



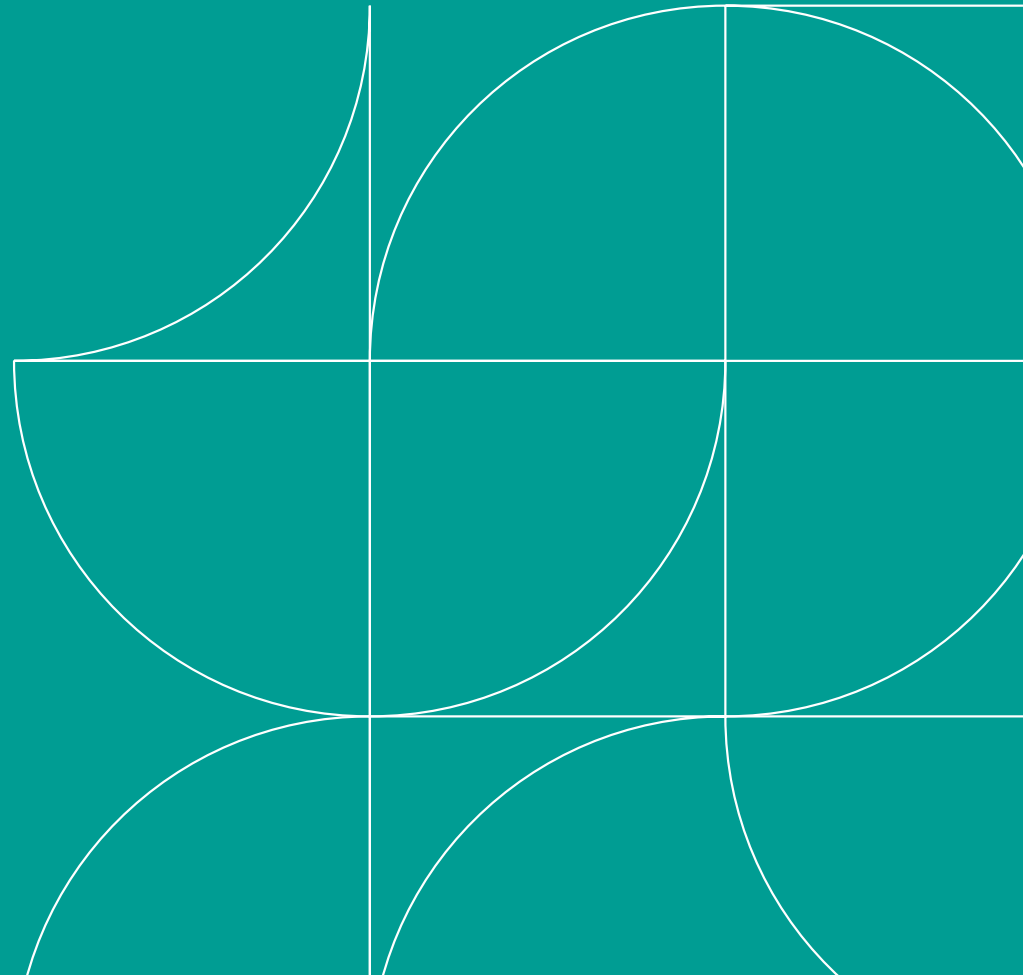
The Future Starts Now: Future of Work for New England Employers – Part 1: Accommodation

