

# **WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT**

## **EEOC Answers to COVID-19 Questions**

Hundreds of public questions about COVID-19 were submitted to the Equal Employment Opportunity Commission (EEOC). The EEOC created the “Ask the EEOC” Webinar on March 27, 2020, to answer some of these top-level questions. Guidance is provided on how to respond to the pandemic under federal employment nondiscrimination laws the EEOC enforces, including Title VII, Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act.

Prior to addressing questions, the following was highlighted:

- The laws enforced by the EEOC do not hinder employers from following COVID-19 guidance from the CDC or state or local public health authorities and continue to apply.
- The EEOC cannot provide definitive answers to ADA questions. All answers are based upon information from March 27, 2020. Some of the answers may change, and employers should keep up with CDC and state or local public health authorities. The webinar only deals with EEOC laws.

Existing resources can also be found here:

- **Pandemic Preparedness in the Workplace and the Americans with Disabilities Act<sup>1</sup>:**
  - Example Questions: How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce when an influenza pandemic appears imminent?; When may an ADA-covered employer take the body temperature of employees during a pandemic?; and Does the ADA allow employers to require employees to stay home if they have symptoms of the pandemic influenza virus?
- **What You Should Know About the ADA, the Rehabilitation Act, and COVID-19<sup>2</sup>.**

## **Summary of Questions**

The following provides a short summary of some of the questions posed. As things keep changing, it is important to stay up to date on any relevant guidance.

**Question:** Is there anything else an employer could do at the current time to determine if employees physically coming into the workplace have COVID-19 or symptoms associated with the disease?

**Summary of Answer:** At the time of the recording, March 27, 2020, employers may ask all employees who will be **physically entering the workplace** if they have COVID-19 or symptoms associated with COVID-19 or ask if they have been tested for COVID-19.

**Question:** What may an employer do under the ADA if any employee refuses to permit the employer to take his temperature, or refuses to answer questions about whether he has COVID-19, or has symptoms associated with COVID-19, or has been tested for COVID-19?

## **WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT**

Summary of Answer: Under the circumstances existing today, March 27, 2020, the ADA allows an employer to bar an employee from physical presence in the workplace if he refuses to answer questions about whether he has COVID-19, symptoms associated with COVID-19 or has been tested for COVID-19 as well as the ability to bar this employee's presence if he refuses to have his temperature taken. Measures can be taken to gain the employee's cooperation and reassure the employee.

**Question:** A manager learns and confirms that an employee has COVID-19 or symptoms associated with the disease. The manager knows she must report it but is worried about violating ADA confidentiality. What should she do?

Summary of Answer: The ADA requires that an employer keep all medical information about employees confidential, even if that information is not about a disability. Clearly here, the information that an employee has symptoms of or a diagnosis of COVID-19 is medical information. But the fact that this is medical information does not prevent the manager from reporting to appropriate employer officials so that they can take actions consistent with guidance from the CDC and other public health authorities. The answer is that exactly who in the organization needs to know the identity of the employee will really depend on each workplace and why a specific official needs this information.

**Question:** An employee who must report to the workplace knows that a coworker who reports to the same workplace has symptoms associated with COVID-19. Does the ADA confidentiality prevent the first employee from disclosing the coworker's symptoms to a supervisor?

Summary of Answer: The answer is no. The ADA confidentiality does not prevent this employee from communicating to his supervisor about a coworker's symptoms.

**Question:** Employers may be concerned that telling employees "someone at this location" or "someone on the 4<sup>th</sup> floor" has COVID-19 may not provide sufficient information to allow people to know if they should take further steps to protect themselves or others. Therefore, can employers tell the workforce the name of the employee with COVID-19?

Summary of Answer: No. The ADA does not permit such a broad disclosure of the medical condition of a specific employee.

**Question:** Does the ADA permit employers to notify public health authorities if they learn an employee has COVID-19?

Summary of Answer: Yes. The ADA permits this notification to public health authorities because, as the EEOC explained in its updated pandemic publication COVID-19 poses a direct threat to individuals with the disease and those with whom they come into contact.

**Question:** May an employer exclude from the workplace an employee who is 65 or older and who does not have COVID-19, or symptoms associated with the disease, solely because the CDC has identified this age group as being at higher risk if they contract COVID-19?

Summary of Answer: No.

## **WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT**

**Question:** Do the EEO laws require an employer to grant a request to telework from an employee who is 60 or older because the CDC says older people are more likely to experience severe symptoms if they get COVID-19?

Summary of Answer: No. The Age Discrimination and Employment Act does not itself have an accommodation provision like the ADA; however, if an employer is allowing other comparable workers to telework, they should make sure it is not treating older workers differently based upon their age.

**Question:** Is COVID-19 a disability under the ADA?

Summary of Answer: This is a very new virus, and while medical experts are learning more about, there is still much that is unknown. Therefore, it is unclear at this time whether COVID-19 is or could be a disability under the ADA. Regardless of whether COVID-19 is or could be a disability, remember that an employer may bar an employee with the disease from entering the workplace at this time because of a direct threat.

If you would like to watch or listen to the entire webinar, please click [here](#)<sup>3</sup>.

\*\*\*

Lauren L. Dockter | [ldockter@wc-b.com](mailto:ldockter@wc-b.com) | 202-785-9500

---

<sup>1</sup> Accessible here: [https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html).

<sup>2</sup> Accessible here: [https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm).

<sup>3</sup> Accessible here: <https://www.youtube.com/watch?v=X50G7I41NKg>.

**Disclaimer:** This article is for informational purposes only and does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader.