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U.S. Equal Employment Opportunity Commission Pandemic Preparedness in the Workplace and the Americans with Disabilities Act

In 2009 the EEOC issued guidance to employers on how to address ADA issues with the H1N1 pandemic. On March 21, 2020 the Commission updated the publication to address its application to COVID-19. It advised employers and employees to follow CDC and state/local public health authorities on how to protect employees, customers and clients from the spread of the virus.

DISABILITY-RELATED INQUIRES AND MEDICAL EXAMINATIONS

The ADA prohibits an employer from making disability-related inquires and requiring medical examinations of employees, except under certain circumstances. Under the COVID-19 pandemic, employers:

- May send an employee home with COVID-19 or symptoms associated with it.
- May ask employees who report feeling ill, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19. Currently, these symptoms include, fever, chills, cough, shortness of breath, or sore throat.
- May take an employees' body temperature, but please note, as with all medical information, the fact that an employee had a fever or other symptoms would be subject to ADA confidentiality requirements and not all people with COVID-19 have a fever.
- Should follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or pleasure. An employer does not have to wait for the employee to develop symptoms.
- May encourage employees to telework, and employees who are at high risk (over age 60 or who have underlying health conditions) may request telework as a reasonable accommodation to reduce their chance of infection of COVID-19. Obviously, telework is not possible in every situation.
- May require its employees to follow infection-control practices such as regular hand-watching or maintaining proper distance from other individuals while at the workplace.

- May require an employee to wear personal protective equipment such as face masks, gloves or gowns, designed to reduce the transmission of COVID-19.
- May require an employee to provide a doctor's note certifying that the employee can return to work.

Employers who are attempting to hire employees during the COVID-19 pandemic 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 allowing post-offer (but not pre-offer) medical inquiries and exams applies to all applicants. An employer can withdraw a job offer if it needs the applicant to start immediately if the individual has COVID-19 or symptoms. This is justified because current CDC guidance states that individuals cannot safely enter the workplace.