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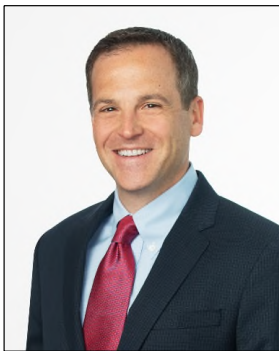
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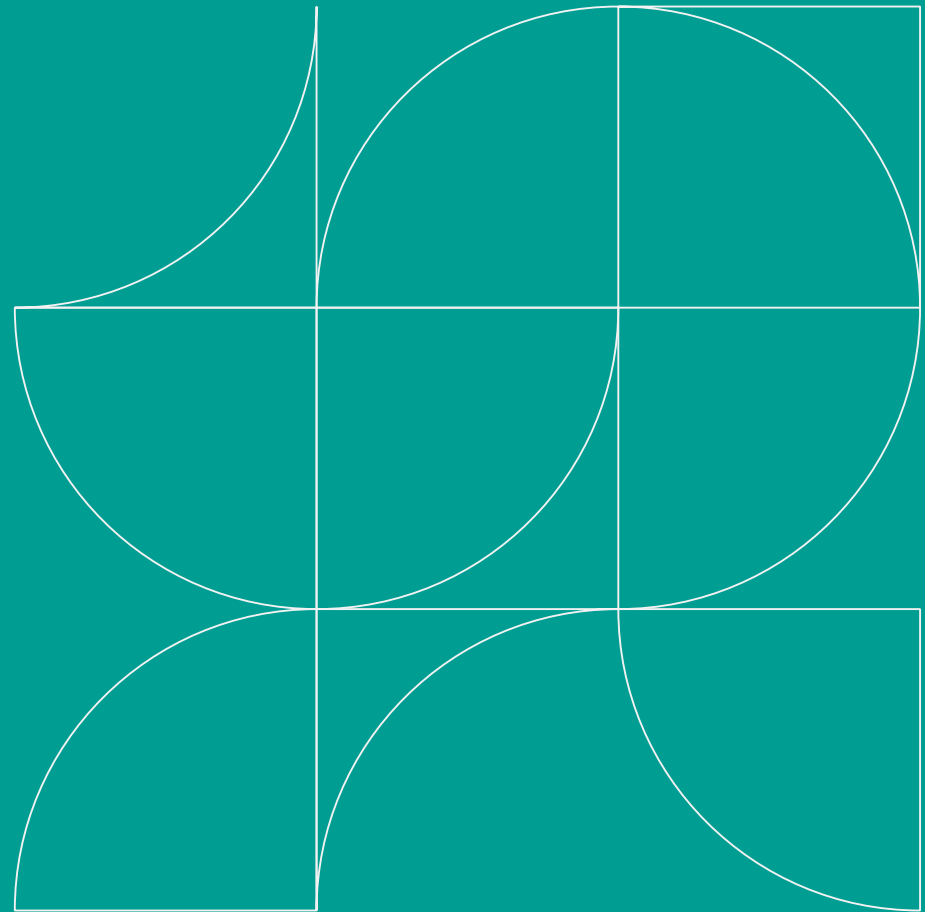


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Agenda

- 01** COVID-Related Requests: Adapting to a Post-Pandemic Accommodations Framework
- 02** Accommodations in Remote and Hybrid Work Arrangements
- 03** Web Content Accessibility
- 04** Service and Emotional Support Animals

COVID-Related Requests: Adapting to a Post-Pandemic Accommodations Framework



Changes in EEOC Guidance



- EEOC guidance has evolved over time.
- Example:
 - Standard under the ADA for conducting medical examinations was always met for employers who conducted viral screenings in the workplace for COVID-19
 - Now: business necessity
- Age-related accommodation requests

Accommodation Required for Long COVID?

- The EEOC has referenced the DOJ/HHS's publications on Long COVID.
 - DOJ/HHS guidance says that Long COVID can be a disability under the ADA if it substantially limits one or more major life activities.
- Requires individualized assessment
 - Example from EEOC: An individual diagnosed with “Long COVID,” who experiences COVID-19-related intestinal pain, vomiting, and nausea that linger for many months, even if intermittently, is substantially limited in gastrointestinal function, among other major life activities, and therefore has an actual disability under the ADA.
- Important take-away: if employee is struggling with the long-term effects of COVID, they could have a disability and be entitled to an accommodation.

