Accommodation and Compliance Series: Coronavirus Disease 2019 (COVID-19)

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Funded by a contract with the Office of Disability Employment Policy, U.S. Department of Labor
JAN’S Accommodation and Compliance Series

Introduction

Coronavirus (COVID-19) related workplace issues vary widely. JAN does not provide public health, safety, or legal advice, but does offer Americans with Disabilities Act (ADA) compliance assistance and practical job accommodation strategies for returning individuals with disabilities to work during the COVID-19 pandemic. These strategies can enable workers with disabilities to return to the work environment, work at home, or access leave when other accommodations are not reasonable.

- **For Employers**
  - **For Individuals**

For Employers

The ADA does not contain a list of medical conditions that constitute disabilities. Some individuals affected by COVID-19 will have a disability and others will not. When an individual requests a change at work for a reason related to COVID-19, a covered employer is expected to initiate the interactive process to gather information and establish whether the individual has the right to receive a reasonable accommodation for a disability-related reason. An individual might request accommodations for various medical reasons related to COVID-19. For example, the individual:

- Has, or has a record of, a medical impairment that puts them at high risk for developing serious illness from COVID-19 if infected (e.g., heart conditions, COPD, cancer, kidney disease, etc.)
- Has an underlying medical condition that is exacerbated by the effects of COVID-19 (e.g., cardiovascular, respiratory, renal, neurological, etc.)
- Has an underlying medical condition that is exacerbated by circumstances related to COVID-19 (e.g., a preexisting mental health impairment)
- Has serious illness from COVID-19, or has had COVID-19 and is experiencing ongoing effects or lingering symptoms.

An accommodation request received for a medical reason related to COVID-19 should be treated in the same manner as any other request for accommodation under the ADA – meaning there should be an interactive process to determine if the individual has an ADA disability and if effective and reasonable accommodation(s) can be provided without causing undue hardship for the employer.

Employers should refer to COVID-19 related technical assistance guidance provided by the Equal Employment Opportunity Commission (EEOC) when making disability-related inquiries or requiring medical examinations, analyzing direct threat and safety issues, and engaging in the interactive process under the ADA, the Rehabilitation Act, the Pregnancy Discrimination Act (PDA), and other relevant federal laws enforced by the EEOC.
For information about engaging in the interactive process under the ADA, see:
• Engaging in the Interactive Process During the COVID-19 Pandemic
• The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19
• Employers’ Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act (ADA)
• Accommodation and Compliance: Interactive Process
See also:
• What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (EEOC)
• Engaging in the Interactive Process During the COVID-19 Pandemic
• The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19

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For information about disability disclosure and how to request accommodation under the ADA, see:
• Requesting and Negotiating Accommodations During the Pandemic
• Disability Disclosure
• Employees’ Practical Guide to Requesting and Negotiating Reasonable Accommodations Under the Americans with Disabilities Act (ADA)
• How to Request an Accommodation

For Employers

For Individuals

JAN Resources

• ADA and Accommodation Lessons Learned: COVID-19 Edition
• Supporting Employees with Mental Health and Cognitive Conditions While Teleworking
• Sighted Assistance in the Age of Social Distancing
• FAQ: COVID-19 Vaccination and the Americans with Disabilities Act
• COVID-19 Long Haulers and the Americans with Disabilities Act
• Accommodating Employees with COVID-19-Related Symptoms
• Requesting and Negotiating Accommodations During the Pandemic
• Engaging in the Interactive Process During the COVID-19 Pandemic
• The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19
• Accommodation Strategies for Returning to Work During the COVID-19 Pandemic
• Masks for COVID-19 Management and ADA Accommodations
• Coronavirus (COVID-19), Stress, and Mental Health Conditions
• Accommodations for Educators Who are Deaf or Hard of Hearing
• Teleconference Accessibility and Hearing — Keeping Deaf and Hard of Hearing Employees in the Loop
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EEOC Resources

- What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws
- Pandemic Preparedness in the Workplace and the ADA
- COVID-19 “Ask the EEOC” Webinar and accompanying transcript

When addressing safety concerns during the pandemic, employers should make decisions based on facts, what is actually happening, and not speculation. Under the ADA, employers do not have to ignore safety concerns, but they must be real. So, employers should determine what’s really going on. A good starting point regarding workplace safety is guidance from the Centers for Disease Control and Prevention (CDC), state and local public health authorities, and the Occupational Safety and Health Administration (OSHA). These resources offer extensive guidance related to various industries, jobs, and environments, which can be useful when exploring COVID-19 related accommodation solutions for workers with disabilities.

