

# JAN

Job Accommodation Network

Practical Solutions • Workplace Success

## Accommodation and Compliance Series

# 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

Employers covered by the ADA should keep the following strategies in mind when dealing with communicable diseases such as COVID-19 in the workplace.

### COVID-19 and the ADA

The first is to make decisions based on facts, what is actually happening, and not speculation. Under the ADA, employers can make decisions based on safety concerns, but they have to be real. So, employers should determine what's really going on.

Furthermore, employers should remember the ADA medical exam and inquiry rules apply when they are assessing workplace situations. In order to ask medical questions or require medical exams, employers must have a reasonable belief, based on objective evidence, that a specific employee might pose a direct threat. Employers should not put employees through medical screening without evidence they have been exposed to the virus or are exhibiting symptoms. The Equal Employment Opportunity Commission (EEOC) provides the following guidance: [What You Should Know About the ADA, the Rehabilitation Act, and the Coronavirus](#).

- For additional information, see the JAN blogs titled, [The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19](#) and [Coronavirus \(COVID-19\), Stress, and Mental Health Conditions](#).
- The U.S. Equal Employment Opportunity Commission (EEOC) posted a [webinar](#) addressing questions arising under any of the Federal Equal Employment Opportunity laws and the COVID-19 pandemic.
- For information about the Families First Coronavirus Response Act (FFCRA), effective April 2, 2020, see the U.S. Department of Labor, Wage and Hour Division page: [COVID-19 and the Workplace](#).

The best approach is to rely on guidance from public-health authorities including the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the U.S. Department of State. These expert authorities are closely monitoring the situation and providing information for employers.

#### Centers for Disease Control and Prevention (CDC):

- [COVID-19 Page](#)
- [Interim Guidance for Businesses and Employers](#)

- [Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 \(COVID-19\) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases](#)

**Occupational Safety and Health Administration (OSHA):**

- [COVID-19 Page](#)

Even if a direct threat exists, employers must consider whether there might be accommodations to reduce or eliminate the threat. Examples of possible accommodations include telework, temporary reassignment to a job that can be done from home if the current job can't be done from home, and temporary leave.

**U.S. Department of State:**

[Current Outbreak of Coronavirus Disease 2019](#)

**JAN Blog Posts:**

[The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19](#)

## **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.