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Hot Topics in Minnesota Employment Law

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Employee Handbooks

In recent years, there have been major developments regarding employee handbooks. More specifically, whether employee handbooks can create an implied contract despite a provision expressly denying the existence of a contract. Everyone has seen, and has likely signed, such a disclaimer. For example, "This manual does not create an express or implied contract between XYZ and any of its employees located in Minnesota or any other designated locations where this manual is applicable."[1] This language is largely boilerplate and easy for human resource managers to include at the beginning of handbooks. For years, these disclaimers offered employers an iron clad protection against implied contracts. But recent case law has created a hole in this protection, allowing some claims to go forward.

In Minnesota, the Supreme Court case that set this trend in motion was *Hall v. City of Plainview*.[2] Plaintiff Hall worked as the manager of a municipal liquor store owned by the City for nearly 30 years. In that time, he accumulated over 1,778 hours of unused paid time off (PTO). The City implemented a policy in 2009 which said in relevant part, "When an employee ends their employment with the City, for any reason, 100% of the accrued unused personal leave time will be paid up to 500 hours, unless the employee did not give sufficient notice as required by the policy." The policy explained that sufficient notice was written notice 14 days prior to departure. Lastly, and most importantly here, the employee handbook included a disclaimer that said, "[t]he purpose of these policies is to establish a uniform and equitable system of personnel administration for employees of the City of Plainview. **They should not be construed as contract terms"** (emphasis added). And "The Personnel Policies and Procedures Manual is not intended to create an express or implied contract of employment between the City of Plainview and an employee…"

Hall was asked to resign voluntarily, but he refused. The City Council then voted to terminate his employment. After his termination, Hall requested to be paid the 1,778 hours of PTO he accrued. The City refused any payout because Hall failed to give sufficient notice. Hall sued, alleging breach of contract, unjust enrichment, and violation of Minn. Stat. § 181.13(a). Sections 181.13(a) and 181.171 allow employees to bring a cause of action against their former employer for failure to pay wages promptly. If the employee prevails, the court must award attorney's fees that would otherwise be unavailable under a breach of contract claim. On a case with multiple appeals, the attorney's fees will be substantial and could easily surpass the value of Hall's unpaid PTO.

[1] https://www.elinfonet.com/sample-employee-handbook-disclaimer/
[2] *Hall v. City of Plainview*, 954 N.W.2d 254 (Minn. 2021).

Turning to the contract issue, generally the "provisions in an employee handbook could form the basis for a unilateral employment contract if all the requirements for formation of such a contract were met."[3] And, "individual portions of an employee handbook may create contractual rights even if other portions of the handbook do not."[4] For an employee handbook to be enforceable, if at all, it must be sufficiently definite. In *Hall*, the Court held that the City's PTO policy satisfied this requirement.[5]

The Minnesota Court of Appeals has long "upheld the effectiveness of express disclaimers in employee handbooks as a means of preventing the formation of an employment contract."[6] The City used this precedent to argue against the formation of a contract. But the Supreme Court disagreed. "We are not convinced that the disclaimer language in the Handbook on which the City relies unambiguously means that the provision on payment of accrued PTO is not binding on the City."[7]

The Court ultimately concluded that:

> the general disclaimer language in the Handbook's introduction—the provision 'to establish a uniform and equitable system of personnel administration'—does not unambiguously mean that Hall has no contractual entitlement to payment for accrued PTO in exchange for the labor that he provided to the City while the provision for that payment was in place. Accordingly, the question of the impact of the Handbook's general disclaimer on Hall's claim is for a fact-finder to determine.[8]

This was largely a policy decision. "An ordinary Minnesota employee who is provided with a detailed PTO policy that his employer follows when its employees leave, and who watches PTO accrue on his paycheck every pay period, would have a legitimate expectation that he would be paid for the earned PTO for the hours he worked."[9]

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[3] *Hall*, 954 N.W.2d 254, 261, *citing Pine River State Bank v. Mettille*, 333 N.W.2d 622, 627 (Minn. 1983).
[4] *Hall*, 954 N.W.2d 254, 261.
[5] *Id*. at 262.
[6] *Id*. at 263. *See Klevesahl v. Ackley*, No. A10-1684, 2011 WL 1364448, at *2–3 (Minn. App. Apr. 12, 2011); *Roberts v. Brunswick Corp.*, 783 N.W.2d 226, 230–31 (Minn. App. 2010); *Michaelson v. Minn. Mining & Mfg. Co.*, 474 N.W.2d 174, 180 (Minn. App. 1991); *Audette v. Ne. State Bank of Minneapolis*, 436 N.W.2d 125, 127 (Minn. App. 1989).
[7] *Id*. at 265.
[8] *Id*. at 267.
[9] *Id*.

