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Q&A About the ADA, the Rehabilitation Act, and COVID-19

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, D.C. Headquarters

What You Should Know About the ADA, the Rehabilitation Act, and COVID-19

- The EEOC enforces workplace anti-discrimination laws including the Americans with Disabilities Act (ADA) and the Rehabilitation Act, including the requirement for reasonable accommodation and rules about medical examinations and inquiries.
- The ADA and Rehabilitation Act rules continue to apply, but they do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19. **Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.**
- The EEOC has provided guidance (a publication entitled Pandemic Preparedness in the Workplace and the Americans With Disabilities Act), consistent with these workplace protections and rules, that can help employers implement strategies to

navigate the impact of COVID-19 in the workplace. This pandemic publication, which was written during the prior H1N1 outbreak, is still relevant today and identifies established ADA and Rehabilitation Act principles to answer questions frequently asked about the workplace during a pandemic.

- The World Health Organization (WHO) has declared COVID-19 to be an international pandemic. The EEOC pandemic publication includes a separate section that answers common employer questions about what to do after a pandemic has been declared. Applying these principles to the COVID-19 pandemic, the following may be useful:
  - **How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?**
    - During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.
  - **When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?**
    - Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.
  - **Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?**
    - Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.
  - **When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?**
    - Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.
  - **If an employer is hiring, may it screen applicants for symptoms of COVID-19?**
    - Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all

entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

- **May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?**
  - Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.
- **May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?**
  - Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.
- **May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?**
  - Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

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