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Accommodating employees who are at high-risk of contracting serious illness from COVID-19

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As the new school year approaches, school districts are seeing requests to work remotely during the upcoming school year from employees who report being at high-risk of serious illness if they contract COVID-19.

How should such requests be handled? The answer is carefully and on a case-by-case basis. School districts are obligated under the Americans with Disabilities Act (ADA) to engage in an interactive process with employees in order to identify whether the requested accommodation, or another accommodation, must be provided.

Some basic steps to help move through the ADA's interactive process are as follows:

1. Request medical verification that the employee has a personal health condition recognized by the CDC as being at high-risk for serious illness from COVID-19 (such as chronic lung disease, asthma, heart conditions, immune deficiencies, cancer, HIV or AIDS, severe obesity, diabetes, kidney disease or liver disease). If the employee does not have a high-risk condition, there may not be an obligation under the ADA to consider the request (without additional information about the health condition) as The Equal Employment Opportunity Commission has stated that the accommodation process is not

triggered solely by an employee's "generalized fear" of contracting COVID-19. Note that the ADA does not afford accommodations for situations where a member of the employee's household, rather than the employee, is a high-risk individual.

2. Review the employee's job duties and assess whether the essential functions may be performed remotely. If the position is one that can be performed remotely on a full-time or part-time basis, the employee's request may be reasonable and the accommodation may be granted.
3. If, however, the position requires the employee to be on-site, the school district should document, and be able to explain, the reasons that remote work is unreasonable or how it will pose an undue hardship on the school district. The school district should consider alternative accommodations designed to reduce the risk of exposure to COVID-19 and that comply with medical documentation. Such accommodations may include offering to supply an N95 mask, providing unpaid leave, temporary job restructuring of marginal job duties, modifying or staggering a work schedule or shift assignment, or temporary transfer to a position that is possible to be performed remotely.

Ultimately, balancing the ADA accommodation requirements for high-risk individuals is fact specific and requires flexibility and careful consideration. The failure to provide an accommodation where one is available or denying an accommodation that is reasonable can be a costly error resulting in exposure under the ADA. It is highly recommended that school districts work with legal counsel as they navigate the accommodation process.