The Court ultimately explained that this decision was limited. "We express no opinion today about the impact of a general disclaimer on non-compensation conditions of employment."[10] But it is not difficult to imagine how this case might have opened the door for future litigation regarding other provisions of employee handbooks. The Court reiterated that "well-drafted, specific, disclaimers can prevent the formation of contractual rights stemming from employee handbook provisions, including provisions concerning PTO."[11] But how many employers, or municipalities, have such water tight employee handbooks? Most probably have some form of boilerplate disclaimer that they found online (like the provision previously cited here). Under *Hall*, these basic provisions may not cut it.

The main takeaway from *Hall* is that a trend is starting that may create future liability for employers if they do not act in accordance with their handbooks. Hall also follows a trend of Minnesota courts and the Legislature increasingly scrutinizing employee compensation and compensation-related terms and conditions of employment, including recent adoption of the wage theft statute.[12] To avoid liability, employers should either: 1) follow the provisions of their handbooks, despite disclaimer language, or 2) re-write the disclaimers in their employee handbooks so they are definite enough to stand up in court. Specifically, employers should include specific disclaimers for compensation-related provisions in their handbooks, such as provisions regarding the accumulation and payout of PTO, vacation, sick, etc. In addition, employers may want to consider separate acknowledgment forms, statements about the purpose of PTO/vacation/sick, limits on maximum accruals and payouts, and other measures.

Police Misconduct

Issues regarding police misconduct have been a central focus in Minnesota over the last several years. A case of police misconduct creates multiple issues for municipalities. Some of these issues include arbitration in labor grievances between unions and municipalities, and qualified immunity if a lawsuit is brought.

Police Misconduct Arbitration Panel

Recent Minnesota legislation has modified how police operate, including several employment/labor-related provisions.[13] In 2020, a new police arbitration law was enacted where "the commissioner of the Bureau of Mediation Services (BMS), in

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[10] *Id*. at 268.

[11] *Id*.

12 Minn. Stat. § 16C.285.

[13] For example, modifying when no-knock warrants may be conducted. *See* https://www.revisor.mn.gov/bills/text.php?number=SF970&type=ue&version=1&session=ls92&session_year=2021&session_number=0

consultation with community and law enforcement stakeholders, will appoint a roster of six people suited and qualified by training and experience to act as arbitrators for peace officer grievance arbitrations."[14] When choosing arbitrators, the commissioner consider their "familiarity with labor law, the grievance process, and the law enforcement profession; or experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences."[15] The State wants specialized arbiters with specialized backgrounds to deal with these grievances.

Arbitrators are selected alphabetically on a rotating basis.[16] Parties to the grievance no say on who is being chosen, and the parties cannot agree on an arbitrator themselves.[17] Lastly, the decision of the arbitrator is binding on the parties.[18] One important aspect missing from this new grievance process is a method to appeal the arbitrator's decision.[19] The League of Minnesota Cities has written a letter to the legislature suggesting that Administrative Law Judges be used in certain grievances, as an alternative.[20] Because the "ALJ process would involve robust fact-finding and technical legal parameters that would help ensure a thorough review of the officer's and employer's actions. This model also provides an appeal process, which the arbitration process does not."[21]

The State has formed a group of arbitrators with unique backgrounds that will allow them to effectively decide police officer grievances. And in some circumstances, that's exactly what will happen. But it also creates a great deal of uncertainty. The rotating selection process makes it difficult to gauge how the chosen arbiter might stand on an issue. And more importantly, if a bad decision is made, it leaves no avenue for either side to seek an appeal. The result of this new legislation and the ensuing uncertainty is likely an increased desire to settle claims before reaching arbitrators.

