

EEOC Provides Additional Guidance on ADA Compliance During COVID-19

By Nathan Pangrace

The Equal Employment Opportunity Commission (EEOC) has once again updated its guidance regarding employees returning to work during the COVID-19 pandemic. A revised Q&A document published on September 8, 2020, addresses another set of common questions that have arisen under the Americans with Disabilities Act (ADA) and other federal antidiscrimination laws.

First, the new guidance addresses employee medical exams and other disability-related inquiries. According to the EEOC, the fact that an employee has symptoms or a diagnosis of COVID-19 is confidential medical information. Nonetheless, employers may still ask employees entering the workplace if they have COVID-19, symptoms of COVID-19, or if they have been tested for the disease. The employer may bar the employee from the workplace if he or she refuses to answer. Additional requirements apply if an employer asks just one employee (as opposed to all employees) to answer such questions, or to undergo screening or testing. Specifically, the employer must have a reasonable belief based on objective evidence that the employee has the disease. The EEOC also clarifies that an employer may ask questions about where an employee has traveled because these questions are not disability-related inquiries. However, the Genetic Information Nondiscrimination Act prohibits an employer from asking an employee whether he or she has family members who have COVID-19.

The revised EEOC guidance also answers common questions regarding the confidentiality of medical information related to COVID-19. The EEOC states that if a manager learns that an employee has COVID-19, the manager must report the information. The employer should also interview the affected employee, obtain a list of people with whom the employee had contact, and notify those individuals. However, employers must be mindful that an employee's COVID-19 diagnosis is confidential medical information. Employers should therefore limit the number of people who know the name of the affected employee and refrain from revealing his or her identity whenever possible. The EEOC also advises that if an employee is teleworking or on medical leave because he or she has COVID-19, the employer should not disclose the underlying reasons to other staff.

Lastly, the EEOC addresses several new issues regarding the ADA's requirement that employers provide reasonable accommodations to employees with disabilities. For instance, the guidance clarifies that employers must also provide teleworking employees with reasonable accommodations under the ADA. Those accommodations may be different from those provided to employees in the workplace, however. After reopening its workplace, an employer does not have to grant telework as a reasonable accommodation to every employee with a disability, even if the employer permitted many employees to telework at the start of the pandemic. If the employer can address the employee's limitations with another reasonable accommodation, then the employer can choose that alternative to telework.

Additionally, an employee's prior request for teleworking before the pandemic and a successful trial period of teleworking during the pandemic, assuming all requirements for reasonable accommodation are met, triggers an employer's reconsideration of the employee's renewed request for a reasonable accommodation of teleworking and the interactive process. Of course if the teleworking employee was unsuccessful in the performance of the essential job functions during the pandemic, that would imply it would not be a reasonable accommodation to continue teleworking.

We will continue to keep you informed as the EEOC updates its guidance for employers on issues related to COVID-19. Should you have any questions, please contact one of the listed Roetzel attorneys.

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