

Bouncing Back From COVID-19: Rights and Accommodations under the Americans With Disabilities Act

05.14.2020

The COVID-19 legal landscape changes daily. On May 7, 2020, the Equal Employment Opportunity Commission (EEOC) expanded its interpretation of the Americans With Disabilities Act (ADA) to prohibit employers from banning or disfavoring workers based on certain COVID-19 related risk factors—even though those factors were not previously considered disabilities.

The guidance applies to specific characteristics identified by the Center for Disease Control (CDC) as increasing one's risk for developing severe COVID-19 related complications, including chronic lung disease, moderate or severe asthma, serious heart conditions, a compromised immune system, an age of 65 or older, and other conditions. See here for the complete list. Being "regarded as" disabled from your work due COVID-19 risks presented by one of these underlying conditions may now be actionable.

Here are some additional common questions and answers concerning disability rights under the Americans With Disabilities Act (ADA) as we re-integrate during this pandemic. Please check with us for applicability of the ADA and other laws to your employment, for updated information, and for answers to any other concerns you have. This article is intended for informational purposes only and is not legal advice.

Q: What if I want to return to work, but I have disability-related concerns that are complicated by COVID-19?

A: Employers should hear your concerns, and in most situations, should try to return you to work. The inquiry is whether a reasonable accommodation can be made for you without creating undue hardship or causing a significant expense to the employer, as those terms are defined in the law. Be encouraged: the EEOC recommends a creative approach that is quite favorable to you as the employee. If, for example, your underlying disability places you at higher risk for contracting the

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coronavirus, your employer may be required to accommodate you by allowing you to work from home, if that solution is reasonable given your job characteristics. Depending on the nature of your work (and other work available within your business), your employer might be required to give you temporary assignments or remove marginal functions of your job so that you can still work.

Employers are also required to consider making changes to the work environment itself to facilitate your return. For example, if you are in a job that normally requires close interaction with others, but can't tolerate a mask, accommodations might include designing one-way aisles, installing plexiglass, or placing tables or other barriers to ensure minimum distances between you and customers or co-workers. Employers may also be required to consider staggering work shifts, modifying your work schedule, restructuring your job or moving you to a different position temporarily. However, you must still be able to perform essential job functions and adhere to your employer's other policies, such as hourly requirements and attendance policies.

Q: How do I request accommodation from my employer if I have a medical condition that puts me at higher risk for severe illness from COVID-19?

A: To request an accommodation based on one of the CDC characteristics listed above or to seek modification of an existing accommodation made for your disability, the first and fastest step is to start a dialogue with your employer. You do not have to make your request in writing or use any particular form, although it may be wise to document the date and substance of your conversation. Once you make a request, it is proper for your employer to ask additional questions of you or to seek medical documentation in order to understand the nature of your condition. The employer must then determine if a reasonable accommodation can be made without undue hardship on the business.

If you do not request an accommodation, the ADA does not require your employer to initiate any accommodations for you.

Q: What health information can my employer require if I ask for a COVID-related accommodation?

A: An employer cannot hijack the COVID pandemic as an excuse to ask inappropriate disability-related information. However, if your disability is not obvious or already known to your employer, it is proper for them to request documentation of your condition when you seek an accommodation. It is also proper for employers to initiate an interactive process with you to determine which job functions you can still perform and what sorts of accommodation you need. Your employer is entitled to know the specific dates for any leave requested and a qualifying reason for the leave, and to seek a signed statement from a health professional verifying that you are unable to work due to the health condition which makes you particularly susceptible to COVID-19.

Q: Can my employer legally choose not to return me to my job?

A: If your employer chooses to return only part of its work force, the employer must have legitimate, non-discriminatory reasons for its choice of who returns. Examples would include neutral factors such as functions, skill sets, revenue, or general business operations.

The ADA prohibits an employer from excluding you solely because your disability increases your risk for a severe COVID-related illness. This prohibition now extends to certain underlying conditions which, while not always disabilities, have been recognized by the CDC as placing one at higher risk. The employer may **only** exclude you from the workplace on one of these bases if the employer shows your disability/condition poses a direct threat to your health that cannot be eliminated or reduced by reasonable accommodation. What accommodations you should accept, and how hard your employer must try, are case-specific inquiries that we can discuss in consultation with you.

Q: Can my employer require me to take a COVID-19 test (or conduct other testing, such as temperature checks) before I return to work?

A: Under the ADA, any mandatory medical test must be “job related and consistent with business necessity.” So, in present pandemic circumstances: yes, to both of the above, because infected individuals pose a direct threat to the health of others. See EEOC resources below. However, as always, testing must be administered without any discriminatory intent; you cannot be selectively tested because your employer perceives you as having (or presenting) a greater risk.

On a related note, an employer *can ask* for a medical release from any employee who seeks to return to work after exhibiting coronavirus symptoms or testing positive; however, this policy also must be applied in an even-handed, non-discriminatory manner. Current CDC guidelines caution employers against *requiring* such documentation, recognizing that this may be unrealistic at a time when medical offices are overwhelmed with treating the pandemic. As always, your health information must be held strictly confidential, disclosed only on a need-to-know basis or with your consent.

Q: What if my employer re-opens, but I am afraid to return to work?

A: If you are not under advice from a medical provider to self-quarantine due to COVID-19 concerns, your fear of returning to work likely does not require accommodation by your employer. Talking to your medical provider may alleviate your fears, help you and your employer develop suitable accommodations, or generate necessary documentation if you truly should not return to work for health reasons.

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Look for upcoming articles on this site relating to this topic. We are here to help you maintain your job, your health, and your rights.

Resources

- [EEOC COVID-19 Guidelines](#)
- [Job Accommodation Network \(JAN\) website on COVID-19 accommodations](#)
- [Job Accommodation Network, in general](#)

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Practice Areas

Labor & Employment