employers are now facing as to whether they can (or should) properly require their employees to return to work in person. With the vaccine rollout and recent government action mandating vaccinations in certain workplaces¹, many companies are beginning to bring their workforces back onsite.

It will be interesting to see how the case unfolds. In the meantime, employers should be mindful that according to the EEOC, flexibility is important in determining whether an accommodation is possible. This can mean implementing changes to the work environment, such as designating one-way aisles, using plexiglass, tables, or other barriers to maximize distance between workers. Alternatively, when it does not present an undue hardship to the business, flexibility can also mean allowing a disabled employee to work remotely even if the workplace has resumed its onsite operations.

Employers should engage in the interactive process with each accommodation request and should make their assessments on a case-by-case basis, factoring in each employee's essential job duties and evaluating whether those tasks can be performed efficiently through remote means. If an accommodation request is ultimately denied based on an undue hardship, the employer should be equipped with the specific basis for such denial to help overcome later challenge by an employee or governing agency. This is particularly important in the event that a workplace accommodation is granted for only some members of the employer's workforce.

¹ On September 13, 2021, President Biden announced new vaccine mandates covering federal employees and all employers with more than 100 employees. Federal workers have approximately 75 days to become vaccinated. The deadline for private employers will be determined once the Department of Labor issues its rule.