EXECUTIVE SERIES:
LABOR & EMPLOYMENT

NON-DISCRIMINATION UPDATE: NAVIGATING ADA AND TITLE VII ACCOMMODATION REQUESTS AND RESPONDING TO COMPLAINTS

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ADA – REASONABLE ACCOMMODATIONS



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ROADMAP

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ADA refresher

Remote Work (Post-Covid/Trump Administration)

Common Pitfalls
- Effective accommodation, not any accommodation
- Equal is not a defense
- Interactive process means interactive

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GENERAL RULE

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42 U.S.C. § 12112 – Discrimination. "(a) General rule. No covered entity shall discriminate against a qualified individual on the basis of disability . . ."

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DISCRIMINATION

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"[N]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C. § 12112(b)(5)(A)

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QUALIFIED INDIVIDUAL

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- What does "qualified individual" mean under Title I?
- **42 U.S.C. § 12111(8):** "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. . . ."

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ESSENTIAL FUNCTIONS

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- What are the "essential functions" of a job?
- **42 U.S.C. § 12111(8):** "consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants . . . this description shall be considered evidence of the essential function"

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ESSENTIAL FUNCTIONS

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- Does not include the marginal functions
- Evidence a particular function may be essential:
  - The employer's judgment
  - Written job descriptions prepared before advertising or interviewing applicants for the job
  - Consequences of not having the person in the job perform the function
  - Terms of the collective bargaining agreement
  - Work experience of the previous job holders
  - Current work experience of holders of similar jobs
- 29 C.F.R. § 1630.2(n)

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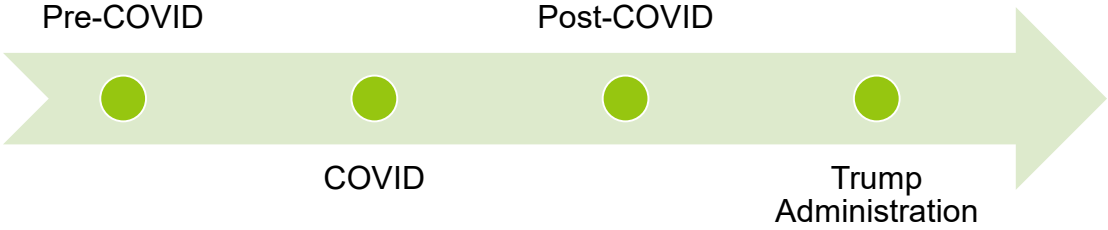
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REMOTE WORK



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EVOLUTION OF TELEWORK



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EEOC/OPM JOINT FAQ (FEB. 2026)

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- Employers are not required to continue all previously granted telework accommodations
- Employers should not take a blanket approach to rescind or deny all telework accommodations
- Employers may choose between effective reasonable accommodations
- ADA does not create a right to be free from all discomfort and distress in the workplace
- *Caveat: Non-binding, and applies only to federal agencies*

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EEOC/OPM JOINT FAQ (FEB. 2026)

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"The fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework for the purpose of protecting their safety from COVID-19, or otherwise chose to permit telework, does not mean that the employer permanently changed a job's essential functions, that telework is always a feasible accommodation, or that it does not pose an undue hardship. These are fact-specific determinations."

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TELEWORK CASES



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BUT...

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EEOC v. Federal Express Corp. (S.D.N.Y.) – $280,000 Settlement

Gardner v. Kutztown University (3d. Cir.) – Vacated summary judgment

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HYPOTHETICAL: LOPEZ V. REGIONAL BANK

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Maria Lopez is a customer service representative at a regional bank. She has been diagnosed with Multiple Sclerosis and requests to work from home permanently.

During the pandemic, the bank allowed all customer service staff to work remotely for 18 months. Now, telework is not allowed.

The bank's current job posting for the role does not list on-site presence as a requirement. But managers say that in-person presence aids supervision and team collaboration.

Maria's supervisor has allowed other customer service representatives to telework occasionally, for example, when children are off from school or maintenance workers are coming to the house.

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THINK ABOUT

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- Does pandemic-era telework establish essential functions can be performed remotely or show that it was temporarily feasible?
- **Risks:** Blanket policy, lack of clarity in job post

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EFFECTIVE VS. PREFERRED ACCOMMODATION



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AN EFFECTIVE ACCOMMODATION

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- Effective means that the employer's response accommodates the limitations of the person with a disability
- Employers may choose among equally effective alternatives
- An accommodation that leaves the employee unable to meet medical restrictions is not effective

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RIPPED FROM THE HEADLINES

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- Software company hired Benefits Coordinator who has severe onion allergy
- Requests to work in an enclosed office away from food areas or work from home
- Employer told Benefits Coordinator to wear a mask, carry an EpiPen, and relocated her to a floor with fewer employees
- Employee suffered repeated anaphylactic reactions from onion exposure
- EEOC sued

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BEWARE BLANKET POLICIES AND NO EXCEPTIONS



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FOR EXAMPLE:

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No more than allotted vacation days
- EEOC v. 1st Franklin Financial Corporation - $750,000

Mandatory vaccines even for remote employees
- Klimek v. CentraCare Health System (8th Cir.)

In-person attendance policy, regardless of essential functions
- Hunt-Brown v. New Mexico General Services Department (D.N.M.)