Safety-Related Resources

- CDC Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19)
- CDC Businesses and Workplaces
- CDC Health and Safety Steps for Specific Occupations
- Occupational Safety and Health Administration (OSHA) COVID-19 Updates
- OSHA COVID-19 Frequently Asked Questions
- OSHA Standards COVID-19 Related Standards
- OSHA Guidance on Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace
Individuals who are unable to work for a reason related to COVID-19 might be able to access leave or unemployment insurance benefits. Leave might be available as an accommodation under the ADA if a disability prevents an employee from working, if other accommodations cannot be provided, and barring undue hardship. COVID-19 related leave might also be available under other federal laws, like the Families First Coronavirus Response Act (FFCRA) and the Family and Medical Leave Act (FMLA), or under state and local requirements.

**Leave and Unemployment Related Resources**

- U.S. Department of Labor, Wage & Hour Division COVID-19 and the Workplace
- Families First Coronavirus Response Act (FFCRA)
- COVID-19 and the Family and Medical Leave Act Questions and Answers
- Each state administers a separate unemployment insurance program, but all states follow the same guidelines established by the Employment and Training Administration. Contact your state unemployment insurance program regarding the rules in your state.

Individuals with disabilities who own a small business or are self-employed might be impacted by the COVID-19 pandemic. JAN offers self-employment and small business development expertise on a case-by-case basis.

**Small Business and Self-Employment Resources**

- SCORE - Small Business Resilience Hub
- U.S. Department of Treasury - The CARES Act Provides Assistance to Small Businesses
- Association of Women Business Centers and America’s Small Business Development Centers (SBDCs) Federal Resources for U.S. Small Businesses

**Other Resources**

- Considerations for Wearing Masks
- Guidance for Handlers of Service and Therapy Animals
- Stress and Coping
• **Vaccination Considerations for Persons with Underlying Medical Conditions**

As COVID-19 related workplace issues evolve, JAN will continue to develop practical guidance and resources. For one-on-one guidance on job accommodations and ADA technical assistance, please contact JAN.
Situations and Solutions:

A local government employee requested to reduce direct contact with people and to wear a mask in order to limit possible exposure to the coronavirus. The employee has an underlying impairment and takes medication that suppresses their immune system. The employer contacted JAN to ask if this request would need to be considered as an accommodation under the ADA. If the individual has a disability under the ADA that may put them at high risk for complications of pandemic coronavirus, the employer must treat the request as an accommodation request under the ADA and determine if the accommodation is reasonable.

A university received a request from an employee in her seventies whose spouse is older and has diabetes. The employee requested to telework due to concerns about being exposed to coronavirus in the workplace, and in-turn, exposing the spouse. The university employee does not have a reported disability. Because the employee does not have a disability, it was suggested that the employer discuss the request with an appropriate legal professional to determine the best approach for handling situations involving 1) at-risk aging employees who want to take measures to avoid exposure, and 2) accommodation requests from caregivers of individuals with disabilities who may be at-risk during the current public health situation. It was suggested that the employer also contact the Occupational Safety and Health Administration (OSHA) for guidance on the duty to protect employees and prevent occupational exposure during a pandemic public health situation.

An energy company wanted to take proactive steps to ensure that its employees with known medical impairments can receive telework as a form of accommodation during the coronavirus pandemic. The employer was aware of several employees with impairments who could be considered at-risk for developing complications if exposed to the coronavirus. The employer contacted JAN to learn if the ADA disability-related inquiry rules would allow the employer to ask these employees with disabilities if they will need to telework as an accommodation. According to the Equal Employment Opportunity Commission (EEOC), an employer may ask an employee with a known disability whether they need an accommodation when the employer has a reasonable belief that accommodation is needed. If this standard is met, the employer may reach-out to employees, on a case-by-case basis, to inform them of the opportunity to request accommodation in response to the current coronavirus pandemic.

A financial institution with a bank teller employee who is pregnant contacted JAN to ask if it would be acceptable to move the teller from direct client contact to working as a teller in the drive-through. The employer wanted to help reduce the risk of the employee’s exposure to customers who could have the coronavirus, or flu-like symptoms. It was suggested that the employer discuss the opportunity of the alternative workstation with the employee, rather than automatically moving the employee solely on the basis of the employer’s
concerns. Through this interactive process, both parties can then determine the best course of action.

In the weeks leading-up to the coronavirus outbreak, a university employee traveled abroad to an affected region. The employer contacted JAN to learn if it would be possible to ask if the employee to self-quarantine by working at home for fourteen days upon their return to the country. When public health authorities or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have pandemic symptoms, an employer may ask whether employees are returning from these locations, and encourage employees to telework.
This document was developed by the Job Accommodation Network, funded by a contract from the U.S. Department of Labor, Office of Disability Employment Policy (#1605DC-17-C-0038). The opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Labor. Nor does mention of tradenames, commercial products, or organizations imply endorsement by the U.S. Department of Labor.