

Alerts and Newsletters

EEOC Issues Guidance Related To What Employers Should Know About the ADA, the Rehabilitation Act and COVID-19

March 20, 2020

On March 18, 2020, the Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing workplace anti-discrimination laws such as the Americans with Disabilities Act (ADA) and the Rehabilitation Act, issued guidance to employers regarding the intersection of the ADA, the Rehabilitation Act and COVID-19. Below are some frequently asked questions and answers provided by the EEOC.

Questions & Answers

Question: 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?

Answer: 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.

Question: When may an ADA-covered employer take employees' body temperatures during the COVID-19 pandemic?

Answer: 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.

Question: Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?

Answer: 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.

Question: When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

Answer: 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.

Question: If an employer is hiring, may it screen applicants for symptoms of COVID-19?

Answer: 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.

Question: May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?

Answer: 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.

Question: May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?

Answer: Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

Question: 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?

Answer: Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

Additional Resources

In addition to these helpful Questions and Answers, the EEOC has also advised employers that previous guidance that was issued in response to the H1N1 outbreak is still relevant today and identifies principles for businesses to follow during a pandemic. This guidance can be found by clicking [here](#).

If you have any questions concerning the above guidance or workplace issues related to COVID-19, please contact Lisa Scidurlo at lmsc@stevenslee.com, Brandon Shemtob at bss@stevenslee.com, or the Stevens & Lee attorney with whom you regularly work.

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