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EEOC UPDATES ADA GUIDANCE FOR EMPLOYERS DURING COVID-19 PANDEMIC

This week the Equal Employment Opportunity Commission ("EEOC") issued new guidance on how to adhere to the Americans with Disabilities Act ("ADA") and the Rehabilitation Act amid the COVID-19 pandemic. As we discussed [here](#) and reiterated in the new EEOC guidance, the ADA and Rehabilitation Act do not interfere with employers following the Centers for Disease Control and Prevention ("CDC") guidelines. In particular, the EEOC discusses how to maintain a healthy workplace and manage the hiring process during this pandemic.

The EEOC advises that employers may ask employees if they are experiencing symptoms of the virus. For COVID-19, these symptoms include fever, chills, cough, shortness of breath and/or sore throat. Additionally, although typically considered a medical examination, measuring an employees' body temperatures during a pandemic is permissible. This is because the CDC has acknowledged community spread of the virus and fever is one of the primary symptoms. Finally, the CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace immediately.

Once an employee is ready to return to the workplace, an employer may require a return to work certificate to confirm a fitness for duty. However, as a practical matter, employers are instructed to be flexible about what that documentation might look like while there is a particular strain on health care providers.

If an employer is currently in the hiring process, they may screen job applicants for symptoms of COVID-19 after making a conditional job offer. However, the employer must ensure that all entering employees in the same job type are subject to the same screening process. Additionally, an employer may delay a start date or withdraw a job offer because the individual cannot safely enter the workplace.

Finally, even during a pandemic, it is important for an employer to preserve confidentiality regarding an employee's illness. To comply with the ADA, the EEOC advises employers to maintain an employee's illness similar to a confidential medical record.

As the COVID-19 situation is rapidly developing, employers should continue to watch for additional guidance from the EEOC and/or local officials. Please refer to Hall Render's COVID-19 [resource center](#) webpage and hotline at (317) 429-3900 for any questions, as well as up-to-date information regarding the virus.

If you have any questions on issues discussed in or related to this post, please contact Jon Rabin at jrabin@hallrender.com or (248) 457-7835 or your regular Hall Render attorney.

Special thanks to Claire Bailey, law clerk, for assistance in preparing this article.

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