

LABOR AND EMPLOYMENT

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The EEOC’s Coronavirus Guidance Amid Uncertain Times

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On March 16, 2020, the EEOC issued guidance on how employers can [respond to the COVID-19 outbreak](#) in a manner consistent with the Americans with Disabilities Act. This guidance includes how to deal with applicants or employees who have symptoms of COVID-19 or may be returning to work after recovering from COVID-19. Perhaps because the EEOC has directed its own employees to telecommute for the foreseeable future after a worker tested positive for COVID-19, this guidance represents a departure from EEOC guidance promulgated in response to past novel public health issues.

In its guidance, the EEOC states employers may ask employees if they are suffering symptoms of COVID-19 and may even take employees’ body temperatures at work. The caveat is that any information gained from such questions and tests must be maintained in a confidential medical file consistent with the ADA’s requirements. Employers may ask employees for a fitness for duty upon a return to work after suffering COVID-19 but should be willing to consider alternatives to doctors’ notes given the pressure healthcare workers are under right now. The EEOC guidance also permits employers to screen prospective employees for COVID-19 after making a conditional offer of employment. Moreover, the EEOC has suggested employers may withdraw job offers if an employee tests positive for COVID-19 or has symptoms of COVID-19. With respect to screening applicants for COVID-19, employers should only do so after making a conditional job offer provided the employer does so for all entering employees in the same type of job. In addition to the above guidance from the EEOC, employers should be aware

that under federal OSHA standards, there is a general duty to provide employees a workplace free of safety hazards.

The above notwithstanding, many states are pursuing legislative action that would provide individuals diagnosed with COVID-19 with significant benefits, including job protection in certain instances. Additionally, some states have fair employment laws that are more expansive than the ADA. COVID-19 likely will impact employers in significant and unexpected ways in the weeks and months ahead. Employers should be nimble in responding to the ever-changing COVID-19 landscape to comply with all local, state and federal laws.

Read the EEOC’s “What You Should Know About the ADA, the Rehabilitation Act, and COVID-19” –

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_da_rehabilitaion_act_coronavirus.cfm

This Alert was based on information available at the time of publishing. It is subject to change. You should consult government websites and publications for the most up-to-date information.



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