Qualified Immunity

42 U.S.C. § 1983 creates a cause of action against defendants who acted under the color of state law and whose wrongful conduct deprived the plaintiff of a constitutionally protected federal right.[22] Section 1983 removes state immunity in these specific circumstances. But federal case law offers police officers a major protection – qualified

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[14] https://www.lmc.org/news-publications/news/all/police-arbitration-reform/
[15] Minn. Stat. § 626.892, Subd. 4.
[16] *Id*. at Subd. 11.
[17] *Id*.
[18] *Id*.
[19] *See* Minn. Stat. § 626.892.
[20] https://www.lmc.org/wp-content/uploads/documents/Letter-Arbitration-Reform.pdf
[21] *Id*.
[22] *Schmidt v. City of Bella Villa*, 557 F.3d 564, 571 (8th Cir. 2009).

immunity. This immunity has long been the ardent defender of honest and good faith police work. But this protection may be beginning to falter.

In the Eighth Circuit, "officials being sued under § 1983 are entitled to qualified immunity for actions that did not violate a clearly established constitutional right at the time of the alleged violation such that reasonable officials acting in the officials' position would not have understood they were violating that right."[23] Rights are clearly established "when the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right."[24] As previously mentioned, qualified immunity protects police officers doing honest and good faith police work. And in turn, it protects the municipalities the officers serve.

Minnesota, like many other states, is considering adopting legislation that would create a state version of Section 1983 and modify/eliminate qualified immunity for that statute.[25] The effect of this proposed bill would be substantial against municipalities. If passed, all claims of police misconduct will be actionable in state court with a state cause of action. Federal qualified immunity that applies to Section 1983 would have no effect on the state cause of action. Stay tuned on this legislation and similar ones in other states.

Sexual Harassment Standard – Severe and Pervasive Standard

Sexual harassment is a common claim brought by employees against employers. And as employers, municipalities are sometimes subject to these claims. The legal standard for an actionable sexual harassment claim can vary by jurisdiction. And in some jurisdictions, like Minnesota, that standard is being lowered.

The US Supreme Court has set the federal standard for sexual harassment under Title VII. "For sexual harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."[26] "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview."[27] In application, conduct that many reasonable people would constitute as sexual harassment behavior is not actionable under this standard.

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[23] *Harrington v. City of Council Bluffs, Iowa*, 678 F.3d 676, 680 (8th Cir. 2012).
[24] *Winslow v. Smith*, 696 F.3d 716, 738 (8th Cir. 2012).
[25] *See* Bill HF 1104, currently in the House.
[26] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67, 106 S. Ct. 2399, 2405, 91 L.Ed.2d 49 (1986) (internal quotations omitted).
[27] *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993).

The Minnesota Human Rights Act (MHRA) parallels Title VII in prohibiting workplace discrimination (among other forms of discrimination).[28] In fact, the MHRA has more protected classes than Title VII itself.[29] The MHRA, unlike Title VII, has a definition for sexual harassment.[30] Sexual harassment includes "unwelcome sexual advances ... or communication of a sexual nature when ... that conduct or communication has the purpose or effect of substantially interfering with an individual's employment ... or creating an intimidating, hostile, or offensive employment ... environment."[31] Despite having its own definition for sexual harassment, Minnesota courts have long relied on federal interpretation of the Title VII "severe and pervasive" standard regarding sexual harassment claims brought under the MHRA.[32] But that strict reliance has now changed.

In *Kenneh v. Homeward Bound, Inc.*, the Minnesota Supreme Court modified the State's adherence to the federal case law.[33] The severe and pervasive standard will still remain, because "sexual harassment must be more than minor: the work environment must be both objectively and subjectively offensive in that a reasonable person would find the environment hostile or abusive and the victim in fact perceived it to be so."[34] But, as the Court explained, "for the severe-or-pervasive standard to remain useful in Minnesota, the **standard must evolve to reflect changes in societal attitudes towards what is acceptable behavior in the workplace**."[35]

The Court went on to distance itself from federal precedent. Sexual harassment must be analyzed looking at all the circumstances surrounding the alleged conduct.[36] Furthermore, "each case in Minnesota state court must be considered on its facts, not on a purportedly analogous federal decision."[37] This is important as the Eighth Circuit is historically employer friendly. The Court also cautioned against quickly granting summary judgment in sexual harassment cases. "If a reasonable person could find the alleged behavior objectively abusive or offensive, a claim is sufficiently severe or pervasive to survive summary judgment."[38] All it takes is a reasonable person.

