EEOC guidance to consider as employees return to the worksite

The U.S. Equal Employment Opportunity Commission (EEOC) enforces certain federal workplace antidiscrimination laws, including the Americans with Disabilities Act (ADA). The ADA prohibits employers from engaging in disability discrimination, such as failing to grant a reasonable accommodation to a qualified individual with a disability absent undue hardship or making unlawful medical examinations and inquiries. Employers must continue to abide by the ADA during the current COVID-19 pandemic, but the EEOC had advised that the ADA does not prevent an employer from following the guidelines suggested by the Centers for Disease Control (CDC) about steps employers should take regarding COVID-19.

You can read the EEOC’s guidance on “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act” on the EEOC website. We’ve highlighted key information you need to know here:

**Are all employers required to comply with the ADA?**

The ADA covers employers with 15 or more employees, excluding the United States or Indian tribes.

**What should employers keep in mind when it comes to accommodations during a pandemic?**

An employer’s responsibility to provide reasonable accommodation to a qualified individual with a disability absent undue hardship does not change during a pandemic. In the event an employee with a disability requires an accommodation to perform the essential functions of his or her job, the employer and employee should work together to identify reasonable accommodations and the employer may select an appropriate accommodation.

**If a job can only be performed at the work site, are there reasonable accommodations recommended to protect employees who may be at greater risk from COVID-19 due to a pre-existing disability or health issue?**

Yes, the EEOC has provided some examples of potential low-cost solutions that can be easily implemented to help employees with a pre-existing disability reduce contact with others. Some examples of changes that could be made in the work environment are:

- Designating one-way aisles
- Using barriers to ensure minimum distances between customers and coworkers whenever feasible, per CDC guidance
- Requiring protective gear, such as masks, gloves, etc. be worn at all times

Other accommodations, such as modifying a work schedule or temporarily shifting marginal duties, could also help reduce exposure - both in and out of the workplace.

**If an employee has a pre-existing mental illness or disorder that has been exacerbated by the COVID-19 pandemic, are they entitled to a reasonable accommodation?**
While many people are feeling additional stress and anxiety amidst this pandemic, it is understandable that employees with a pre-existing mental health condition may have exacerbated symptoms and could be struggling to cope.

As with any accommodation request, employers should ask questions to determine whether the condition is a disability and work with the employee to identify if a reasonable accommodation can be implemented.

**Can employers take employees’ temperatures?**

In typical circumstances, no. Generally, measuring an employee's body temperature is a medical examination. However, during the current COVID-19 pandemic, because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, the EEOC has advised that employers may require that their employees undergo temperature checks. Keep in mind, a person may have COVID-19 and not have a fever.

**Can employers require employees to wear personal protective gear?**

Yes. An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols).

However, if an employee with a disability requires an accommodation related to protective gear, the employer must determine if it can provide such accommodations absent undue hardship.

For example, if an employee with a disability needs a related, reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), the employer should discuss the request and provide the modification or an alternative, if feasible.

It is imperative that each case be handled individually. Conversely, an employer may want to make items that are frequently requested, such as non-latex gloves, available to all employees in order to avoid multiple, one-off requests.

**Can employers send an employee home if they display symptoms of COVID-19?**

Yes, an ADA-covered employer can send employees home if they display influenza-like or COVID-19-like symptoms during a pandemic. For employees who report feeling ill or call-in sick, the employer can ask questions about their symptoms (such as: fever, chills, cough, shortness of breath, or sore throat) to determine if they have or may have COVID-19.

**Can employers require their employees get vaccinated when/if one becomes available?**

Generally, yes, but with exceptions. Employees who have a disability that prevents them from safely being vaccinated cannot be required to undergo vaccination. Similarly, under Title VII of the Civil Rights Act, if an employee has a sincerely held religious belief that prevents them from getting vaccinated, an employer would have to exempt them from any mandatory vaccination requirement.

To find more resources and information to consider as employees return to the worksite, please visit our [Returning to the Worksite](https://www.cigna.com) resource page on Cigna.com.

Together, all the way.