

What the EEOC Wants You to Know About the ADA, the Rehabilitation Act, and COVID-19

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March 19, 2020



On March 18, 2020, the Equal Employment Opportunity Commission ('EEOC') published its 'Q&A About the ADA, the Rehabilitation Act, and COVID-19.'

The Q&A confirms much of what we gleaned from previous EEOC guidance regarding the 2009 H1N1 outbreak, but it is certainly helpful to hear from the EEOC during these

trying times. We encourage you to review and keep handy the Q&A, which is available here, and we have the following key takeaways:

- **Follow public health guidance.** While the ADA still requires employers to not discriminate against and provide reasonable accommodations for individuals with disabilities, the EEOC defers to CDC recommendations in maintaining workplace health and safety during this pandemic. Notably, the EEOC includes bolded text that employers should frequently review current information recommended by public health officials, implying that ADA-covered employers may be advised to take measures they typically would not take.
- **Asking about virus-related symptoms, confidentially, is OK.** Because we are in a pandemic, employers have more flexibility in asking employees if they are experiencing COVID-19 symptoms. This information must be kept confidential in compliance with the ADA.
- **Taking employee temperatures is OK but may not be effective indicators.** Although taking employee temperatures is not considered a medical examination while COVID-19 is acknowledged as a widespread pandemic, it is important to recognize it is not 100% determinative of whether someone has COVID-19. Again, this information must be kept confidential, and employers should also review applicable state privacy laws (i.e., California).
- **Employers can dictate when employees must stay home and come back to work.** For applicants, employers can take their temperature or otherwise ask about symptoms following a conditional job offer, delay the start date, or even withdraw a job offer if the individual has COVID-19 or symptoms. Employers can continue practices of requiring return-to-work medical certifications but should consider accepting new types of certifications that ease the burden on healthcare providers (e.g., email or simple forms).
- **Keep referring to the EEOC's previous Pandemic Preparedness guidance.** Although written specifically for the prior H1N1 outbreak, the information in the EEOC's "Pandemic Preparedness in the Workplace and the Americans With Disabilities Act" is relevant and should be used to answer questions

during the COVID-19 pandemic.

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