

Accessibility Considerations for a Return to Work Plan

Agencies can review these citywide workforce considerations in order to tailor their guidelines as they develop their return to work plans.

1. Consideration for members of the workforce with self-disclosed disabilities

a. Equitable access for people with disabilities

Determining groups among the workforce to return to the workplace first must always take into consideration equitable access for people with disabilities.

Those with self-disclosed registered disabilities that may be impacted with ongoing spacing and distancing adjustments in the workspace may not necessarily be among the first called back to the workspace. However, before assuming the employee should be among last called back to work, the agency should work with such employees who have mobility or sight disabilities to consider potential challenges when designing spacing protocols. That also entails preparing for how such employees will be oriented to the reconfigured space plans while the workspace is being adjusted and then evaluated for effectiveness in elevator capacity, hallway, and stairwell access, for example.

Agencies should also consider how shared spaces are being used by people with disabilities, for religious reasons, medical needs or for lactation purposes prior to modifying use. For example: closure of the breakroom and use of a refrigerator may affect someone who needs to keep their medication or breastmilk refrigerated. The use of lactation rooms may require awareness to immediately clean before the next individual use. Timing and use of space designated for prayer may need to be modified to ensure social distancing.

New signage for the workspace should take into consideration people who are blind. Include requirements for braille, tactile and large print signage as well as other ways to frequently convey the information to all, such as via email messaging.

b. A fair return to work grouping and order must be tied to job functions

It is recommended that when the broader plan for what percentage and groups of employees return to work first and in gradual waves/groupings, the plan to be implemented is tied to job functions, operational needs and the need to comply with legal requirements for social distancing. This will support that the operational decision is non-discriminatory and tied to business necessity.

Within those job groupings, employees should all be reminded of the resources and then employees can voluntarily seek out Reasonable Accommodations if they believe

they have a disability that impacts their ability to perform the essential functions of the job.

2. Agencies' resource messaging should mention the Reasonable Accommodation Process/EEO Office and the Time and Leave policy in effect

a. Refer matters to the agency EEO Officer

When in doubt, it is prudent to refer matters to the EEO Officer. Reasonable Accommodation requests are premised on an employee having a disability which requires such an accommodation in order to perform the essential functions of the job.

Agencies must remind managers and supervisors that all persons requesting a Reasonable Accommodation must be referred to the agency EEO Officer, designated to review such requests. Given changes in workplace circumstances post-COVID-19, Reasonable Accommodations may look different than they did pre-COVID. Accommodations previously requested and denied if raised post-COVID may entail a new assessment with different options.

However, it is important for agencies to be aware that there is no policy that leads to a uniform determination for all Reasonable Accommodation requests in the workplace. Such requests and the process that leads to a determination is necessarily contingent on many variables. Each request requires an individual assessment of very fact sensitive circumstances, including confidential medical information. The EEO Officer can determine if the request meets certain threshold criteria to qualify as a Reasonable Accommodation request for assistance to perform the essential functions of the job due to a disability. The EEO Officer must also engage in a cooperative dialogue with the employee to learn all the relevant information. In addition, an assessment must be made on whether granting a particular accommodation will have an undue hardship impact on the agency. The operational needs and demands of the agency are a factor to be considered in the undue hardship assessment. However, every agency has different functions and service missions that also impact such individualized assessment.

When offering resources in messaging to the entire workforce, the agency must avoid making disability-related inquiries to individual employees but instead generally remind the workforce of their resources should anyone need a Reasonable Accommodation. These [FAQs about Reasonable Accommodations](#) for the general workforce and the [Reasonable Accommodation Process at a Glance](#) flowchart can be included in the agency messaging.

b. PPE, breathing, hearing disabilities and CDC-identified pre-existing conditions

General guidelines agencies issue should take into consideration situations that can be resolved with best practice advice but may have to be referred to the Reasonable Accommodation assessment process. For example: consider that employees with hearing disabilities who may need to lip read may be affected by the use of others' wearing masks in the workplace. Masks are a safety necessity, but the agency may recommend in its guidelines that communications among co-workers occur via email

or telephone in order to maintain social distancing. In addition, an agency may consider that a deaf person may be accommodated by people with whom they are conversing wearing clear face shields/masks.

The type of PPE should be taken into consideration. For example: non-latex gloves, gowns that are suitable for people in a wheelchair, and a face shield may be an appropriate investment instead of a mask for lip-reading purposes. In addition, those who wear hearing aids and glasses may find it difficult to have another item that is behind the ear. These are situations that require an individualized assessment of specific needs, medical conditions, and workspace availability.

