

ADA Considerations Related To COVID-19

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The Americans with Disabilities Act (ADA) prohibits discrimination in employment on the basis of a disability. While the ADA factors into everyday decisions and employment practices, special consideration should be given to the ADA in relation to COVID-19. The following addresses key points on how the ADA applies to COVID-19.

1. Asking about a disability for pandemic and return to work planning

- An employer may ask whether an individual has a disability that will affect their return to work or ability to do their job during the pandemic. However, this may not be the sole question that the employer asks. Equal weight must be given to medical and non-medical questions. The employer cannot ask the individual to specify if they are effected by the medical or non-medical question.
- Answers do not have to be anonymous.
- See the box below for an example on how to ask this question.

ADA-COMPLIANT PRE-PANDEMIC EMPLOYEE SURVEY

Directions: Answer "yes" to the whole question *without specifying the factor that applies to you*. Simply check "yes" or "no" at the **bottom of the page**.

In the event of a pandemic, would you be unable to come to work because of any one of the following reasons:

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work; and/or;
- If you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the pandemic influenza virus, you would be advised by public health authorities not to come to work (e.g., pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

Answer: YES _____ , NO _____

2. Employee Self-Disclosure of a Disability

- If an individual self-discloses that they have a disability effected by COVID-19 then this is considered a reasonable request for accommodation. The employer may require verification of the disability, however employers should consider different ways this can be verified beyond a doctor's note due to pressure on health care resources.
- The request for accommodation may be considered temporary and not permanent.
- The employer and the employee may discuss why an accommodation is needed and how that accommodation can be met. Employers may also assess whether an accommodation will cause significant expense or excessive hardship.

As of May 22, 2020 the Centers for Disease Control (CDC) considers the following as underlying disabilities that put an individual at higher risk of COVID-19 infection:

- Chronic lung disease or moderate to severe asthma
- Serious heart conditions
- People who are immunocompromised
- People with severe obesity (BMI of 40 or higher)
- Diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease

3. Employees who live with someone at greater risk of contracting COVID-19

- The employer is only responsible for reasonable accommodations for the employee, not household members of the employee
- However, employers cannot treat employees differently. So if an accommodation is made for one employee with a household member at greater risk of contracting COVID-19 then that accommodation must be available to all employees.
- Employees may also be eligible for leave under the federal Family and Medical Leave Act and/or the Families First Coronavirus Response Act.

Sources & Resources

1. U.S. Equal Employment Opportunity Commission. (2020, May 7). What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws. See <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
2. U.S. Equal Employment Opportunity Commission. (2020, March 27). COVID-19 "Ask the EEOC" Webinar. See <https://www.youtube.com/watch?v=i8bHOtOffJU>
3. U.S. Equal Employment Opportunity Commission. (2020, March 21). Pandemic Preparedness in the Workplace and the Americans with Disabilities Act. See <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>
4. Job Accommodation Network. Accommodation and Compliance: Coronavirus Disease 2019 (COVID-19). See <https://askjan.org/topics/COVID-19.cfm>

Please note: Any documents shared by CNY BHCC to respond to the challenges of COVID-19 are prepared based on the information available at the time of creation and are offered to assist our partners in combating this pandemic. It is each organization's responsibility to do their own due diligence if using other's documents and ensuring documents are based on most recent guidance. Any documents used should be reviewed by your own teams/counsel to ensure you are meeting your own regulations and standards. CNY BHCC and/or creators of shared resources shall not be held responsible for the use of their documents by partners. Please continue to utilize resources provided by CDC, NYS DOH, NYS OMH, NYS OASAS and NYS OPWDD.

