

## **EEOC Updates COVID-19 Guidance on Accommodating Employees Who Are Disabled, Pregnant, or Over 65**

**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 June 11, 2020, addresses several common questions that have arisen under federal anti-discrimination laws.

First, the new guidance addresses various issues regarding accommodating employees under the Americans with Disabilities Act (ADA). According to the EEOC, an employee is not entitled to an accommodation to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition. For example, an employee is not entitled to telework as an accommodation to protect a family member with asthma from potential COVID-19 exposure.

The EEOC also suggests that, as a best practice, an employer may invite employees to request flexible work arrangements in advance of their returning to work. For instance, the employer may send employees a notice that includes the CDC-listed medical conditions which create a higher risk of illness from COVID-19, explain that the employer will consider requests for accommodation on a case-by-case basis, and provide instructions about who to contact. If employees choose to return to work, they may also request an alternative method of COVID-19 screening due to medical conditions as a reasonable accommodation under the ADA.

The revised guidance also answers common questions that have arisen under Title VII of the Civil Rights Act and Age Discrimination in Employment Act (ADEA) during the pandemic. According to the EEOC, the ADEA prohibits an employer from involuntarily excluding an individual from the workplace based on his or her being 65 or older, even if the employer acted for benevolent reasons such as protecting the employee. The CDC has explained that individuals age 65 and over are at higher risk for a severe case of COVID-19 if they contract the virus.

Similarly, an employer may not involuntarily exclude an employee from the workplace due to pregnancy. Even if motivated by benevolent concern, an employer is not permitted to single out workers because of pregnancy under Title VII. However, if an employee makes a request for reasonable accommodation due to a pregnancy-related medical condition, the employer must consider it. Pregnancy-related medical conditions may be disabilities under the ADA. The new guidance also states that under Title VII, female employees cannot be given more favorable treatment than male employees because of a gender-based assumption about who may have caretaking responsibilities for children.

Lastly, the EEOC notes that managers should be alert to harassment directed to Chinese or other Asian employees, including about the coronavirus or its origins. Employees may not harass other employees through emails, calls, or video chat platforms. If an employer learns that a teleworking employee is harassing a worker, it should take the same actions it would take if the employee was in the workplace.

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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