



What You Should Know About the ADA, the Rehabilitation Act, and COVID-19

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The Equal Employment Opportunity Commission (“EEOC”) has issued guidance entitled, “What You Should Know About the ADA, the Rehabilitation Act, and COVID-19” The EEOC refers employers to its 2009 publication entitled, “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act.” Applying these principals to the COVID-19 pandemic, the EEOC has provided answers to four (4) common questions related to COVID-19, as quoted *verbatim* below:

- 1. 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 such 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.
- 2. When may an ADA-covered employer take the body temperature of employees 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.
- 3. Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?**
 - 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.
- 4. When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?**
 - Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. 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, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.