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BLOGS

COVID-19; Discrimination; Privacy & Information Security

EEOC Updates Guidance on COVID-19 and Anti-Discrimination Laws

The U.S. Equal Employment Opportunity Commission (EEOC) recently updated its guidance [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

Many of the updates to the guidance document are consistent with the EEOCs March webinar on COVID-19, but the updates also provide additional clarifying information regarding the Americans with Disabilities Act (ADA) and COVID-19 screening. The ADA continues to apply during the COVID-19 pandemic and requires that any employment disability-related inquiries or medical exams, including COVID-19 related inquiries and testing, be job related and consistent with business necessity. The EEOC guidance states, however, that the ADA does not prevent employers from following recommendations from the CDC or other public health authorities.

In particular, the EEOCs updated guidance addresses inquiries and testing by an employer of one employee, rather than all employees. The EEOC clarified that, if an employer wants to ask only one particular employee to answer questions designed to determine if the individual has COVID-19 or to have that individual have their temperature taken or undergo other screening or testing, the employer must have a reasonable belief based on objective evidence that the individual might have COVID-19 (such as a display of COVID-19 symptoms). Accordingly, employers should carefully consider why it is necessary to make targeted inquiries or require screening of a particular employee, rather than a broader group, before doing so.

The EEOC also reminded employers that the Genetic Information Nondiscrimination Act (GINA) prohibits employers from asking an employee who is physically coming to the workplace whether the employee has a family member who has COVID-19 or symptoms associated with COVID-19. Employers may, however, ask an employee whether the employee has had contact with anyone diagnosed with COVID-19 or who may have symptoms associated with the disease. This guidance should serve as a prompt for employers to review their current screening practices to ensure that COVID-19 questions are consistent with GINAs requirements.

If an employee refuses to undergo screening or refuses to answer questions about whether the individual has COVID-19, has symptoms associated with COVID-19, or has been tested for COVID-19, the ADA allows an employer to bar the employee from being physically present in the workplace. The EEOC guidance recommends, however, that employers ask the reasons for the employees refusal. This provides an opportunity for the employer and employee to engage in a dialogue and for the employer to provide reassurance that the inquiries and/or screening are to ensure the safety of everyone in the workplace and that its steps are consistent with health screening recommendations from the CDC.

The updated guidance also reminds employers that the ADA requires that an employer keep all medical information about employees confidential. The ADA does not, however, prohibit a manager who learns that an employee has COVID-19 or has symptoms associated with COVID-19 from reporting to appropriate employer officials so that they can take actions consistent with the guidance from the CDC and other public health authorities. When determining what information to share, including whether to share the identity of the employee or just share that an employee has



COVID-19 or symptoms of COVID-19, the manager should consider who in the organization needs to know the identity of the employee. The EEOC reminds employers that they should make every effort to limit the number of people who learn the identity of the employee. When notifying other employees who may have had contact with the employee, an employer should use a generic descriptor such as someone on the third floor, to provide notice without revealing the employee's identity unless the employee has consented to the disclosure of their identity.

Employers should review the updated EEOC guidance and ensure that their managers understand the legal requirements and are prepared to continue protecting the safety of the workplace, while also complying with anti-discrimination laws. We will continue to keep you up to date with Alerts and blog posts as the various federal and state agencies issue new laws, regulations, guidance and answers to the questions posed by employers. Please check here on the Modern Workplace for updates or go to the [Lathrop GPM](#) website to find all of the COVID-19 Alerts by our various practice groups.