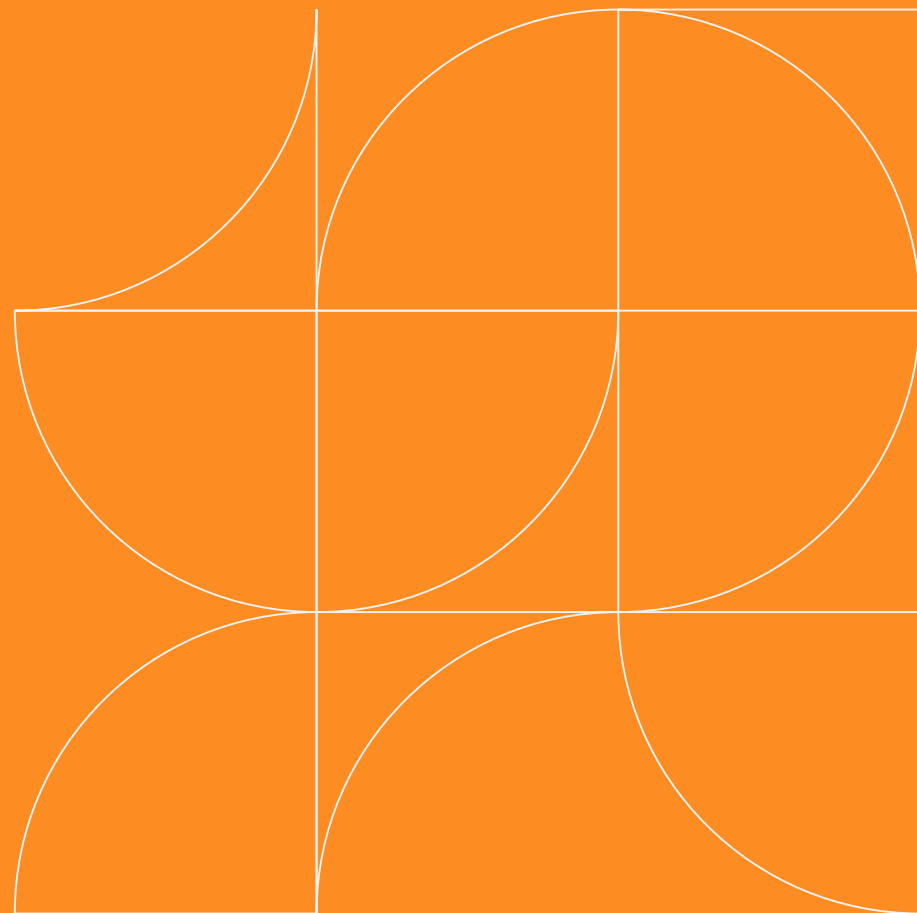


Accommodation Required for Associational Disability?



- Associational accommodation: accommodation for employee who has a family member with a disability
- ADA protects applicants and employees from discrimination based on their relationship or association with an individual with a disability, whether or not the applicant or employee has a disability.
 - However, employers are **NOT** required to provide accommodation under ADA.
- We are beginning to see plaintiffs bring associational failure to accommodate claims in Massachusetts.

Accommodations in Remote and Hybrid Work Arrangements



The Two-Sided Coin of Remote Work



Most recently, during the vaccine mandate period, some employees who wanted exemptions from the vaccine wanted to return onsite but were not permitted.

Some employers forced them to work remotely rather than accommodate them onsite due to their unvaccinated status and risk to others.

So, requiring remote work was some employers' choice of accommodation, as long as the employee was not adversely affected in comparison to onsite peers.

The Two-Sided Coin of Remote Work (*con't*)



But, the script has flipped...

