

CLIENT ALERT: EEOC Updates Guidance on the ADA, the Rehabilitation Act and COVID-19

On March 18, 2020, the Equal Employment Opportunity Commission (“EEOC”) issued guidance about the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act, as they relate to COVID-19.

The EEOC’s guidance states it will continue to enforce anti-discrimination laws as they relate to reasonable accommodations and rules about medical examinations and inquiries and encourages employers to follow current guidance from the Centers for Disease Control and local health authorities.

The guidance highlights several key issues presently facing employers which are summarized below:

- During the COVID-19 pandemic, employers may ask employees if they are experiencing symptoms of the virus. Those symptoms may include fever, chills, cough, shortness of breath, and sore throat. Any information related to an employee’s health must be kept confidential in compliance with the ADA.
- Employers may measure an employee’s body temperature if they are concerned that the employee may be ill with COVID-19. Employers should be aware that not all individuals carrying the illness have a fever, or any symptoms at all.
- Employers may require that employees stay home if they have symptoms of COVID-19. The CDC advises that any employee who becomes ill with COVID-19 symptoms should leave the workplace.
- Employers may require that an employee provide a doctor’s note certifying his or her fitness for duty following a suspected or confirmed COVID-19 illness. However, due to the demands placed on healthcare providers during the ongoing pandemic, fitness-for-duty documentation may be overly burdensome and employers may have to allow flexibility on the part of their employees with regard to the type of documentation required.
- Employers may screen applicants for COVID-19 symptoms, as long as the employer does so for all employees entering the same type of job.
- Employers may delay start dates or withdraw job offers from applicants who are experiencing COVID-19 or similar symptoms. Based on the CDC’s guidance, those employees cannot safely enter the workplace.

Additionally, in 2009 the EEOC issued guidance entitled, **Pandemic Preparedness in the Workplace and the Americans With Disabilities Act** to assist employers addressing the H1N1 outbreak. The EEOC updated that guidance as of March 19, 2020, to address examples and information regarding COVID-19.

Please note that the above information is an overview of the EEOC’s current guidance, which may be further altered. Employers with questions about ADA, Rehabilitation Act, or employee disability and/or medical leave laws should consult with their MBJ attorney.

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