

MDM&C Update

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EEOC ISSUES GUIDANCE ON COVID-19

As the EEOC has noted in its latest Guidance on the coronavirus, the Americans With Disabilities Act and other employment discrimination laws continue to apply in the pandemic. The ADA is of particular importance because it limits medical inquiries by employers and restricts the employer's use of medical information of its employees.

First, the EEOC in its Guidance, which was revised on April 17, makes it clear that an employer may ask an employee if the employee has experienced symptoms of COVID 19. And the list of symptoms that an employer may ask about can expand as more information about the virus becomes available. However, the employer must rely on public health authorities as to what symptoms may be inquired about and the employee's responses are to be treated as a medical record to be kept in compliance with the ADA.

Second, although measuring an employee's body temperature could be considered a medical inquiry, given the advice of public health authorities and the need to limit exposure, employers are permitted to take employees' temperature.

Third, an employer may require an employee returning to work from COVID-19 to produce a doctor's note that the employee can safely return to work, although, as the EEOC notes, there may be practical problems in getting the doctor's note.

Fourth, an employer may not unilaterally postpone the start date or withdraw the job offer of a prospective employee because the employee is a member of a high risk group for the virus (e.g. over 65; pregnant women). Nor may the employer unilaterally change the terms and conditions of employment for those at high risk because of their high risk, though there may be accommodations that can be made to reduce the risk.

Fifth, employees with pre-existing psychiatric or psychological illness may need a reasonable accommodation to deal with the additional stress caused by COVID-19.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at bjacques@mdmc-law.com.

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