Use of PPE, such as masks, may affect employees who indicate they have breathing disabilities. For example: accommodations may have to be made for the individual to preserve social distancing in the workspace without wearing a mask frequently. It is possible a clear face shield may be an option to consider.

If an employee raises they have a CDC health condition for which COVID-19 may place them at a high health risk, they can resort to the EEO Office for a Reasonable Accommodation assessment.

c. Some alternative work arrangements are outside of the Reasonable Accommodation process

Agencies need to be aware that the Reasonable Accommodation process is a legal requirement to address the needs of an employee with a disability in order to be able to perform the essential functions of the job. Some requests for alternative work arrangements that do not involve whether the employee has a disability do not fall under the Reasonable Accommodation process and should be viewed as requests for alternative work arrangements. It is recommended that in those situations, management, Human Resources, and the employee work together to come up with creative solutions.

d. Look to the Time and Leave Policy for many solutions

The Time and Leave policy in effect for the temporary pandemic emergency should be another resource to address employee needs. (e.g. medical note requirements, COVID-19 symptoms, childcare needs, caretaker status, etc.)

DCAS Human Capital issued Agency Personnel Officers the latest ***Updated Guidance for City Agencies on Leave Policy Applicable During the Outbreak of Coronavirus Disease 2019 (COVID-19)***, effective April 15, 2020.

e. Offer EAP and Other Resources

Spearhead through agency HR to deliver consistent and periodic messaging of resources such as EAP for all the workforce who may be experiencing, for example, anxiety over returning to the workspace, using the public transportation system, and cleanliness in the workspace.

3. General Accessibility Messaging Components

a. Means and mode of messaging

Social distancing rules should be communicated electronically and/or in hardcopy at workstations and common areas. Materials should be easy to understand and available in the appropriate language for all workers. Materials need to be accessible (online training, emails, etc.) in alternate formats including braille and any videos or online material need to be in American Sign Language (ASL).

Agencies should consider a re-orientation for people returning to the workplace. This will be in addition to the electronic and print messaging and will ensure everyone is level set about priorities and the motivation behind measures implemented. The orientations are also an opportunity to re-enforce the City's anti-discrimination policy.

b. Messaging about transportation-related options

General accessibility messaging to the entire workforce should also contain resources and information to facilitate travel:

- Access-a-ride information for people with disabilities who qualify for the program
- Parking availability near the respective worksite
- Restrictions or ease thereof for parking in the area near the worksite
- Bicycle parking space availability
- Citi Bike program for essential workers

4. Model/Sample Message Agencies May Issue to the Workforce

Sample message (adjust for specific needs):

Esteemed Employees:

The [AGENCY NAME] thanks you for your continuous service to the City of New York. The City is facing unprecedented challenges, and you have shown time and again the resiliency and dedication of our workforce and how crucial your contribution to the City has been as civil servants.

As we begin to transition to a more traditional work environment, we want to keep you informed of the changes being implemented in consideration of your safety and wellbeing. Please see the attached agency guidelines for an outline of the new processes. New measures being implemented include but are not limited to these main areas: adjustment to the current workplace (social distancing, schedule changes), adjustment to the worksite (cleaning measures, use of workspace), and adjustment to current processes (use of personal protective equipment, protocols for employees who are sick and time and leave policies).

Keeping our workplace safe is a group effort and requires full compliance from each staff member. Your participation in following these procedures is critical so that the agency can consistently implement these health and safety guidelines.

We understand the many challenges and anxieties you may face upon returning to the workplace and want to remind you of the resources available to you. Therefore, please communicate with your supervisor, or respective HR/EEO staff, should any challenges arise. Here are some specific resources based on your needs:

*For EEO-related inquiries or Reasonable Accommodations, contact the EEO Office at [INSERT name, email, and phone # of agency EEO Officer].

*For mental and physical wellness inquiries, contact the City's Employee Assistance Program at eap@olr.nyc.gov or WorkWell NYC at workwell@olr.nyc.gov

*For questions about the new guidelines included in this email, please contact your Human Resources Office at XYZ.

We continue to value your hard work and dedication to serving the City of New York. We have confidence that these protocols and your collaboration will help the agency in successfully establishing a safe transition into the workplace environment.

FAQs about Reasonable Accommodations

What is a Reasonable Accommodation?