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[28] *See* Minn. Stat. § 363A.08.

[29] MHRA prohibits employers from taking adverse employment action against an employee "because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age." Minn. Stat. § 363A.08, Subd. 2.

[30] *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 229 (Minn. 2020).

[31] Minn. Stat. § 363A.03, subd. 43(3).

[32] *Kenneh*, 944 N.W.2d 222, 229.

[33] *Id*.

[34] *Id*. at 230-231.

[35] *Id*. at 231 (Noting the essence of the MHRA is societal change).

[36] *Id*.

[37] *Id* at 231-232.

[38] *Id*. at 232.

Following *Kenneh*, more sexual harassment cases will likely survive summary judgment. The days of relying on old federal case law to win at summary judgment are gone. District courts have been given large discretion to apply what they perceive as "changes in societal attitudes" to deny an employer's motion for summary judgment. This is a trend that may progress to other jurisdictions too. If so, the more difficult summary judgment standard will continue to encourage settlement, rather than proceeding through trial, especially because laws like Title VII and the MHRA allow for attorney's fees. There is an inherent conflict with common law principles and changing society values. The Minnesota Supreme Court has turned its district courts away from the past and are allowing them to look forward. Society is undoubtedly changing and courts in some jurisdictions, like Minnesota, are looking to reshape their precedent to reflect those changes.

Whistleblower Developments

Whistleblower claims continue to be an increasingly common claim. The Minnesota Whistleblower Act provides:

> Subdivision 1. Prohibited action. An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:
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> (1) the employee, or a person acting on behalf of an employee, **in good faith**, **reports** a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official; . . .[39]

In Minnesota, 'report' has always been defined by the statute as "a verbal, written, or electronic communication by an employee about an actual, suspected, or planned violation of a statute, regulation, or common law, whether committed by an employer or a third party."[40]

Previously, the Minnesota Whistleblower Act did not have a definition of "good faith."[41] Without a definition, Minnesota case law interpreted good faith by requiring that "a putative whistleblower act with the purpose of exposing an illegality."[42] This required the employee to report to their employer, or to any governmental body or law

[39] Minn. Stat. § 181.932 (emphasis added).
[40] Minn. Stat. § 181.931 subd. 6.
[41] *See Friedlander v. Edwards Lifescis., LLC*, 900 N.W.2d 162, 166 (Minn. 2017).
[42] *Id*.

enforcement official.[43] This requirement restricted an employee's ability to recover in many circumstances. For example, discussions between employees regarding an employer's illegal actions would not have been protected or actionable.

The legislature removed the 'exposing an illegality' element by adding a definition of "good faith" to the statute.[44] Under this definition, reports "are made in 'good faith' as long as those reports are not knowingly false or made with reckless disregard of the truth."[45] This definition made it much easier for employees to recover because: 1) a report includes any conversation about the illegality (even a conversation with a third party), and 2) the report is in good faith so long as it is not knowingly false.

In *Moore v. City of New Brighton*, the Court of Appeals allowed a whistleblower claim to proceed past summary judgment where a police officer alleged that their employer retaliated against him "for his having filed a union grievance, a grievance that accused the city of violating its contractual duty to make overtime payments."[46] This case was significant because it showed that a union grievance is a sufficient report under the Whistleblower Act.[47] It also showed that retaliation for reporting common law violations like breach of contract are actionable even if there is a separate unfair labor practice process available under labor law like the Public Employment Labor Relations Act (PELRA).[48]

As a result of these changes, the Minnesota legislature has created a more pro-plaintiff framework. Employers must tread lightly when terminating employees because of their statements. Whistleblower claims must still meet the basic statutory elements. But in Minnesota, by adding a definition for 'good faith' to the law, the legislature has removed the 'exposing the illegality' requirement and has opened the door to more claims. Now more than ever, employers need to take all complaints seriously, even if they seem frivolous, duplicative of others' complaints, or stemming from bad motives. Employers are going to have a more difficult time at the summary judgment stage challenging whether a complaint is a "report," whether the report was made in "good faith," or whether a claim is covered under the Whistleblower Act.

