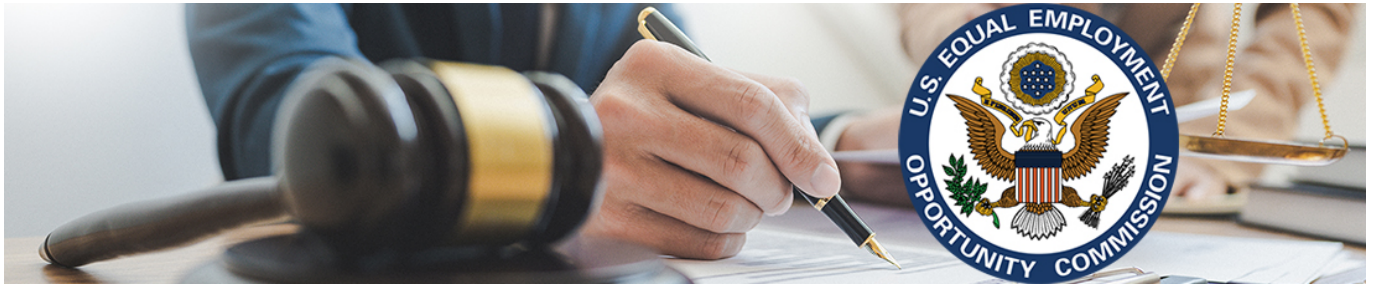


Continuation of Pandemic-Related Remote Work as an ADA Accommodation: Lessons from the EEOC's First Lawsuit



By [Janet Hendrick](#)

Employers can glean valuable takeaways from the EEOC's recent lawsuit against a facility management company, the EEOC's first case alleging disability discrimination for an employer's refusal to allow an employee to continue to work from home following pandemic-related remote work. On September 7, 2021, the [EEOC filed suit in federal court in Atlanta against ISS Facility Services](#), Inc. alleging that it unlawfully denied Ronisha Moncrief's request for remote work as a reasonable accommodation under the Americans with Disabilities Act. Moncrief, a health and safety manager for the company who has a pulmonary condition, sought treatment after she became sick at work. Her doctor recommended that she work from home and take frequent breaks while working. Around this time, due to the COVID-19 pandemic, ISS implemented rotating staff schedules, so that Moncrief and others worked from home four days a week.



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In June 2020, ISS required all staff to return to the facility five days a week. When Moncrief requested continued work from home as a disability accommodation, ISS denied her request. According to the lawsuit, and of critical importance, other health and safety managers were allowed to continue working from home. A month later, Moncrief's supervisor recommended that Moncrief be terminated due to performance issues and ISS terminated Moncrief shortly after. According to the lawsuit, and again of critical importance, Moncrief had not previously been informed that her performance warranted termination. Although the EEOC attempted conciliation of Moncrief's charge of discrimination, that failed and the EEOC filed the lawsuit.

Although the lawsuit is in very early stages, here are some valuable takeaways for employers:

1. Promptly address and document performance issues

- One glaring issue in this case, assuming the allegations are true, is that Moncrief claims to have been unaware that her performance could land her on the chopping block. Be sure your managers

are managing. This requires addressing performance issues in a timely manner, including documenting the issues and communicating the issues and possible repercussions to the employee. Managers frequently ignore performance issues or sugar-coat communications, leading to terminated employees claiming they never had a chance to improve. Timely documentation of performance issues serves as key evidence for employers accused of not adequately informing an employee of possible termination.

2. Assess accommodation requests on a case-by-case basis

- The EEOC has repeatedly cautioned employers to avoid a “one-size-fits-all” blanket approach to disability accommodations. Instead, employers are expected to conduct an individualized analysis of each accommodation request. Further, in light of the ISS Facility lawsuit, denials of remote work requests may garner heightened scrutiny, particularly if the employee at issue has worked remotely for a “trial period” during the pandemic.

3. Treat similarly situated employees consistently

- When it comes to disability accommodations, employers who treat employees in the same or similar positions inconsistently create unnecessary legal risk.
- If an employer allows one employee to work from home but denies remote work to another employee with the same or a similar position, the employer better be ready to explain the disparity. There may be justification for the different treatment, but it gives an appearance of an unjustified denial of an accommodation.

4. Ensure job descriptions are updated and robust

- Job descriptions tend to be among the lowest priorities for often-harried human resources professionals. But accurate (i.e., updated), robust job descriptions can be some of the best evidence an employer can offer if an employee challenges that a task is not an “essential” job function. This is often a key issue in disability discrimination cases, as the employee must be able to perform all “essential job functions” with or without a “reasonable accommodation” to come with the protection of the ADA as a “qualified individual with a disability.” Courts routinely defer to an employer’s judgment as to whether a job function is “essential” and often rely on a written job description.
- Employers who take the time and resources to periodically review and update job descriptions can reap the benefits if facing this type of challenge. Bonus points for including such nontraditional requirements as reliable, predictable attendance and regular attendance at the assigned office or work facility, as long as the employer can back these up as truly “essential” if challenged.

Phillips Murrah’s [Labor and Employment](#) attorneys regularly advise employers on complex issues relating to ADA accommodations and performance management and can help strengthen job descriptions and other key employment documents.

For more information on this alert and its impact on your business, please call 469.485.7334 or [email](#) Janet A. Hendrick.



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