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EEOC Issues New Guidance on COVID-19 and ADA Disability

Recently, the Equal Employment Opportunity Commission (EEOC) issued new answers to frequently asked questions (FAQs) about what employers may or may not do to comply with federal fair employment laws during the COVID-19 pandemic. The new FAQs specifically address the definition of “disability” and how to determine whether an individual with COVID-19 meets it under the Americans with Disabilities Act (ADA).

ADA and COVID-19 Background

Under the ADA, employers with 15 or more employees may face liability if they take certain adverse employment actions against individuals who have been diagnosed with or are believed to have COVID-19. The ADA also requires these employers to provide reasonable accommodations for individuals with disabilities, including any related to COVID-19. Smaller employers may be subject to similar rules under applicable state or local law.

Three-Part Definition

The EEOC’s new FAQs clarify that COVID-19 may qualify an individual for ADA protection based on “actual” disability, a “record of” disability or being “regarded as” having a disability. Employers must perform an individualized assessment to determine whether a specific employee’s COVID-19 meets any of these definitions.

Disability Types

COVID-19 is an actual disability if it is a physical or mental impairment that “substantially limits one or more major life activities.” The FAQs provide examples of situations in which an individual with COVID-19 would (and would not) meet this definition.

The FAQs also explain and provide examples illustrating how certain adverse employment actions may violate the ADA even if an individual only had COVID-19 in the past (“record of” disability) or is mistakenly believed to have COVID-19 (“regarded as” having a disability).

Employee Benefit Plan Limits for 2022

Many employee benefits are subject to annual dollar limits that are periodically updated for inflation. The IRS typically announces the dollar limits that will apply for the next calendar year well before the beginning of that year. This gives employers time to update their plan designs and ensure that their plan administration will be consistent with the new limits.

Although most of the limits will increase for 2022, some of the limits remain the same.

Increased Limits

For plan years beginning on or after Jan. 1, 2022, the following limits have increased:

- **Health savings account contributions:** Single coverage—\$3,650 (up \$50)
- **Family coverage**—\$7,300 (up \$100)
- **High deductible health plan (HDHP) out-of-pocket maximum limit:** Single coverage—\$7,050 (up \$50)
- **Family coverage**—\$14,100 (up \$100)
- **Health FSA contribution limit**—\$2,850 (up \$100)
- **Health FSA carryover limit**—\$570 (up \$20)
- **Transportation fringe benefit plan monthly limits**—\$280 (up \$10)
- **Employees' elective deferrals to 401(k) plans**—\$20,500 (up \$1,000)
- **Tax exclusion for adoption assistance benefits**—\$14,440 (up \$140)

Unchanged Limits

Certain limits will not change for 2022, including the HDHP minimum deductible and catch-up contribution limits to HSAs or 401(k) plans. The tax exclusion for dependent care FSA benefits also returns to traditional rules.