

## **Working Remotely during the Coronavirus Pandemic**

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In an effort to reduce the spread of the coronavirus, employers have been asked to consider allowing employees, on a wholesale basis, to work from home. While that is a decision that is left to the employer to make on a case-by-case basis, it does create risks. If you do not make clear the terms under which this type of an arrangement is being made, you may create liability exposure for the future should an employee, after all of this coronavirus dust settles, seek a work-from-home arrangement as an accommodation under the Americans with Disabilities Act (ADA). While some jobs may be conducive to work-from-home arrangements, it is certainly not true for most engaged in municipal employment. Employers should be aware that for those employees who may be able to work from home, particularly where they may not be able to undertake all of the essential functions of their positions, the ADA is implicated. Under the ADA, whether an employee might be able to work remotely is often a matter of whether their job duties include regular and predictable attendance at work, interaction with other employees, or interaction with the public as essential functions of the position. These questions are important because employers are not required to remove essential functions from the position as a reasonable accommodation under the ADA.

Where an employer is considering work-from-home arrangements, even if it means that one or more essential functions are removed in response to this pandemic, be aware that doing so with some employees, even if on a temporary basis, may make it more difficult for an employer to assert in the future that an employee could not perform all of the essential functions from home, or that doing so as an accommodation would create an undue burden. In order to avoid this risk and yet still offer this option as protection against the spread of the coronavirus, employers may temporarily provide an accommodation to their employees in this time of crisis without unintentionally hampering their ability to return to their pre-pandemic work setting by communicating to employees that any work from home arrangements is temporary, as follows:

- Employees will be expected to be working or available for work from home during the same hours that they would be working at the regular job site.
- The Municipality understands that the employee cannot perform all of the essential functions of their job from home but that this arrangement has been made on a temporary basis and as an exception to deal with a global pandemic.
- That the arrangement is fluid, subject to change upon review by the Municipality as developments unfold, and may be rescinded at any time.

Finally, be aware that while work from home may not be feasible for all employees, employers should not reject outright an individual's request to do so when made in the context of a requested accommodation under the ADA. The need to engage in the interactive process with an employee who requests an accommodation and analyze the request on a case-by case-basis is of the utmost importance. If you need assistance with any of these issues, please call the attorneys at Campbell Durrant, P.C.