

NEW EEOC TECHNICAL ASSISTANCE ON COVID-19

On April 9, 2020, the EEOC issued new technical assistance *FAQ responses*.

BACKGROUND

- EEOC states that EEO laws do not prevent employers from following *guidelines and suggestions made by the CDC or state/local public health authorities*.
- As previously mentioned in Hall Render postings, the EEOC has provided prior guidance entitled *Pandemic Preparedness in the Workplace and the Americans With Disabilities Act (PDF version)*, which has been updated as of March 19, 2020.

A) DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMS

To protect its workforce, employers may ask employees who call in sick if they are experiencing symptoms of the pandemic virus, such as fever, chills, cough, shortness of breath, sore throat, the recent loss of smell/taste or gastrointestinal problems.

When screening employees entering the workplace (not just those who call in sick), employers can revise or expand the above-listed symptoms as public health authorities, doctors and reputable medical sources learn more about COVID-19. Also, employers may measure employees' body temperature but should be aware that some people with COVID-19 do not have a fever.

Employers may require employees to stay home if they have symptoms of the COVID-19. When employees return to work, employers may require a doctor's note certifying fitness for duty. If doctors are too busy, an employer could rely on local clinics to provide a form, a stamp or an e-mail to certify that an individual does not have the pandemic virus.

B) CONFIDENTIALITY OF MEDICAL INFORMATION

Employers must maintain all information about employee illness as a confidential medical record. COVID-19 information may be stored in existing medical files. An employer who requires all employees to have a daily temperature check before entering the workplace may maintain a confidential log of the results. An employer may disclose the names of employees infected with COVID-19 to a public health agency. A temporary staffing agency or a contractor that places an employee in an employer's workplace may notify the employer if it learns the employee has COVID-19.

C) HIRING AND ONBOARDING

An employer may screen job applicants for symptoms of COVID-19 by medical exam and taking temperature after making a conditional job offer, as long as it does so for all entering employees in the same type of job. An employer may delay the start date or withdraw the offer to an applicant who has COVID-19 or its symptoms. However, an employer may not postpone the start date or withdraw a job offer merely because the individual is 65 years old or pregnant and at higher risk from COVID-19; an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

D) REASONABLE ACCOMMODATION

For an individual whose disability puts him at greater risk from COVID-19, reasonable accommodations to reduce contact with others, if requested, may include designating one-way aisles, using barriers to ensure minimum distances, temporary job restructuring of marginal job duties, temporary transfers to a different position or modifying a work schedule or shift assignment.

Stress due to the COVID-19 pandemic may negatively impact employees with preexisting mental health conditions. Medical documentation may be requested if needed, and the standard interactive process may be used to determine whether requested reasonable accommodation is possible.

A request by a teleworking employee for accommodation upon return to the workplace need not be postponed until after mandatory telework ends, because productive discussions and decisions may occur prior to that date.

An employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic may be entitled to an additional or altered accommodation, absent undue hardship.

E) OTHER

EEOC resources are available to prevent or address harassment when fear of the COVID-19 pandemic is misdirected against individuals because of a protected characteristic.

For layoffs, remember that special rules apply when an employer is offering employees severance packages in exchange for a general release of all discrimination claims against the employer.

PRACTICAL TAKEAWAYS

- Employers are free to screen employees and job applicants (after a conditional offer) in order to prevent the spread of COVID-19 in their workforce, but medical information should be kept in confidential medical files.
- The interactive process for reasonable accommodation requests still applies.
- Guidance from public health authorities on COVID-19 changes regularly as the pandemic evolves, so employers should continue to review and follow the most current information on maintaining workplace safety.

If you have any questions or would like more information on this topic, please contact:

- **Mark Sabey** at (303) 801-3538 or marksabey@hallrender.com;
- **Mary Kate Liffbrig** at (720) 282-2033 or mliffbrig@hallrender.com; or
- Your regular Hall Render attorney.

Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our [COVID-19 Resource page](#), through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

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