- As employers want everyone to return to the office / onsite, we will continue to see more and more requests for remote work as an accommodation for a disability (less likely for religion).
 - Requests for full-time remote or greater than your hybrid policy permits
- For many jobs, employers can no longer deny remote work as unreasonable or because it causes an undue hardship.
 - It will mostly come down to whether (i) remote work is medically necessary; and (ii) the essential functions of the job require the employee to perform the job onsite.

Employees Declining to Return to the Office

- Employees who are immuno-compromised due to an underlying disability and still fear COVID exposure (or other viruses, etc.)
- Employees with mental health conditions where provider says healthier to work from home (the workplace or the commute exacerbates the condition / stress / anxiety)
- Commute / driving exacerbates condition
- Pregnant employees with physical limitations
- What about employees with household family members who are disabled and/or immuno-compromised – right to accommodation for disabled household member???



Best Practices for Dealing With Remote Work Accommodation Requests If Hoping to Keep Employees Onsite

- Conduct job assessments – assess what functions of the job are truly essential and if/why they need to be performed onsite.
 - e.g. need to physically be on the floor or assisting others, security reasons, onsite equipment/tools/systems needed, safety reasons, in-person interaction that cannot be accomplished virtually, etc.
- Revise offer letters and job descriptions to ensure accurately reflect essential functions of the job, including reasons certain functions need to be performed onsite.
- Explore alternative onsite accommodations (e.g. private office, masks, alternative schedule if public transportation / commute-related reason).

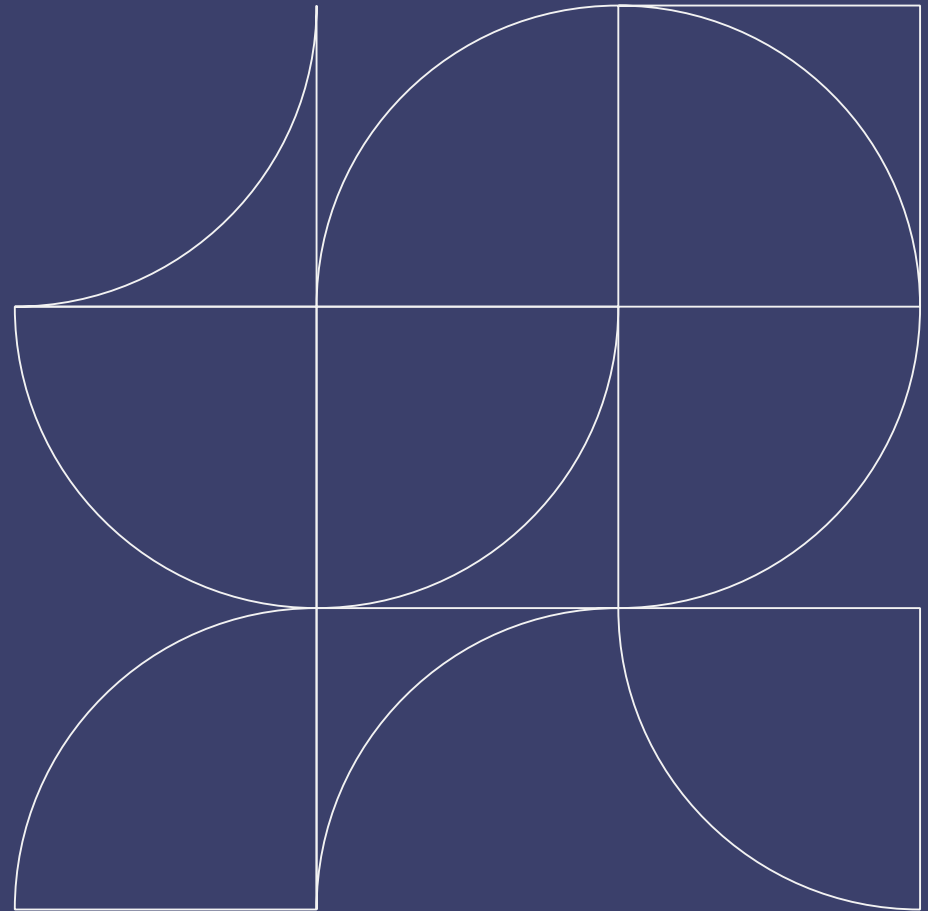
Other Types of Accommodation Requests Due to the Return to the Office

