

EEOC Updates COVID-19 Guidance to Address Employers Reopening for Business

By Nathan Pangrace

As many employers prepare to reopen for business following government-mandated shutdowns, the Equal Employment Opportunity Commission (EEOC) has updated its guidance for employers on issues related to COVID-19. A revised Q&A document published by the EEOC on April 17, 2020, answers common questions from employers regarding employees returning to work and reasonable accommodations for individuals at greater risk from COVID-19.

The EEOC clarifies that during the pandemic, if an employee requests an accommodation for a non-obvious disability, the employer may still ask questions and request medical documentation to verify the employee's need for accommodation. Further, the need for accommodations may change when government restrictions are fully or partially lifted. The agency therefore suggests placing end dates on accommodations that can be either a specific date or correspond to when the employee returns to work due to changes in government stay-at-home orders.

The updated guidance also reaffirms that an employer does not have to provide a reasonable accommodation if it poses an "undue hardship," which means a "significant difficulty or expense." Interestingly, the EEOC appears to lower the hurdle for establishing an undue hardship. The guidance comments that an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now. For example, the EEOC acknowledges that it may be more difficult to provide employees with temporary assignments, to remove marginal functions, or to hire temporary workers. The agency also notes that the sudden loss of an employer's income stream and the amount of funds available because of the pandemic are relevant considerations.

With respect to employees returning to work as stay-at-home orders are lifted, the EEOC advises that employers will comply with the ADA so long as employee health screening is consistent with advice from the CDC and public health authorities. For example, employers may continue to take temperatures and ask questions about symptoms or require self-reporting of employees reentering the workplace. An employer may also require employees to wear protective gear such as masks and gloves and observe infection control practices like regular hand washing and social distancing. Finally, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

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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