



EEOC elaborates on ADA compliance: COVID-19 and the return to work effort

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On September 8, 2020, the Equal Employment Opportunity Commission (EEOC) published updated guidance on complying with the Americans with Disabilities Act (ADA) amidst the return to work effort during the COVID-19 pandemic.

Disability related inquiries & COVID-19 screening

The new guidance addresses employee medical exams and disability related inquiries. According to the EEOC, the fact that an employee has symptoms or a diagnosis of COVID-19 is confidential, and must be maintained as such, in compliance with the ADA. However, employers may still ask employees *entering the workplace* if they have COVID-19, COVID-19 symptoms (*i.e.*, fever, chills, cough, and shortness of breath), or if they have been tested for COVID-19. Under the guidance, employees who refuse to answer the screening questions, or undergo temperature screening, may be barred from the workplace. If employees report feeling ill or call in sick, and work on-site even occasionally, they, too, may be presented with the workplace screening questions. Finally, the EEOC states that employers may ask questions about where an employee has traveled, as this is not a disability-related inquiry.

If an employer asks one employee, but not all employees, COVID-19 screening questions, or to undergo additional screening or testing for COVID-19, the EEOC guidance advises that the employer must “have a reasonable belief based on objective evidence that the employee might have the disease” (*i.e.*, manifestation of COVID-19 symptoms). The guidance clarifies that employers may also ask questions about employees’ contact with individuals who have been diagnosed with COVID-19 or who have symptoms. However, the Genetic Information Nondiscrimination Act (GINA) prohibits employers from asking employees medical questions specifically about family members. Therefore, broadly worded questions will protect employers and provide more robust health

information regarding employees' potential exposures.

Confidential medical information

In addition, the updated guidance elaborates on the confidentiality of medical information related to COVID-19. The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file. The guidance suggests that all medical information related to COVID-19, such as the results of taking an employee's temperature, the employee's self-identification as having COVID-19, or the employer's documentation from questioning an employee, may be stored in these separate medical files.

If a manager learns that an employee has COVID-19, the manager must report the information. In addition, the employer should interview the employee, determine individuals with whom the employee had contact, and notify those individuals of their potential exposure. However, an employee's COVID-19 diagnosis is confidential medical information and employers should take measures to limit the number of people who know the identity of the diagnosed employee. The EEOC advises that if an employee is teleworking or on leave related to COVID-19, the employer should not disclose the underlying reasons to other staff (*i.e.*, that the employee exhibited COVID-19 symptoms).

Reasonable accommodations: Teleworking employees

Finally, the new guidance discusses a number of issues pertaining to the ADA's requirement that employers provide reasonable accommodations to employees with disabilities, which may include teleworking. These requests may arise in the context of individuals who may be at higher risk for severe illness if exposed to COVID-19, including to asymptomatic co-workers. The employer's interactive process with the employee should attempt to determine, as a practical matter, whether there is a nexus between the employee's health condition and the need to work from home, assuming the work can be performed remotely. The best evidence of this would be medical documentation from a treating physician.

Once an employer resumes normal operations at its workplace, it need not grant telework as a reasonable accommodation to all employees with a disability, regardless of whether the employer permitted employees to telework preventatively or as an accommodation during the pandemic.

Additionally, the guidance offers the following scenario: If an employee requested teleworking as an accommodation prior to the pandemic, and a successful trial period of teleworking occurred during the pandemic, the employer would need to again consider the employee's renewed request for a reasonable accommodation of teleworking, assuming all requirements for reasonable accommodation are otherwise met. This would include restarting the interactive process and an analysis of whether the impairment is a disability and why an accommodation is needed. If, instead, the teleworking employee was unable to perform the essential job functions during the pandemic, that would suggest that continued teleworking may not be a reasonable accommodation.

As part of the interactive process and before concluding whether a request to telework is or isn't a reasonable accommodation in light of COVID-19, an employer's involvement in the interactive process should still explore whether the existing COVID-19 protocols and recommendations can address the requesting employee's concern. Employers should carefully document all efforts to engage in the interactive process.

The EEOC's guidance also addresses a number of other challenges that have arisen as a result of the COVID-19 environment, including addressing employees who request accommodations from the requirement to wear personal protective gear and related issues. Access the EEOC's complete guidance on ADA compliance during the COVID-19 pandemic [here](#).

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