- Managing employer's assigned in-office/onsite days
 - e.g. alternative days than the required days in the office/onsite
- Other commute-related accommodations
 - e.g. scheduling around peak public transportation times
 - e.g. paying for taxi, Uber instead of driving, etc.
- Business travel-related accommodations
 - e.g. limits on frequency of travel if not essential part of job (again, review job descriptions, offer letters, etc.)
 - e.g. downtime built into travel agenda if medically necessary
 - e.g. extended stays due to medications, sleep issues, etc.
 - e.g. flight-related accommodations or hotel-related accommodations

Other Types of Accommodation Requests Due to the Return to the Office (*con't*)

- Alternative / flexible schedules
- If hoteling, accommodations for not sharing office space/equipment or enhanced cleaning
- Accommodations within home offices
 - e.g. ergonomic chairs, computer / phone equipment, etc.
- Facilitating communication for remote employees so can participate fully
 - Communication-related requests (during Zoom, etc.)
 - e.g. chat feature during Zoom may exclude deaf employees
 - Web content accessibility for blind or deaf employees

Web Content Accessibility



What is Web Content Accessibility?



- Design of apps, websites, software that are usable by people with disabilities
 - Not just an ADA Title III/public accommodations issue -- litigation has begun to focus on the employment context
 - Relates to all disabilities: auditory, visual, neurological, physical, speech
- Common examples of web accessibility issues:
 - Color Contrast
 - Lack of text alternatives (“alt text”) on images
 - Captioning of videos
 - Inaccessible online forms (e.g., PDFs)
 - Mouse-only navigation
 - Transcripts for audio files

Web Accessibility in the Employment Context



- Where are web accessibility issues likely to arise in the employment context?
 - Career websites/job portals
 - Websites or apps used for hiring and onboarding
 - Websites or apps used for training or disseminating information
 - HR tools (e.g., timekeeping software, programs or sites used to track employee HR data, enter leave/PTO requests, etc.)
 - E-mail, word processing, related programs/software needed to perform job functions
- Web Content Accessibility Guidelines (WCAG)
 - Private international consortium – not legal requirement, but considered to be a key set of standards
 - Guidelines are complex and technical. Employers and businesses should be forward-thinking and consider engaging reputable consultants to review key user journeys

Accessibility Issues in Remote and Hybrid Meetings

- Post-pandemic, employers increasingly rely on remote meeting platforms, hybrid remote/in-person meeting format
- Remote/hybrid meetings present three key sets of accessibility issues: (1) the platform, (2) the content, and (3) awareness of hosts/participants
- e.g.: pre-recorded video:
 - Platform needs ability to provide captioned video feedback
 - Video content itself needs captions
 - Meeting host needs to know how to enable captions for viewing by all participants

