

RESPONSIBILITIES FOR MANAGERS

Supervisors play a critical role in the thoughtful and effective implementation of every aspect of the return-to-work process including remaining vigilant in emphasizing to employees the importance of social distancing, hand washing, staying at home when sick, and use of face coverings, as needed.

A key piece of the return to work process is the establishment of flexible work schedules that will allow employees to follow social distancing measures, and reduce the population density within buildings and work spaces while meeting their College's (or Central Office) density goal of at least 50%. Managers must approve flexible work schedules and ensure that appropriate arrangements are made to ensure that support services and University operations can continue without interruption while modified schedules are in place.

Possible flexible scheduling scenarios include:

- **A combination of remote and on-site work days**
 - i.e., 2 days remote and 3 days on-site
- **Combination of remote and on-site work weeks (every other)**
- **Condensed work week**
 - Where employees work 35 hours over a minimum of 4 days, with varying day off
- **Flex start/ end times**
 - Schedule start time must be between 7am -11am
 - Schedule end times must be between 3pm –7pm
- **Full time remote**

Employees seeking an accommodation, general or medical, should contact the Office of Human Resources at the college or unit where they are employed. CUNY will review all requests on a case-by-case basis in accordance with applicable federal, state, and local law.

For more information visit [CUNY's Flexible Work Arrangements](#) webpage.

A. Reasonable Accommodations

Employees may also request reasonable accommodations to their Office of Human Resources for:

- Disabilities
- Pregnancy, childbirth or related medical conditions
- Religious practices
- Status as a victim of domestic violence, sex offense, or stalking

All requests for reasonable accommodations for these reasons should follow the Procedure for [Implementing Reasonable Accommodations and Academic Adjustments](#).

Employees who have concerns about returning to onsite work for other reasons (i.e. caregiving, own non- disability health condition) may be eligible for other options such as FMLA, leaves of absence, or use of annual leave. HR should encourage employees to speak with their supervisor/unit head to work out a mutually agreeable work schedule. If there is agreement, employees should complete the remote work agreement.

A comprehensive list of associated medical conditions potentially increasing risk for severe COVID-19 disease is located on the [CDC website](#).

FAQs on Responsibilities for Managers:

Will there be a policy in place for monitoring absenteeism and non-compliance with return to work policy? For additional resources regarding managing a remote workforce, see CUNY's [Tools and Rules for Teleworking](#).

- **How should we handle employees who are *required* to return to work full-time or through a *flexible schedule, but they disagree*?**

The University has the right to require employees to return to work as operations warrant it. The use of annual leave where mutually beneficial is encouraged. "Mutually beneficial" is where the employee requests and the employer approves of annual leave. It is strictly voluntary on the part of the employee and the employer is encouraged to accommodate wherever possible, including requests for partial days, recurring days or full weeks off, etc. If the employee has no annual leave, no special rights and they are needed in order to operate; it may be necessary to utilize the corrective action process.

- **What if the employee has concerns with family, health, commuting, etc.?**

Many employees will have concerns about coming back which is why it is important to let employees know that everything is being done to ensure their safety as the University re-opens (cleaning and disinfecting, staggering shifts, facilities assessments, etc.) Employees who have concerns about returning to onsite work for reasons not covered by [CUNY's Reasonable Accommodations and Academic Adjustments policy](#) may be eligible for other options such as FMLA, leaves of absence, or use of annual leave. HR should encourage employees to speak with their supervisor/unit head to work out a mutually agreeable work schedule. If there is an agreement, employees should complete the remote work agreement.

- **Can employees age 65 and older be required to stay at home?**

With regard to issues of age discrimination, the EEOC reminds employers that they cannot treat workers age 65 and older less favorably than other employees, even if their efforts are intended to protect employees who are at a higher risk of severe illness from COVID-19. The ADA would prohibit a covered employee from involuntarily excluding an individual from the workplace based on his or her being 65 or older, even if the employer acted for benevolent reasons such as protecting the employee due to higher risk of severe illness from COVID-19.

It is important to note that workers age 65 and older also may have medical conditions that are under the protection of the ADA as individuals with disabilities. As such, they may request reasonable accommodation for their disability as opposed to their age. For more information visit: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

6. What is our responsibility to employees who are uneasy about returning to work because they live with or come in close contact regularly with members of their family that are high-risk candidates for COVID-19? Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition?

General accommodation requests will be considered for employees who live with a household member at high risk for COVID-19; this does not typically include children too young to be vaccinated.

- 1. Managers continue to be responsible for addressing excessive absences as a performance deficiency. Non-compliance with the return to work policy should be addressed utilizing the corrective actions process, the same as any other policy violation.*
- 2. How can supervisors regularly evaluate their employees work while working remotely? What procedures and tools need to be in place to ensure employees meet their deliverables?** *Employees with an approved telecommuting arrangement are subject to the same performance standards, processes and timelines for their position that were in place prior to telecommuting. Managers should clearly communicate expectations for work assignments, check-ins, and any other parameters relevant to supporting a remote arrangement.*

Although the ADA prohibits discrimination based on association with an individual with a disability, the protection is limited to disparate treatment or harassment. The ADA does not require an employer to accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom they are associated. For example, an employee without a disability is not entitled under the ADA to work remotely as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure.

Of course, an employer is free to provide such additional options if it chooses and is able to do so; CUNY encourages colleges to be as flexible as possible in granting such requests with the understanding that services, operations and density goals cannot be compromised. An employer choosing to offer additional flexibility beyond what the law requires should be careful not to create a disparate impact to a protected EEO category. Be sure to consult with the campus CDO and/or OHR as necessary.

7. How should managers handle employee requests to work from home on days they are feeling sick?

It will be at the supervisor's discretion to grant an employee's request to work remotely on a day, they are feeling ill or if they have to use their dedicated sick leave. CUNY highly encourages individuals that are feeling ill and experiencing COVID-related symptoms to stay at home and rest.

8. Can an employee request a 100% remote work accommodation if they moved out of state during the pandemic?

Employees who made a decision to move out of the state cannot request a 100% remote accommodation unless they need a short period of time to move back to the NY metro area or campuses require the time to conduct a search to fill the position but no later than the end of Fall 2021 semester. CUNY is not set up as an employer in states beyond the "commutable distance standard" and as such cannot withhold other states income taxes, participate in those states' unemployment programs or monitor and apply effectively the localized state and municipality laws outside of the New York City Metropolitan area. Geographic locations that are considered commutable to New York City include portions of New Jersey, Connecticut, Pennsylvania, and upstate New York. . Employees are disallowed from using residential addresses that do not comply with this requirement as soon as possible, but by no later than the close of the Fall 2021 semester.