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Compliance Connection

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Federal Compliance Update

Review of Telework as a Reasonable Accommodation: Recent EEOC Guidance for Employers

Disability accommodation claims have long been among the most common workplace discrimination claims, but the recent increase has been unusually sharp. One major driver is telework as a requested reasonable accommodation. For employers managing return-to-office expectations, the practical question is whether there are lawful ways to evaluate, limit, modify, or deny telework requests when appropriate. Recent Equal Employment Opportunity Commission (EEOC) guidance says yes, provided employers focus on the individualized Americans with Disabilities Act (ADA) analysis and the interactive process.

EEOC Guidance on Telework as an Accommodation

COVID-19 normalized remote work for many jobs. As more employers push for in-person work, however, conflicts are increasing between employees who seek telework for disability-related reasons and employers that want consistent office attendance. That tension creates risk, especially for employers that rely on blanket return-to-office rules without preserving room for individualized accommodation decisions.

On February 11, 2026, the EEOC and the Office of Personnel Management (OPM) issued FAQs addressing telework accommodations in the federal sector. Although the guidance is directed to federal agencies, private employers should pay attention because the analysis relies on ADA standards and established federal case law. The central message is useful for all employers: Telework may be a reasonable accommodation, but it isn't automatic.

Effectiveness Matters More Than Preference

The guidance reinforces that the key issue is whether telework is effective, not whether the employee prefers it. Telework qualifies as a reasonable accommodation only if it enables an applicant to participate in the hiring process, enables an employee to perform the job's essential functions, or gives the employee equal access to the benefits and privileges of employment.

Employers therefore may ask whether remote work helps the employee perform the essential functions of the position rather than simply making work more comfortable or reducing symptoms unrelated to job performance. If another accommodation is effective, such as leave for periodic flare-ups, telework may not be required.

Reevaluation is Part of the Interactive Process

Accommodation decisions aren't necessarily permanent.

The EEOC guidance makes clear that reevaluation and modification can be part of the ongoing interactive process. A telework accommodation that is reasonable today may become unreasonable if job duties, operational needs, the employee's medical status, or the law materially changes. You should build periodic reassessment into accommodation administration and document the reasons for any modification.

COVID-Era Flexibility Didn't Redefine Essential Functions
The guidance also confirms that temporary pandemic-era flexibility didn't permanently rewrite essential job functions. Suspending in-office duties during an emergency doesn't mean those duties are no longer essential, and it doesn't mean telework is always feasible going forward.

Whether physical presence is essential remains a case-specific inquiry based on current operational realities. You are in a stronger position when job descriptions clearly identify essential functions and when the business reasons for in-person work are documented.

Anxiety and Mental Health Symptoms Require Same Individualized Analysis
The EEOC also addresses requests based on anxiety or other mental health symptoms related to on-site work.
The ADA doesn't create a general right to avoid all workplace discomfort or distress. The question is whether the condition creates a material barrier to working in the office. If it does, the employer should consider reasonable accommodation, including telework if appropriate. If it doesn't, telework isn't required merely because the employee would prefer to work remotely.

Key Takeaways for Employers
Keep these important points in mind:

- Avoid blanket rules. Return-to-office policies should leave room for individualized ADA accommodation analysis.
- Telework isn't automatic. Focus on whether remote work enables the employee to perform essential job functions or access equal employment benefits.
- Document why in-person work matters. Updated job descriptions and clear operational reasons are critical when physical presence is essential.
- Don't treat COVID-era arrangements as permanent evidence that all duties can be performed remotely.
- Distinguish preference from necessity. Stress or discomfort with office work, by itself, doesn't require telework under the ADA.
- Recognize accommodation requests even when employees don't use "magic words."
- Keep the interactive process active. Reassess accommodations when job duties, operations, medical information, or legal standards materially change.

Just a Friendly Reminder – Know Enough to Know if AI is Wrong: 'It Wasn't Me; It Was ChatGPT' Doesn't Fly as an NLRA Violation Defense

In case you were looking for another chatbot cautionary tale, the latest comes from a decision issued by an administrative law judge analyzing a company's arguments in defense of a National Labor Relations Act (NLRA) Section 7 charge.

Employer Confesses, in Writing, to Unlawful Motive for Firing
The facts underlying the charge are simple enough. Daniela Melendez, an administrative assistant at a company called Autofit, disclosed her hourly wage to a curious coworker. Armed with that information, the coworker went to management and demanded equal pay. Just over two weeks later, Melendez was fired. When Melendez applied for unemployment benefits, the company had to submit a written explanation for her termination to the Texas Workforce Commission. Autofit's explanation? Melendez had been "instructed to keep sensitive information confidential, yet she shared pay details with colleagues." The problem with that, of course, is that firing an employee for talking about pay is unlawful. So, the company had, in writing, admitted to breaking the law.

