

Labor and Employment

EEOC Updates Guidance on Disability Discrimination

By: [Joseph J. Torres](#) and [Emma J. Sullivan](#)



As we explained in one of our [prior briefings](#), employers must be careful to manage workplace risks arising out of the COVID-19 pandemic while still complying with, among other things, federal and state anti-discrimination laws.

On March 19, the Equal Employment Opportunity Commission issued a briefing entitled "[What You Should Know About the ADA, the Rehabilitation Act, and COVID-19.](#)" This publication provides helpful guidance for employers seeking to balance all legitimate safety and other concerns in this uncertain environment.

As the EEOC noted, while federal disability discrimination protections still apply, "they do not interfere with or prevent employers from following [CDC, state and local guidance] about steps employers should take regarding COVID-19." The EEOC's briefing also refers employers to its revised guidance entitled "[Pandemic Preparedness in the Workplace and the Americans Disabilities Act,](#)" which has been updated to address the impact of COVID-19 on workplaces. That publication provides additional detailed information for employers.

By way of summary, the briefing addresses several key questions employers are having to confront:

- Employers may ask employees calling in sick if they are experiencing COVID-19 symptoms, but must treat information concerning the employee's condition as a confidential medical record;
- While employers may take an employee's body temperature if they have a reasonable concern, the EEOC has also stressed that many individuals with COVID-19 do not exhibit a fever;
- An employer may require a fitness-for-duty certification from an employee returning from illness, though the EEOC encourages employers to recognize the practical difficulties in obtaining such confirmation and to consider alternate means of obtaining an acceptable verification; and
- An employer may screen applicants for COVID-19 symptoms, delay start dates and withdraw offers where the applicant's condition would prohibit them for meeting the employer's reasonable business needs in filling a position.

Employer can find additional information in the EEOC's pandemic publication that will be helpful in managing their workforce needs. However, employers should also consult with counsel as necessary to make sure they are correctly assessing all relevant factors in this rapidly-changing environment.

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

For additional information and materials, please visit our COVID-19 / Coronavirus Resource Center.

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Contact Us



Joseph J. Torres

jtorres@jenner.com | [Download V-Card](#)



Emma J. Sullivan

esullivan@jenner.com | [Download V-Card](#)

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