

## Important Takeaways from the EEOC's Webinar on COVID-19 and Anti-Discrimination Laws

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By Daniel R. Williams on April 7, 2020

The Equal Employment Opportunity Commission (EEOC) has uploaded a pre-recorded [webinar](#) devoted to answering the most common questions the agency has received about how COVID-19 interacts with the equal employment opportunity laws that the agency enforces. The webinar supplemented the COVID-19 publications that have already been issued by the EEOC, including [What You Should Know About the ADA, the Rehabilitation Act, and COVID-19](#) and the recently updated [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) .

The EEOC explains that an employer's obligations under the anti-discrimination laws should be interpreted consistently with recommendations from the Centers for Disease Control and Prevention (CDC) and other public health authorities. The EEOC emphasizes that during the COVID-19 pandemic employers should follow the CDC and other health authorities' guidance, even where anti-discrimination laws could be read in some instances to conflict with that guidance.

The webinar is conducted in a question and answer format, with a total of 22 questions answered by the EEOC. The information below summarizes key take-aways from the webinar for employers.

### **Permissible Preventive Actions Employers May Take**

Most notably, while it remains unclear whether COVID-19 qualifies as a disability under the Americans with Disabilities Act (ADA), the EEOC specifically states that COVID-19 now constitutes a "direct threat" under the ADA. Because COVID-19 is presently considered a direct threat, if an employer has a reasonable belief, based on objective evidence, of potential exposure of an employee or the workplace to the disease, it may take certain preventive actions without violating the ADA, including:

- Taking the body temperature of all employees entering the workplace;
- Asking all employees entering the workplace if they have COVID-19, symptoms associated with COVID-19, and if they have been tested for COVID-19;
- Asking employees if they have been in contact with *anyone* who has been diagnosed with or has symptoms associated with COVID-19 (importantly, in this respect, employers should not limit inquiries to whether a specific employee's family-member has been diagnosed with or has symptoms of COVID-19, as such questions may violate the Genetic Information Nondiscrimination Act);
- Excluding employees with COVID-19 or symptoms of COVID-19 from entering the workplace; and
- Excluding employees who refuse to answer questions about COVID-19 or have their temperatures taken from entering the workplace.

It is important to note that these preventive actions are allowed in order to protect the physical workplace location from exposure to COVID-19. Employers may not require medical examinations of or

make such medical inquiries about employees who are teleworking because, in the case of remote work, COVID-19 is not a direct threat to the workplace.

### **Providing Reasonable Accommodations to Employees with Disabilities**

Employees with certain disabilities or preexisting medical conditions may be at a higher risk of severe illness if they contract COVID-19 and, as a result, an employee may request an accommodation. In this case, employers should consider the following:

- The interactive process under the ADA still applies;
- Employers may request documentation to verify that the employee has a disability and that the disability places them at a higher risk, but should be aware that it may be difficult to obtain such verification from medical professionals at this time;
- If an employee is unable to provide documentation to verify the existence of a claimed disability, the employer should consider providing a reasonable accommodation on a temporary basis until the employee can provide such verifying documentation; and
- As is the case for any request for a reasonable accommodation, employers may take into consideration whether such accommodation would pose an undue hardship for the employer.

### **Protecting Confidential Medical Information**

The EEOC reminds employers that the ADA's confidentiality rules still apply during the pandemic. Accordingly, employers should consider the following:

- If an employer learns of an employee's confirmed case of COVID-19 or that the employee has symptoms related to it, the identity of the particular employee should be kept confidential to the greatest extent possible;
- Employers may notify the coworkers of an employee who has a confirmed case of COVID-19 that they may have been exposed to COVID-19, but this disclosure must be narrowly tailored without revealing identifying information about that employee, including but not limited to the affected employee's name; and
- Employers may notify public health officials if they learn an employee has a confirmed case of COVID-19.

### **Potential Issues under Other Anti-Discrimination Laws**

There are several anti-discrimination laws other than the ADA that employers should consider during the pandemic. For example:

- Employers may not exclude employees based on their age from entering the workplace solely because they are considered to be at a higher risk of severe illness if they contract COVID-19;
- Employers may not lay off or furlough employees who are pregnant solely because they are at a higher risk of severe illness if they contract COVID-19;
- Employers may not discriminate against an employee based on their national origin; and

- Employers may not tolerate a hostile work environment based on an employee's national origin or religion because others link it to transmission of COVID-19.

**Further Information about COVID-19 for Employers**

We will continue to monitor updates from the EEOC on the issues addressed in this webinar and the EEOC publications on COVID-19 issues. This post provides a summary of the information from the EEOC webinar and is not a substitute for legal advice. Employers should be aware that there are several other federal and state agencies that have issued guidance to employers regarding the impact of COVID-19 on the workplace. Employers are encouraged to consult with a member of Peabody & Arnold's Employment Law and Litigation Practice Group with any questions or for further information about the COVID-19 pandemic and its impact on anti-discrimination and other employment laws.