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COVID-19 and the ADA and Rehabilitation Act

Life has changed in ways most of us could never have imagined. Our homes have become our safe havens more than ever before, and our workplaces have spilled over into our home offices, kitchen tables, and family rooms. As we settle into our new normal, we find ourselves connecting to family, friends, and colleagues through Zoom meetings, livestream services, and quarantini virtual happy hours. Without a vaccine, the spread of COVID-19 is a concern that will not quickly disappear. Maintaining a healthy and productive workplace for employees will continue to be a top priority long after the days of walking from the bedroom to the home office have passed.

That leaves us with the question: What changes have and will occur with the Americans with Disabilities Act [ADA] and the Rehabilitation Act as we move forward post-COVID-19?

While the ADA and Rehabilitation Act rules still apply, they do not prevent employers from complying with the [guidelines and suggestions made by the CDC or state/local public health authorities](#) regarding COVID-19. During a pandemic, ADA-covered employers may ask employees who call in sick if they are experiencing symptoms of the pandemic virus [fever, chills, cough, shortness of breath, sore throat] and maintain this information in as a confidential record. Due to the community spread of COVID-19, employers may measure employees' body temperature [note, however, that some people with COVID-19 do not have a fever]. Employers may also screen applicants for symptoms and measure their temperature as part of a post-offer medical exam [and may delay the start date of an applicant with symptoms or withdraw an offer when they need the applicant to start immediately]. Employers may require employees with symptoms to stay home. And when employees do return to work, employers may require a doctor's note certifying their fitness. The EEOC provides an online guide, [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act](#), which builds on the publication issued during the H1N1 outbreak to help employers navigate the impact of COVID-19 in the workplace.

Naturally, employers can expect increased absenteeism caused as employees calling out sick or being called to assist sick family members. Some employees may retreat due to fear of possible exposure, and at-risk worker absences will likely increase, at least in for the short term. Employers should develop an infectious disease preparedness and

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response plan to provide protective actions against the virus. This can be accomplished by monitoring federal state and local recommendations as the situation changes and anticipating and preparing for occasional increases in absenteeism, the need for social distancing, staggering of work shifts if possible, downsizing, delivering remote services, interrupted supply chains and delayed deliveries. Employers should be vigilant about reinforcing infection prevention measures, such as good hygiene and infection control practices (handwashing, use of hand sanitizer for employees, customers and workplace visitors), encouraging ill workers to stay at home, physical distancing and discouraging sharing of devices, tools and equipment, and maintaining stringent housekeeping practices, all of which help to reduce exposure in the workplace. Finally, employers should develop procedures to identify and isolate sick employees, by encouraging workers to self-monitor for signs and symptoms of COVID-19 and by implementing procedures for employees to report when they are experiencing symptoms.

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