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EMPLOYEE RIGHTS UNDER THE ADA DURING COVID-19 PANDEMIC

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[The EEOC Has Updated its Guidance Related to Federal Antidiscrimination Laws During the COVID-19 Crisis.](#)

The Americans with Disabilities Act (ADA) applies to local and state governments with at least 15 employees, private employers with at least 15 employees, federal agencies, employment agencies, and labor organizations that either operate a hiring hall or have at least 15 members. Generally, the ADA prohibits disability-related inquiries (like asking employees what medications they take) or medical examinations (like taking an employee's temperature) for all employees. Employers can make these inquiries when there is a "direct threat" to the workplace. The ADA also prohibits excluding individuals with disabilities from the workplace for health or safety reasons unless they pose a "direct threat" to the workplace.

During this unprecedented time, employers will seek to ask questions and to take actions that would generally be prohibited under the ADA, like asking whether an employee has a fever or sending an employee home for reporting COVID-19 related symptoms. Although the ADA still applies during a pandemic, the ADA does not interfere with employers following recommendations of the CDC or public health authorities. Indeed, the EEOC currently considers COVID-19 to meet the ADA's "direct threat" standard. This means that employers may be given more latitude to make inquiries and to take action to stop the spread of COVID-19.

The EEOC has updated its publication "Pandemic Preparedness in the Workplace and the American with Disabilities Act" to address COVID-19 related issues under the ADA. For answers to common questions about issues like whether an employer can take employees' temperatures, require them to telework, or ask questions about their symptoms, visit: https://www.eeoc.gov/facts/pandemic_flu.html.

In addition, on March 27, 2020, the EEOC posted a pre-recorded Webinar responding to the COVID-19 Pandemic and Antidiscrimination Laws. You can view this helpful 42-minute video at: <https://www.youtube.com/watch?reload=9&v=X50G7I41NKg>. Webinar transcripts are available at: https://www.eeoc.gov/coronavirus/webinar_transcript.cfm.

Although employers have more latitude to protect employee health and safety during this pandemic, there are still some issues that may be in violation of federal antidiscrimination laws. For example, even during this pandemic, an employer generally may **NOT**:

- Ask employees COVID-19 related medical inquiries when the employees are teleworking
- Exclude an employee from the workplace for, or ask about symptoms, that are not COVID-19 related
- Single an employee out for COVID-19 related inquiries or actions, unless the employer has a reasonable belief (based on objective evidence) that the employee poses a COVID-19 related threat to the workplace
- Refuse to grant a request for a reasonable accommodation (such as teleworking) for an employee with a disability that puts the employee at a higher risk for COVID-19 complications
- Refuse to grant a request for a pregnant employee to telework
- Stop providing reasonable accommodations to employees with disabilities unrelated to the pandemic
- Disclose an employee's confidential medical information

During this pandemic employees and employers may need to work together to find flexible, interim solutions. Still, it is critical to consider the potential impact on employee rights. In the event that you have specific questions or issues that arise regarding the ADA or any other federal antidiscrimination laws, please do not hesitate to contact our office.

Nothing herein is intended to provide legal advice. This summary is not intended to cover the various complexities of the federal laws, nor could it, as the law is still developing on these new and evolving COVID-19 related issues. Our team is with you and your members as you navigate these challenging times. We are always available to answer our clients' questions.



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