A Reasonable Accommodation (“RA”) is any approved change to a job or working conditions that allow an employee with a disability to perform their job functions. All RA requests must be assessed by an agency EEO Officer to determine if a change is necessary to an employee’s work conditions (e.g. schedule or duties) in order to meet their specific needs and ultimately allow them to do their job. An employer must provide RAs unless doing so would create an undue hardship (e.g. interference with the safety or efficiency of the operation).

RAs can be requested by employees within the following protected classes:

- Disability: a physical, medical, mental, or psychological impairment, or a history or record of such impairment.
- Pregnancy, childbirth, or related medical condition.
- Religious observance.
- Status as victim of domestic violence, sexual violence, stalking, or threats of violence.
- Need to Lactate: access to lactation room and reasonable time to pump/express breast milk.

How do I know when an RA request should be initiated?

Requests should be initiated by the employee in need of the accommodation. However, if a manager or supervisor learns or suspects that an employee may need a RA, they should refer the matter to agency EEO Officer immediately. The EEO Officer *must* communicate with the employee to fully understand their needs.

All requests are fact sensitive. Therefore, there is no one solution to every RA request as they involve a review of confidential health and medical information.

What type of information can be requested for an RA based on a disability?

The EEO Officer may only ask for medical documentation that is sufficient:

- To confirm the employee has a disability/condition.
- To identify any limitation to perform the essential functions of the job.
- That explains the need for the RA.

How much medical documentation is needed for an RA?

The term “medical documentation” should be considered broadly and the focus must be on its content, not its form. For example: documentation cannot be rejected if it is handwritten by a medical professional as opposed to being printed on letterhead.

Agencies cannot ask for a specific diagnosis or complete medical records UNLESS the exact diagnosis is necessary to determine what accommodation may be needed.

If the provided documentation is insufficient, additional documentation will be requested and, in some cases, upon the consent of the individual via executed HIPAA waiver, the EEO Office may communicate with the health care provider who provided the documentation before a decision is made to deny the request.

What if the employee cannot get medical documentation because they cannot go out to see their doctor?

To ensure appropriate record keeping, employees should make good faith efforts to obtain medical documentation to support their request. Notwithstanding, during this pandemic emergency, consultation with a physician over the telephone or via online health services are also deemed acceptable. Wherever possible, employees should be instructed to ask their physicians to send employee/patient documents via email.

If medical documentation is pending during this period of the pandemic emergency, an EEO Officer may opt to notate their records/database to indicate the documentation is pending and the submission of documentation will be revisited. The EEO Office can attempt to make the best possible decision with the information available and may consider a temporary accommodation while discussing the request, assessing the need, or awaiting documentation.

If an RA is denied, what recourse does the employee have?

If the EEO Office issues a denial of the RA request, the employee will be informed of the determination and their right to submit an appeal to be reviewed by the Agency Head. The appeals process ends with the Agency Head's final determination.

When is an RA not the solution?

There are times when an employee requires an accommodation/arrangement that does not fall within the RA process. The RA process is a legal requirement to address the needs of an employee with a disability to be able to perform the essential functions of the job. Some requests are for alternative work arrangements that do not involve whether the employee has a disability. It is recommended that in those situations, management, Human Resources, and the employee work together to come up with creative solutions.

Agency EEO Officers should be alerted first to determine if the request is appropriate for the RA process. If it is not, the EEO Officer can offer guidance to the manager and/or Human Resources to evaluate the need for alternate work arrangements (e.g. shifting work hours for a finite period of time to allow an employee to accompany a relative to medical appointments). After consultation with the EEO Officer, managers and HR can identify a solution that works for the employee and the larger organization (e.g. situations in which employees or job groups need a change in work location or assignment because their job duties cannot be carried out due to closure of work sites).

The Time and Leave policy in effect for the temporary pandemic emergency also offers various solutions to address employee needs. (e.g. medical note requirements, COVID-19 symptoms, childcare needs, caretaker status, etc.)

What if the employee indicates they have an underlying medical condition that places them at greater risk of getting the virus if they go to work?

Citywide telework has been instituted temporarily as a precautionary measure in response to this public health situation. While RA is predicated upon an employee's disability preventing them from performing the essential functions of the job itself, upon return to work, such a request will be assessed under the RA process.

Therefore, if an employee raises they have an underlying health condition for which contracting COVID-19 may place them at a high health risk, they should contact the EEO Office for an RA assessment.