

Telecommuting As An ADA Accommodation

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Stop me if you've heard this one: an employee calls in to work, states she has a medical condition and can't come in to work but says she can still do her job from home. You have your doubts about how much work will get done from home. But you know that the Americans with Disabilities Act (ADA) obliges an employer to provide a reasonable accommodation for a qualified, disabled employee that will enable her to perform the essential functions of the job. And you also know that a reasonable accommodation can, in some cases, mean granting the employee leave time while she recovers or recuperates. "Telecommuting" however, is not leave time and it does not usually entail any realignment of job duties. It is simply a change in work site, if the location of the work site really doesn't matter, employers should consider whether telecommuting is a viable accommodation. In our story, the employee had been working remotely from home on and off throughout her high risk pregnancy and corrective surgery, but the employer denied her formalized request for a work-from-home accommodation for the remainder of her pregnancy because company policy didn't permit "telecommuting." Showing that it's sometimes hard to stand on policy when practice says otherwise, a jury in *Meachem v. Memphis Light, Gas & Water Division* found that the employee's physical presence was not an essential function, the employer had shown it was able to accommodate the employee's work from home and the employee could have and should have been allowed to continue working from home during the remainder of her disability. Certainly, there will be jobs for which on-site work is a requirement - think production line workers, surveyors, receptionists, etc. But for others, when (despite policy statements and job descriptions to the contrary) it really doesn't matter *where* the work is performed, telecommuting might be on the list of reasonable accommodations to consider.

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