HR COMPLIANCE BULLETIN

EEOC Issues Employer Guidance on Coronavirus and the ADA

On March 18, 2020, the Equal Employment Opportunity Commission (EEOC) issued answers to frequently asked questions (FAQs) about how employers should comply with the Americans with Disabilities Act (ADA) while also observing all applicable emergency workplace safety guidelines during the coronavirus pandemic.

The FAQs draw from the EEOC's existing pandemic publication, Pandemic Preparedness in the Workplace and the ADA, to help employers navigate workplace issues related to the coronavirus (COVID-19). In particular, the EEOC's FAQs include information from a section of the publication that answers employer questions about what to do after a pandemic has been declared. This HR Compliance Bulletin contains the EEOC's FAQs.

Employers are subject to the ADA if they have 15 or more employees. Smaller employers may be subject to similar rules under applicable state or local laws.

Action Steps

All employers should follow the most current guidelines and suggestions for maintaining workplace safety, as issued by the Centers for Disease Control and Prevention and any applicable state or local health agencies.

Employers with 15 or more employees should also become familiar with and follow the guidance provided in the EEOC's FAQs about ADA compliance. These and all smaller employers should ensure that they comply with state and local anti-discrimination laws as well.

Highlights

ADA Rules Still Apply but Do Not Prevent Safety Measures

Employers must follow ADA rules while observing emergency guidelines issued by federal, state and local health authorities during the pandemic.

Employer Guidance

The EEOC's pandemic guidance clarifies that employers may:

- ☑ Ask employees if they have COVID-19 symptoms;
- ☑ Require employees to stay home (and to provide medical notes before returning to work) if they have COVID-19 symptoms; and
- ☑ Screen applicants for COVID-19 symptoms after making conditional job offers.

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How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?

During a pandemic, ADA-covered employers may ask employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

When may an employer take employees' body temperature during the COVID-19 pandemic?

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

May employers require employees to stay home if they have COVID-19 symptoms?

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

When employees return to work, may an employer require doctors' notes certifying their fitness for duty?

Yes. These inquiries are permitted under the ADA either because they would not be disability-related or would be justified under the ADA standards for disability-related inquiries. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary. For example, employers could rely on local clinics to provide a form, stamp or e-mail to certify that an individual does not have the pandemic virus.

If an employer is hiring, may it screen applicants for COVID-19 symptoms?

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies regardless of whether the applicant has a disability.

May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

Yes. Based on current CDC guidance, this individual cannot safely enter the workplace. Therefore, the employer may withdraw the job offer.

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