

The Intersection of Disability Laws and COVID-19

The Equal Employment Opportunity Commission (EEOC), the federal agency that oversees the Americans with Disabilities Act (ADA) and its federal employer complement, the Rehabilitation Act of 1972 (Rehab Act), has issued two pieces of guidance that pertain to how employer restrictions on medical inquiries and obligations to accommodate employees applies to the current COVID-19 pandemic. Key points include:

1. COVID-19 is *not a disability* under the ADA or Rehab Act. Employers do not need to provide a reasonable workplace accommodation to an employee with COVID-19.
2. An employer can conduct the following medical inquiries about COVID-19, remembering to keep the information confidential:
 - a. When an employee calls in sick, the employer can ask if the employee is experiencing fever, chills, cough, shortness of breath or sore throat.
 - b. When an employee returns to work from travel (work-related or personal), the employer may ask whether the employee was exposed to COVID-19 and, if the employee traveled to a high-risk location, may require the employee to stay home until symptoms would have appeared.
 - c. Require the taking of the employee's body temperature.
 - d. Require an employee returning to work following COVID-19 to provide a health care certification of fitness for duty. Due to constraints on the medical community, this may have to take the form of an email, a stamp or a photocopy of a negative test result.
 - e. Following a conditional job offer, screen all applicants for COVID-19 symptoms, including requiring the taking of body temperature. Note, this must be applied consistently to all prospective employees.
 - i. If an employee shows symptoms, the employer should delay the employee's start date, if feasible.
 - ii. If an employee shows symptoms and the job needs to start immediately, the employer may withdraw the job offer.
3. An employer may *not* ask an employee who is not exhibiting symptoms if that employee has asthma, diabetes or any other condition that may make the employee particularly vulnerable to COVID-19. This may change as the severity level of COVID-19 changes.
4. An employer may require an employee to stay home if the employee is exhibiting COVID-19 symptoms. In this event, the employer can determine whether it is feasible for the employee to telework or take sick leave (starting April 2, such sick leave would initially be paid).
5. An employer may encourage employees to telework and high-risk employees can specifically request it as a reasonable accommodation to their disability.
6. An employer may require infection-control practices such as frequent hand-washing, deep cleaning, social distancing and wearing of personal protective equipment such as gloves and face masks.

7. All information about applicants or employees obtained from a medical examination or questioning about COVID-19 must be kept only as part of a separate medical file and treated confidentially.
8. The above may change as the nation's experience with COVID-19 changes.
Examples:
 - a. If we learn of new symptoms, an employer can ask about those.
 - b. If the Centers for Disease Control lowers the threat rating of COVID-19 or downgrades the status from pandemic, taking of body temperature and inquiries about symptoms may become generally inappropriate under the ADA and Rehab Act.
9. An employer must continue to provide reasonable accommodations to individuals with known disabilities.