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[43] *Obst v. Microtron, Inc.*, 614 N.W.2d 196, 200 (Minn. 2000).
[44] *Id*.
[45] *Friedlander v. Edwards Lifescis., LLC*, 900 N.W.2d 162, 165-166 (Minn. 2017), *citing* Minn. Stat. §§ 181.931, subd. 4; 181.932, Subd. 3.
[46] *Moore v. City of New Brighton*, 932 N.W.2d 317, 324 (Minn. Ct. App. 2019), review denied (Oct. 15, 2019)
[47] *Id*. at 322-323.
[48] *Id*. at 322-325.

Post-Pandemic Workplace

Telework

Telework, or remote working, has become more prevalent during the pandemic. For example, Target is leaving one of its large downtown Minneapolis headquarter buildings because many of its employees can work remotely.[49] This trend is likely to continue into the future. The prevalence of remote work has raised a variety of issues. Perhaps the biggest issue is how remote work will impact accommodations for disabled employees. That topic will be covered in detail further below. Another employer concern is OSHA issues for employees working from home.

Generally, the Occupational Safety and Health Act requires employers to "keep their workplace free of serious recognized hazards."[50] But what about employees working from home? The Occupational Safety and Health Administration has no regulations regarding remote workers.[51] In 2000, the agency issued a directive stating that "the agency will not inspect employees' home offices, will not hold employers liable for employees' home offices, and does not expect employers to inspect the home offices of their employees."[52] Simply put, an employer will not be liable for OSHA violations regarding remote employees. Remote employees have the responsibility to keep their own workplaces free from hazards.

Another concern regarding telework is whether employers have to pay for the equipment. This equipment is usually a computer, Wi-Fi, and maybe a phone. Under the Fair Labor Standards Act, "an employer may not require you to pay for items that are your employer's business expenses if doing so reduces your earnings below the required federal minimum wage or overtime compensation due in any workweek."[53] Similarly, "if the employer provides a computer to you or pays for an additional phone line for your home, for example, the employer may not require you to reimburse it for those costs if doing so reduces your earnings below the required federal minimum wage or overtime compensation due in any workweek."[54] Employers can require employees pay for their remote equipment, but they must make sure that offsetting those costs does not move employees below minimum wage.

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[49] https://kstp.com/minnesota-news/target-announces-departure-from-minneapolis-city-center-building-cites-less-needed-space/6039451/#:~:text=Target%20Corporation%20announced%20it%20is,an%20email%20to%20employees%20Thursday.

[50] https://www.osha.gov/laws-regs

[51] https://www.dol.gov/agencies/whd/flsa/pandemic#14

[52] *Id*.

[53] *Id*.

[54] *Id*.

ADA/MHRA Accommodation

Under the Americans with Disabilities Act, employers are obligated to "make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship."[55] An analogous accommodation requirement exists in the MHRA.[56] There are two large issues that these laws raise for employers in a post-pandemic workplace. First, what disabilities require an accommodation? Second, what is a reasonable accommodation?

Disabilities are broadly defined under the ADA. The most common form of disability is "a physical or mental impairment that substantially limits one or more major life activities of such individual."[57] Major life activities include, but are not limited to:

> caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.[58]

Major life activities *also* include the operation of a major bodily function, including but not limited to, "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."[59] This list is broad and open ended. The main point of this discussion is that a protected disability is a lot broader than one might think. In fact, many employees are disabled under the ADA and do not know about it. And this number will only increase during and after the pandemic.

Everyone has heard about the potential long term effects of Covid-19. According to the CDC:

> people commonly report experiencing different combinations of the following symptoms: difficulty breathing or shortness of breath, tiredness or fatigue, symptoms that get worse after physical or mental activities, difficulty thinking or concentrating (sometimes referred to as 'brain fog'), cough, chest or stomach pain, headache, fast-beating or pounding heart (also known as heart palpitations), joint or muscle pain, pins-and-needles

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55 https://www.ada.gov/cguide.htm#:~:text=ADA%20Title%20I%3A%20Employment&text=It%20restricts%20questions%20that%20can,it%20results%20in%20undue%20hardship.