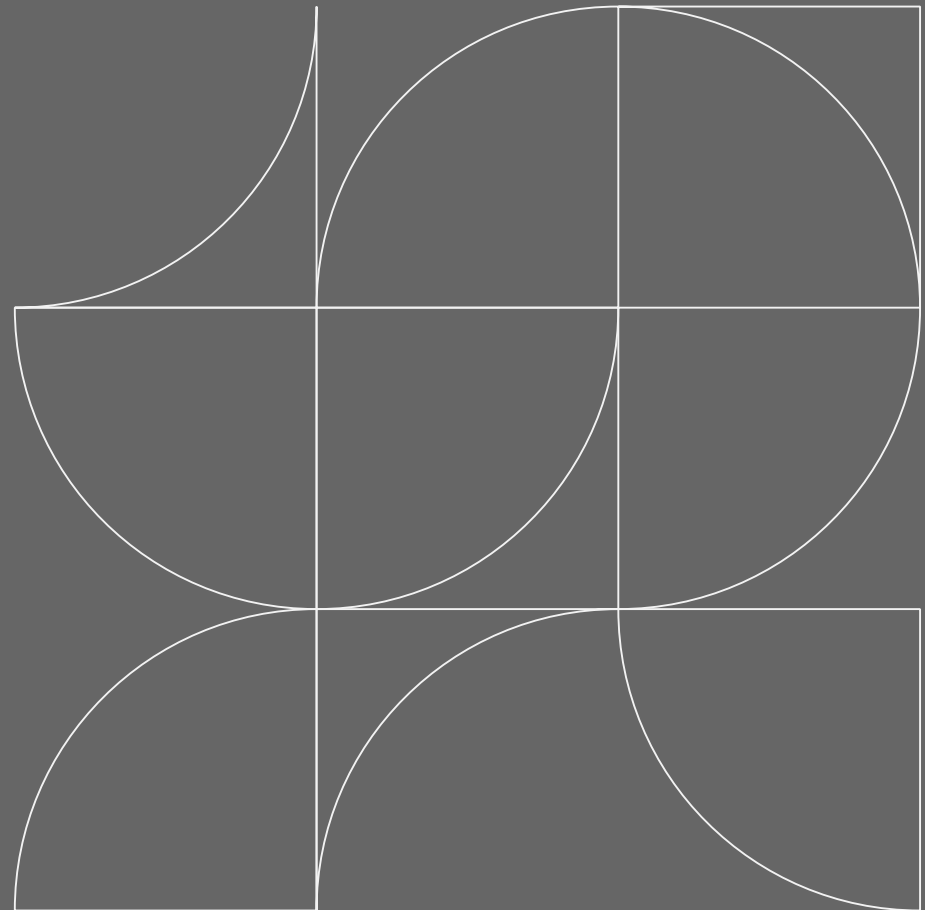


Accessibility Issues in Remote and Hybrid Meetings (*con't*)



- Ask the following about remote meeting platform:
 - Is it accessible for screen reader users?
 - Does it support ASL interpreters?
 - Does it enable live captioning?
 - Does it allow keyboard shortcuts?
 - High contrast mode?
 - Equipped with screen magnifiers or visual modifications?
- Tips for facilitating an inclusive meeting:
 - Invitation statement re: accommodations
 - Encourage speakers to describe visual content, ID themselves before speaking, turn on video and face camera, read aloud links to URLs

Service and Emotional Support Animals



Requests Related to Service and Emotional Support Animals

- During pandemic, many employees (and pets) became used to working together
- Now, growing number of requests related to bringing animals/pets into workplace as employers call EEs back
- Distinction: service animal v. emotional support/comfort/therapy animal
 - Service animal is trained to perform work or task related to person's disability; **THEY'RE NOT PETS!**
 - E.g.: seeing eye dog; dog that reminds person to take prescribed medication; pulling wheelchair
- Service animal definition comes from ADA Title III regs. Does not strictly apply in employment.



Employer Framework for Processing Animal-Related Requests

- Title III regs do not strictly apply, but are a good starting point
 - Begin by assessing whether request relates to a service animal vs. emotional support animal/generic request to bring pet into workplace
- Handle in Accordance with Existing Reasonable Accommodations policy
 - Importance of interactive process – gain understanding of disability and need for accommodation
 - Distinction between a service animal and E.S./comfort/therapy animal is not always clear. (e.g.: trauma victim who requests emotional support animal to help resume job functions without relapse)
- Interactive process should focus on alternatives (e.g., hybrid or remote work, modified schedule, alternative treatment modalities)

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Future of Work
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November 17th 2:00 p.m. EST

**FuturePay: Pay Practices and
Preventing Off the Clock
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Thank You

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