

Balancing COVID-19 Concerns and the ADA in the Workplace

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The Americans with Disabilities Act of 1990 (“ADA”) prohibits covered employers, both public and private, that have at least fifteen employees from discriminating against a qualified employee with a disability. In light of the World Health Organization’s recent classification of COVID-19 as an international pandemic, employers should undertake measures to maintain the safety of their employees while also complying with the ADA. The Equal Employment Opportunity Commission (“EEOC”) recently released an article entitled “What You Should Know About the ADA, the Rehabilitation Act, and COVID-19,” which clarified how employers can respond to an international pandemic like COVID-19 without violating the ADA. What follows is a summary of the EEOC’s directive:

(1) The Center for Disease Control (“CDC”) recommends that individuals experiencing COVID-19 symptoms stay home and not return to work until they are free of fever and any other symptoms associated with COVID-19 for at least 24 hours. In light of the CDC’s recommendation, employers may **confidentially** ask employees if they are experiencing symptoms and require symptomatic employees to leave work or stay home without violating the ADA. Employers must protect the privacy of their employees and maintain the confidentiality of employee health information.

(2) Because fever is a symptom associated with COVID-19, employers may **confidentially** take an employees’ body temperature before allowing admission into the workplace. Under the ADA, measuring an employee’s body temperature is generally considered a “medical examination.” The EEOC defines medical examination as a test or procedure that seeks information about an individual’s health. Typically, an employer cannot require that all employees submit to a temperature reading. However, in the event of an international pandemic, a temperature reading can be justified as a business necessity. Temperature readings should be conducted in a private setting and the results must be kept confidential. Additionally, employers who choose to administer temperature readings must do so in a uniform and non-discriminatory manner.

(3) Employers may measure the body temperatures of new applicants as a condition of employment. However, employers must uniformly administer this practice for all applicants for the same or similar position. Additionally, an employer can postpone a newly hired applicant or, if an employer requires an immediate start date, withdraw an offer of employment from applicants who are positive for COVID-19 or who have COVID-19 symptoms.

(4) Employers may require a doctor’s note to authenticate an employee’s absence from work, or fitness to return to work. However, the CDC cautions against this practice, as health care providers are busy during a pandemic and may be unable to timely provide the documentation. Employers are encouraged to develop flexible policies responsive to the time constraints posed by

an international pandemic on healthcare providers and consider accepting alternative forms of validating an employee's health.

The COVID-19 pandemic is fluid and rapidly evolving. Moving forward, employers should be aware of CDC and EEOC guidelines related to the pandemic, as well as state-specific safety measures, and maintain flexible policies. It is imperative that employers keep abreast of new information about COVID-19 and update their policies accordingly.