**EEOC Publishes Updated Guidance About the ADA, the Rehabilitation Act, and COVID-19**

The Equal Employment Opportunity Commission (EEOC) enforces workplace anti-discrimination laws including the Americans with Disabilities Act (ADA) and the Rehabilitation Act, which provide for reasonable accommodation requirements and rules about medical examinations and inquiries.

In the current COVID-19 crisis, the ADA and Rehabilitation Act rules continue to apply, but they do not interfere with or prevent employers from following [guidelines and suggestions made by the CDC or state/local public health authorities](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html) about steps employers should take regarding COVID-19. **Employers should keep in mind that guidance from public health authorities is subject to rapid change as the COVID-19 pandemic evolves, and they should continue to follow the most current information on maintaining workplace safety.**

In 2009, the EEOC created a pandemic publication to address ADA and Rehabilitation Act implications of the H1N1 outbreak, and it has reissued and updated this [guidance](https://www.eeoc.gov/facts/pandemic_flu.html) to help employers implement strategies to navigate the impact of COVID-19 in the workplace.

One important update relates to COVID-19 as a “direct threat” under the ADA. The ADA prohibits employee disability-related inquiries or medical examinations unlessthey arejob-related and consistent with business necessity. Generally, a disability-related inquiry or medical examination of an employee is job-related and consistent with business necessity when an employer has a reasonable belief, based on objective evidence, that an employee’s ability to perform essential job functions will be impaired by a medical condition, or that an employee will pose a direct threat due to a medical condition.

*“Based on guidance of the CDC and public health authorities as of March 2020, the COVID-19 pandemic meets the direct threat standard. The CDC and public health authorities have acknowledged community spread of COVID-19 in the United States and have issued precautions to slow the spread, such as significant restrictions on public gatherings. In addition, numerous state and local authorities have issued closure orders for businesses, entertainment and sport venues, and schools in order to avoid bringing people together in close quarters due to the risk of contagion. These facts manifestly support a finding that a significant risk of substantial harm would be posed by having someone with COVID-19, or symptoms of it, present in the workplace at the current time. At such time as the CDC and state/local public health authorities revise their assessment of the spread and severity of COVID-19, that could affect whether a direct threat still exists.”*

The EEOC pandemic publication includes answers common employer questions about what to do after a pandemic has been declared, such as:

* + [**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?**](https://www.eeoc.gov/facts/pandemic_flu.html#q6)
		- 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?**](https://www.eeoc.gov/facts/pandemic_flu.html#q7)
		- 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?**](https://www.eeoc.gov/facts/pandemic_flu.html#q5)
		- 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?**](https://www.eeoc.gov/facts/pandemic_flu.html#q16)
		- 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?**](https://www.eeoc.gov/facts/pandemic_flu.html#q16)
		- 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?**](https://www.eeoc.gov/facts/pandemic_flu.html#q17)
		- 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**](https://www.eeoc.gov/facts/pandemic_flu.html#q18) [**who has COVID-19 or symptoms associated with it?**](https://www.eeoc.gov/facts/pandemic_flu.html#q18)
		- 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?**](https://www.eeoc.gov/facts/pandemic_flu.html#q19)
		- Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

Please note this current global emergency and applicable laws, regulations, proposals, guidance, advice, and responses change rapidly. We strive to keep you up to date as much as possible, but this blog article is intended for general informational purposes only and should not be construed as legal advice or opinion. Contact myHRcounsel with questions concerning specific facts and circumstances.