Autofit tried to walk that confession back, twice. Initially, it argued that "shared pay details" didn't actually mean talking about pay but rather accessing and sharing other employees' sales-commission information. Unsurprisingly, given that this spin didn't align with the statements made in the paperwork Autofit submitted, the argument didn't stick. Then the company's witness testified that she hadn't written the problematic sentence at all. Actually, ChatGPT had and had done so, the witness said, without any input from Autofit. As the witness described it, she used ChatGPT to sound professional, pasted its output straight into the Texas Workforce Commission submission, couldn't recall whether she read it, and assumed someone downstream would fix any errors.

In Administrative Law Judge Sharon Steckle'sr decision, she noted that Autofit's "answers to the Texas Workforce Commission about why Melendez was terminated show that [Autofit] was less than pleased about Melendez having a protected concerted discussion about pay." The judge then went on to explain that she did "not credit [the] explanation that

ChatGPT added pay without [the author's] help." Even if the chatbot had generated the language, the judge noted, the company could have reviewed it and taken the offending part out (and clearly did not). The employee was entitled to reinstatement, backpay, other pecuniary harms, expungement of the file, and a notice posted on the wall for 60 days.

Takeaway
The takeaway here is not "never use AI." It's that AI does not launder your legal obligations. Whatever a chatbot drafts on your company's behalf, a human owns. Read it before it goes to a government agency.

State Compliance Update

Colorado's New AI Employment Law Takes Effect January 1, 2027

Artificial intelligence and automated technology are becoming increasingly common in the workplace, particularly in recruiting, applicant screening, and employee evaluations. Beginning January 1, 2027, Colorado employers using certain automated decision-making tools will face new disclosure and compliance requirements under Senate Bill 26-189 (SB26-189).

Signed into law on May 14, 2026, SB26-189 replaces Colorado's previously enacted AI regulatory framework with new requirements focused on transparency, access to information, and human review when automated technology materially influences important decisions about individuals.

What Does the New Law Cover?
SB26-189 regulates certain automated decision-making technology (ADMT) used to materially influence consequential decisions, including decisions involving employment.

For employers, covered technology may include systems used to:

- Screen, rank, or recommend job applicants.
- Evaluate candidates during the hiring process.
- Assist with promotion or compensation decisions.
- Make recommendations affecting employment opportunities.

The law is not limited to technology specifically marketed as artificial intelligence. Other automated systems that process personal information and generate scores, rankings, recommendations, or predictions may also qualify.

However, not every automated workplace tool is covered. For example, technology used only to organize or summarize information for human review generally falls outside the law when it does not generate an inference that materially influences a consequential decision.

What Will Employers Be Required to Do?
Employers using covered automated decision-making technology will have several important responsibilities.

- **Provide Notice:** Employers must provide clear and conspicuous notice when individuals interact with covered technology used in consequential decisions. This may affect how employers communicate with applicants during online applications and automated screening processes.
- **Explain Adverse Decisions**: When covered technology is used in a consequential decision resulting in an adverse outcome, employers generally must provide specified information within 30 days.

  This includes a plain-language description of the technology's role in the decision, information about requesting additional details, and instructions explaining the individual's rights.
- **Allow Requests for Human Review:** Individuals affected by adverse decisions may request meaningful human review and reconsideration, subject to the law's commercially reasonable standard.

  Employers should establish procedures for receiving and responding to these requests rather than relying exclusively on automated results.
- **Maintain Compliance Records:** Employers using covered technology must retain records necessary to demonstrate compliance for at least three years.

Does This Apply to Your Business?
The law may apply to Colorado employers using automated systems that materially influence hiring, promotion, compensation, or other covered employment decisions.

Importantly, employers may have responsibilities even when the technology is provided by an outside vendor. Businesses should not assume that purchasing recruiting or HR software transfers all compliance obligations to the software provider.

What Should Employers Do Before January 1?
With the effective date approaching, employers should consider taking the following steps:

- **Review existing technology.** Identify applicant tracking systems, recruiting platforms, automated assessments, and other HR tools that influence employment decisions.
- **Contact software vendors.** Determine whether their products fall within the law and request information about system functionality, limitations, and available compliance documentation.
- **Update applicant communications.** Prepare appropriate notices explaining the use of covered automated decision-making tools.
- **Establish review procedures.** Designate personnel and processes for handling requests for information, corrections, and human reconsideration.
- **Train HR personnel and hiring managers.** Ensure employees involved in hiring and employment decisions understand when automated technology is being used and how to respond to requests.