56 Minn. Stat. § 363A.08, Subd. 6.

57 *See* 42 U.S.C.A. § 12102.

58 *Id*. at Subd. 2.

59 *Id*.

feeling, diarrhea, sleep problems, fever, dizziness on standing (lightheadedness)…[60]

These long term symptoms are common and most of them affect a major life activity that is protected under the ADA. It is important to stay vigilant and to understand that there are a whole host of newly disabled workers who might be entitled to an accommodation at some level. And as vaccination rates stay low in parts of the country, and Covid-19 variants continue to become more harmful, those numbers will only increase.

Covid-19 has also increased the national focus on mental health. Mental health issues have increased for many during the pandemic, whether it be stress, anxiety, or depression. These issues can impact major life activities and can be considered disabilities. It is important that employers recognize and acknowledge this. If an employee is suffering from mental health issues, they might be entitled to a reasonable accommodation.

As previously stated, if an employee has a disability, their employer must offer a reasonable accommodation for that disability. What is a reasonable accommodation has changed drastically in recent years. The largest development is probably working from home. There is an interesting Seventh Circuit case from the 1990s that reviewed a disabled employee's request to work remotely from home on a computer.[61] The employer refused the accommodation and Judge Posner affirmed that decision. "Most jobs in organizations public or private involve team work under supervision rather than solitary unsupervised work, and team work under supervision generally cannot be performed at home without a substantial reduction in the quality of the employee's performance."[62] The employer was not required to allow an employee to work remotely.

Technology and circumstances have greatly evolved since then. In 2003 the EEOC published a resource on remote work, which provides helpful information regarding remote work as an ADA accommodation.[63] Technology continues to advance, allowing efficient and free flowing communication. And Covid-19 has forced many non-essential workers to work remotely at one time or another—proving its general viability. The world has greatly changed and there is a good chance that as new reasonable accommodation cases are filed, courts will be more lenient on remote accommodations. In 2020 the EEOC published an updated resource regarding COVID-19, the ADA, and

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[60] https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html

[61] *Vande Zande v. State of Wis. Dep't of Admin.*, 44 F.3d 538 (7th Cir. 1995).

[62] *Id*. at 544.

[63] Work at Home/Telework as a Reasonable Accommodation, https://www.eeoc.gov/laws/guidance/work-hometelework-reasonable-accommodation.

remote work.[64] It answers more specific questions about teleworking like employee privacy, avoiding COVID-19 exposure, and returning to in-person work.

There are some circumstances where remote work will not be a reasonable accommodation, and that is okay. Under the ADA, employers only have to offer a reasonable accommodation to "qualified individuals." A qualified individual is an "individual who, with or without reasonable accommodation, can perform the **essential functions of the employment position**."[65] Municipal employees often do public facing jobs that cannot be done remotely. In those cases, employee accommodations must be limited to accommodations that will allow the employee to continue doing their job. For example, a standing desk or a special chair might be a reasonable accommodation for a front desk worker at city hall. But working remotely is not a reasonable accommodation because the employee could not do the essential functions of the job from home. It is a balance and each job is different. It is important to determine whether an employee can do the work with an accommodation before the accommodation is given.[66]

Additional COVID-19 Resource List

League of Minnesota Cities

- *COVID-19 and Cities: News and Resources* (providing in-depth and up to date resources on the COVID-19 pandemic and city operations), https://www.lmc.org/resources/covid-19-resources/.
- *PTSD and Mental Health Toolkit*, https://www.lmc.org/ptsd-mental-health-toolkit/.

Minnesota Department of Labor and Industry

- *Updates related to COVID-19*, https://www.dli.mn.gov/updates.

U.S. Department of Labor

- *Coronavirus Resources*, https://www.dol.gov/coronavirus.

Minnesota Department of Human Rights

- *COVID-19 and Civil Rights*, https://mn.gov/mdhr/news-community/covid-19/.

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[64] *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.

[65] 42 U.S.C.A. § 12111.

[66] For more resources regarding ADA leave, *See* Employer-Provided Leave and the Americans with Disabilities Act, https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act.

U.S. Equal Employment Opportunity Commission

- *Coronavirus and COVID-19*, https://www.eeoc.gov/coronavirus.
- *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.