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INTERACTIVE PROCESS MEANS "INTERACTIVE"



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COLLABORATIVE PROCESS

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Employee and employer share information

Identify the limitations resulting from the disability, the employer's needs, and the potential reasonable accommodations that could overcome the employee's limitations and meet employer's needs

Goal is to facilitate the identification of an appropriate accommodation

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TWO-WAY STREET

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- **Dieng v. Orkin, LLC (4th Cir.)**: Employer was at fault for failing to engage in the interactive process when it did not attempt to speak with employee about his physical limitations or his request for an accommodation
- **Byrd v. Austal USA (11th Cir.)**: Employee was responsible for the breakdown in the interactive process when he did not comply with request for documentation

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TITLE VII – RELIGIOUS ACCOMMODATIONS



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ROADMAP

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- Title VII Duty
- Groff v. DeJoy
- Post-Groff Federal Landscape
- Current Administration
- Compliance and Best Practices

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REASONABLE ACCOMMODATIONS

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Employers must reasonably accommodate an employee's sincerely held religious beliefs, practices, or observances unless doing so would impose an undue hardship on the conduct of the employer's business

Notice: Enough to flag the conflict. No magic words

Sincerity: Belief must be sincerely held; employer may not probe lightly or demand orthodoxy

Religion: Broadly defined — theistic and non-theistic moral/ethical beliefs of comparable strength

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GROFF V. DEJOY (2023)

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Before

- Hardison "de minimis" standard
- Any cost or burden more than trivial could justify denial. Coworker inconvenience and morale often treated as sufficient

After

- "Substantial increased costs"
- Burden must be substantial in the overall context of the particular business. Context, size, and operating costs matter

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Substantial in Overall Context

Not abstract. Measured against the nature, size, and operating cost of this employer's business

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WHAT UNDUE HARDSHIP MEANS NOW

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Evidence Required

Specific, concrete costs or disruptions. Speculation and hypotheticals will not carry the day

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THE OPEN SPLIT ON PROOF

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Realistic risk, assessed at the time
Petersen (9th Cir. 2025); Rodrique (1st Cir. 2025); Henry (6th Cir. 2025). Cert denied Oct. 5, 2026

Concrete cost still required elsewhere
Courts have reversed employers who offered a recited interest, not a record

Plan for the stricter circuit
Document the risk when you decide (i.e., the cost, staffing, or safety data)

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GENERALLY NOT UNDUE HARDSHIP FROM GROFF SUBSEQUENT APPLICATION

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- Temporary or occasional costs
- Voluntary shift swaps or substitutes
- Occasional schedule adjustments
- Administrative costs of arranging the accommodation
- Coworker grumbling or subjective discomfort
- Hypothetical future burdens without evidence

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FEDERAL ENFORCEMENT — THE SCORECARD

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As of the May 7, 2026 EEOC release
16 religious lawsuits since January 2025. More than $63 million recovered

FY 2025
More than $48 million — up 146% from $19.55 million in FY 2024

Inside that figure
March 2026: $15 million public conciliation on COVID vaccine accommodations. Later decrees are not in the $63 million

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POST-GROFF ENFORCEMENT REALITY

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- **EEOC Priority**
  - Religious accommodation claims are a clear enforcement focus. Significant recoveries and lawsuits since 2025, including large COVID-era vaccine settlements
- **Federal Sector Signals**
  - EEOC Office of Federal Operations decisions (VA Friday prayer; Federal Reserve vaccine) apply Groff strictly and require robust interactive process and concrete evidence of hardship

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CURRENT ADMINISTRATION SIGNALS

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- **Generous Posture**
  - DOJ guidance encourages a generous approach to religious accommodations, including flexible schedules and situational telework where operationally feasible
- **Expression Protected**
  - Private religious expression in the workplace is treated as generally accommodating. Coworker disagreement is not a defense

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CURRENT ADMINISTRATION SIGNALS

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- **Interactive Process**
  - Federal decisions emphasize that employers must engage fully and document alternatives considered — not simply deny and move on
- **Heightened Scrutiny**
  - Charges alleging failure to accommodate religion are prioritized. Expect close examination of the interactive process and any claimed hardship

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PRACTICAL COMPLIANCE ROADMAP

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1. Train
Managers & HR on recognizing requests and the Groff standard

2. Receive
Accept notice in good faith; no magic words required

3. Engage
Robust interactive process — explore options, including unrequested ones

4. Analyze
If considering denial, gather specific evidence of substantial cost/impact

5. Document
Every step, alternative considered, and the factual basis for any decision

6. Update
Policies, handbooks, and prior denials against the new standard

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INTERACTIVE PROCESS — BEST PRACTICES

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Start promptly
Do not delay. Acknowledge the request and open dialogue quickly

Focus on the conflict
Identify the specific work requirement that conflicts with the belief or practice

Explore options
Schedule changes, voluntary swaps, job modifications, leave, remote work where feasible

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INTERACTIVE PROCESS — BEST PRACTICES

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Avoid sincerity fishing
Question sincerity only with objective basis. Most cases do not warrant inquiry

Offer effective alternatives
An accommodation that leaves the conflict in place is not reasonable

Close the loop in writing
Confirm the outcome and the reasoning in a clear, contemporaneous record

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DOCUMENTATION THAT SURVIVES SCRUTINY

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- Date and substance of the employee's request (or notice)
- Summary of interactive discussions and who participated
- All accommodations considered — including those not requested by the employee
- Specific operational or cost data supporting any claimed hardship
- Why each alternative was accepted or rejected
- Final decision and how it was communicated

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KEY TAKEAWAYS

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1. De minimis is gone
Substantial increased costs in the context of your business is the standard

2. Process matters as much as outcome
A well-documented interactive process is your best defense

3. Evidence over assumptions
Speculation and coworker discomfort will not establish undue hardship

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KEY TAKEAWAYS

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4. Enforcement is active
Religious accommodation is a priority area under current EEOC leadership

5. When in doubt, accommodate
Most requests can be met without substantial cost. Denial is the higher-risk path

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