

# UNITED SPINAL<sup>NOW</sup>

## The Return

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**T**he return to normal seems a long way away in the New York area, but America is reopening, despite climbing COVID-19 numbers. The reopening of businesses and places of public accommodation is dangerous if done too early and may remain dangerous to some far longer than to others.

The Americans with Disabilities Act (ADA) and New York's non-discrimination laws apply to people who need accommodation because of their disabilities as America opens its doors. Say, for example, you have a disability that makes you more vulnerable than people without that disability to the COVID-19 virus.

You are employed in a customer contact position and have been called back to work by your employer. You are understandably nervous, as this could be a life-threatening situation. You tell your employer you can't return yet, because you need to know the virus is gone or until you've had a vaccine.

Does your employer have to let you stay home? Can you keep collecting unemployment, despite the fact that your employer has invited you back to work? Does your employer's sick leave policy, which you have exhausted, have to change to accommodate you?

COVID-19 will challenge people with disabilities and employers, as people return to work. A primary ADA employer responsibility is to behave reasonably in response to request for reasonable accommodation. Therefore, employers must be flexible about return-to-work policies, as they relate to people with disabilities. Policies which seem ironclad may have to be modified to reasonably accommodate workers needing more leave time.

Some employers may not be able to accommodate indefinite leave requests. The friction, when considering disability discrimination accommodation, is always the point where reasonable becomes unreasonable and the needs of employees and employers differ from employee-to-employee and employer-to-employer. Disability advocates, however, can always argue that the law requires reasonable accommodation. It is their right.

One thing the COVID-19 crisis has done for people with disabilities is demonstrate to employers that employees can be productive from remote locations and may not have to be in the office every day, or at all. The receptivity to work-from-home bodes well for people with disabilities and aging baby boomers wishing to remain in the labor force. If large numbers of employers abandon central offices because COVID-19 has convinced them of the possibility of productive work-from-home employees, there will be an abundance of office space available.

More space available is necessary in the short run, too, because as we return to the workplace, stores, restaurants, and dare I say, stadiums, arenas and theaters, we will have to be socially distant from each other. Employers and proprietors of places of public accommodation will have to rethink how we shop, work, and interact.

While I have been sheltering-in-place and have been to few stores, those I have gone to have put up some temporary and some permanent barriers between cashiers and customers. These barriers – sometimes a table or a plexiglass shield – are placed with little regard for people with physical disabilities and less regard for laws requiring accessible design and facilities.

This, I hope, is a temporary problem caused by this emergency, but as this emergency drags on and becomes a way of life, we must reeducate businesses open to the public about the rights of people with disabilities to independent access and reasonable accommodation.

The 30th anniversary of the ADA is July 26. I hope by then we can all celebrate together, if not shoulder-to-shoulder, then virtually. When we are back to normal - maybe the 31st, 32nd ADA anniversary - let's have a real blow-out. Stay safe.