

## **EEOC Guidance on COVID-19 and the Americans with Disabilities Act (ADA)**

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On March 18, 2020, the Equal Employment Opportunity Commission issued a guidance to employers answering several commonly asked questions relating to COVID-19 and compliance with the Americans with Disabilities Act (ADA). The guidance indicates that, while the ADA remains in force during these unprecedented times, the EEOC makes clear that it should not interfere with employers' ability to comply with guidelines and suggestions issued by the CDC or other state or local health officials designed to keep the workplace and the public at-large safe.

### Employer Inquiries

Per the EEOC, an employer is permitted to ask questions about an employee's medical condition in order to protect its workforce from COVID-19. During the pandemic, employers may ask employees who call in sick if they are experiencing symptoms of the pandemic virus. For COVID-19, those symptoms include fever, chills, cough, shortness of breath, or sore throat. However, employers must maintain all information about an employee's illness as a confidential medical record in compliance with the ADA.

### Monitoring Employee Temperatures

Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, the EEOC states that employers may measure employees' body temperature as a preventative measure without running afoul of ADA restrictions on medical examinations.

### Restricting Sick Employees from the Workplace

Citing CDC guidance that employees who become ill with symptoms of COVID-19 should leave the workplace, the EEOC guidance provides that the ADA allows employers to require employees to stay home if they have COVID-19 symptoms.

### Fitness for Duty Certifications

The EEOC provides that employers are permitted to require doctors' notes certifying that sick employees are fit for duty when returning to work. These inquiries are permitted under the ADA either because they would not be disability-related or they would be justified under the ADA standards for disability-related inquiries of employees due to the severity of the COVID-19 pandemic. However, the EEOC cautions that, as a practical matter, doctors and other health care professionals may be too busy during and immediately after the outbreak to provide fitness-for-duty documentation and urges employees to embrace new approaches, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have COVID-19.

### Reasonable Accommodations

Employers must still engage in the interactive process with employees who request accommodations relating to their disabilities in light of the risks posed by COVID-19. As always, this process should be interactive with the employer weighing its ability to provide the requested accommodation (or some reasonable alternative) against the hardship posed on its business. Requests for a leave or the ability to work remotely can be considered reasonable, depending on the circumstances. The ADA does not require employees be paid for leaves where no work is being performed, but employees may be entitled to pay depending on your company's leave of absence and/or short

term disability policies.

While the EEOC guidance is helpful as to ADA compliance, many states, like Massachusetts, have their own disability discrimination laws that may be more restrictive than the ADA. Employers should consider those state laws before implementing any new workplace requirements.

**Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.**

If you need further assistance in handling requests for accommodations or other disability-related questions, please contact us.

#### RELATED PRACTICES

- [Labor & Employment](#)
  - [COVID-19 Task Force](#)
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