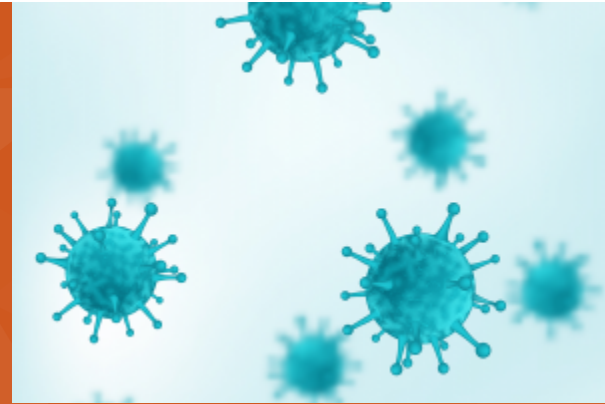


COVID-19 Alert: Americans with Disabilities Act

Equal Employment Opportunity Commission Issues Updated Guidance Related to COVID-19 Preparedness for “Essential Businesses”

By: Matthew L. Mitchell
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The federal Equal Employment Opportunity Commission (the “EEOC”) has issued **revised guidelines** that define Americans with Disabilities Act (“ADA”) compliance standards for employers operating under current COVID-19 pandemic conditions.

In general, the ADA broadly restricts business decisions that consider employee health or medical conditions. Through the guidelines, the EEOC has temporarily suspended certain ADA restrictions in an effort to permit “Essential Businesses” – *businesses that are exempted from various shelter-in-place and business restrictions order now in effect in several regions* – to adopt practical strategies to maintain safe business operations.

Revised EEOC guidelines.

Several of the key concepts are below:

- **With respect to employee inquiries regarding COVID-19 symptoms:** “An employer may send home an employee with COVID-19 or symptoms associated with it. Employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19.”
- **With respect to workplace infection control strategies:** “Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions as of March 2020, employers may measure employees’ body temperature. As with all medical information, the fact that an employee had a fever or other symptoms would be subject to ADA confidentiality requirements. Similarly, with respect to the current COVID-19 pandemic, employers may follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee’s return to the workplace after visiting a specified location, whether for business or personal reasons.”
- **With respect to reasonable accommodation requests by employees that are unrelated to COVID-19:** “The rapid spread of COVID-19 has disrupted normal work routines and may have resulted in unexpected or increased requests for reasonable accommodation. Although employers and employees should address these requests as soon as possible, the extraordinary circumstances of the COVID-19 pandemic may result in delay in discussing requests and in providing accommodation where warranted. Employers and employees are encouraged to use interim solutions to enable employees to keep working as much as possible.”
- **With respect to hiring practices during COVID-19 pandemic:** “An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule allowing post-offer (but not

pre-offer) medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.”

The Morse Employment Law team is following this, and other matters related to COVID-19 responses, and will continue to report as appropriate.