What Happens if Employers Do Not Comply?
The Colorado Attorney General is responsible for enforcing SB26-189 under the Colorado Consumer Protection Act. Violations may be treated as deceptive trade practices.

The law does not establish a new private right of action, although other existing legal protections may still apply. Certain violations are subject to a 60-day notice-and-cure process before enforcement, with exceptions for knowing or repeated violations.

The Bottom Line
January 1, 2027, is approaching quickly. Employers using automated hiring or HR technology should take time before year-end to evaluate their systems, communicate with vendors, and prepare for the law's new transparency and review requirements.

Colorado's Attorney General is developing implementing regulations that may provide additional details about compliance. Employers should monitor those developments and consult employment counsel as needed.

Taking proactive steps now can help employers continue using workplace technology while meeting their legal responsibilities.

Learn More: Colorado Senate Bill 26-189 — Official Legislative Information

Colorado's New Agricultural Overtime Law Takes Effect January 1, 2027

Beginning January 1, 2027, Colorado agricultural employers will be subject to updated overtime requirements under Senate Bill 26-121 (SB26-121). Signed into law on May 4, 2026, the legislation establishes a new statewide overtime threshold for certain agricultural employees and increases penalties for wage theft and employee misclassification.

The law is particularly important for farms, ranches, and other agricultural businesses where employees may work extended hours during planting, harvesting, and other seasonal operations.

What Is Changing?
Under SB26-121, covered agricultural employees must receive overtime pay when they work more than 56 hours in a workweek, beginning January 1, 2027.

The new statutory threshold replaces the agricultural overtime thresholds that were previously scheduled to take effect under Colorado's existing regulatory framework.

For example, an eligible agricultural employee who works 60 hours in a workweek would generally be entitled to four hours of overtime pay.

The law also removes the Colorado Division of Labor Standards and Statistics director's authority to establish agricultural overtime thresholds through administrative rules, placing the new 56-hour threshold directly into state law.

Does the New Overtime Requirement Apply to Every Agricultural Employee?
Not necessarily. SB26-121 establishes specific exceptions for certain agricultural workers.

The 56-hour overtime requirement generally does not apply to:

- **Open-range livestock workers:** Employees principally engaged in producing livestock on the open range, as defined under applicable federal regulations.
- **Decision-making managers:** Certain employees with qualifying management responsibilities who meet the law's definition.
- **Family members:** Certain qualifying family members of a family owner of an agricultural business.

Employers should carefully review these exceptions before determining that an employee is exempt. Job titles or family relationships alone may not establish that an exception applies.

Increased Penalties for Wage Violations
In addition to changing overtime requirements, SB26-121 increases penalties for certain wage theft and employee misclassification violations involving agricultural employers.

This makes accurate employee classification, payroll calculations, and recordkeeping particularly important.

Employers should ensure that workers are properly classified, all compensable hours are recorded, and overtime wages are paid when required.

What Should Agricultural Employers Do Before January 1?
With the effective date approaching, agricultural employers should consider taking the following steps:

- **Review employee classifications.** Identify which employees are covered by the new overtime requirements and whether any statutory exceptions apply.
- **Evaluate employee schedules.** Review workweeks that regularly exceed 56 hours, particularly during busy agricultural seasons.
- **Update payroll systems.** Coordinate with payroll providers to ensure overtime is calculated correctly beginning January 1, 2027.
- **Review labor budgets.** Consider how the updated overtime threshold may affect staffing costs and seasonal workforce planning.
- **Train supervisors.** Ensure managers understand the importance of accurate timekeeping, employee classifications, and overtime compliance.
- **Maintain accurate records.** Confirm that timekeeping and payroll practices appropriately document hours worked and wages paid.

Does This Affect All Colorado Employers?
No. SB26-121 specifically addresses overtime requirements for agricultural employees. Employers outside the agricultural industry will generally continue to follow the overtime requirements applicable to their workplaces under Colorado and federal wage-and-hour laws.

Agricultural businesses must also continue complying with other applicable employment laws, including minimum wage, wage payment, and workplace protection requirements.

The Bottom Line
January 1, 2027, is approaching quickly. Colorado agricultural employers should use the remaining months of 2026 to review employee classifications, evaluate scheduling practices, and update payroll procedures.

Although the new law establishes a uniform 56-hour weekly overtime threshold for most covered agricultural employees, it also increases the potential consequences of certain wage-and-hour violations.
Taking proactive steps now can help agricultural employers transition smoothly to the new requirements and reduce the risk of costly compliance issues.

Learn More: Colorado Senate Bill 26-121 — Official Legislative Information

Compliance Calendar

November
Nothing so far…

December
12/31 – Gag Clause Prohibition Compliance Attestation

January 2027
(W2s will be due 2/1 in 2027 since 1/31 falls on a Sunday

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