



EEOC Updates COVID-19 Guidance

On April 9, the Equal Employment Opportunity Commission (“EEOC”) updated its guidance for employers entitled “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws,” found [here](#). Previously issued guidance explained that employers may, under pandemic conditions, ask employees about whether they are experiencing certain symptoms. The EEOC further stated that employers may also implement other measures to protect against spread of COVID-19 due to the novel coronavirus in the workplace. The guidance further noted that if employers do receive health information from employees, the information must be maintained confidentially, and consistent with other requirements under the Americans with Disabilities Act (the “ADA”).

The April 9 update to the prior guidance further clarifies employer obligations under the ADA and other equal employment opportunity laws during the pandemic. The updated guidance now explains:

- Employers may maintain medical information obtained from employees relating to COVID-19 or its symptoms (including temperature data) in existing medical files. The employer may also maintain temperature information in a log, provided that the employer must also maintain the information as confidential. Employers may also, consistent with confidentiality obligations, share information with local health authorities.
- Employers may not withdraw an offer of employment from an individual because the individual is 65 years old or pregnant, which place them at higher risk for contracting COVID-19. The EEOC explains that a higher risk for these groups does not justify an employer “unilaterally” withdrawing a job offer or postponing a start date. The EEOC clarifies, however, that employers may discuss with individuals in these groups whether they would like to postpone a start date.

- Employers must continue to reasonably accommodate individuals with disabilities in the workplace, in order to allow those individuals to perform the essential functions of the position. As one example of this obligation, the agency noted that if an employee with a disability is at higher risk, the employee may be entitled to an accommodation from the employer that would allow the employee to continue working.
- Employees with preexisting mental health conditions may have a need for workplace accommodations due to increased stress and the disruption accompanying the pandemic. The EEOC advises employers that, as with all accommodation requests, employers may ask questions and engage in a dialogue with the employee regarding the availability of accommodations.
- The agency also reminded employers of their obligation to provide a workplace free of harassment and discrimination, and noted that “fear of the COVID-19 pandemic should not be misdirected against individuals because of a protected characteristic, including their national origin, race, or other prohibited bases.”

Key Takeaways

The EEOC, along with other federal agencies, continues to update its guidance to employers regarding complying with the complex array of employment laws that may come into play during pandemic conditions. Please reach out to your Spencer Fane attorney if you have questions on how these laws affect your business or organization.

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