



Avoiding ADA Compliance Pitfalls in a COVID-19 World

Thursday, September 24 | 2:00-3:00 p.m. ET

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CUPA-HR Webinar

Presenter



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Agenda

- **Legal Considerations**

- What are the ADA workplace “Rules of the Road”?
 - ⇒ Reasonable accommodation, undue hardship, and “direct threat” principles
- How have the rules changed in light of COVID-19?
- EEOC and other agency guidance



Agenda

- **Practical Considerations**

- Anticipating ADA return-to-work issues
- Managing reasonable accommodation requests
- Addressing novel issues without “reinventing the wheel”
- Using the RA “Interactive Process” effectively



Agenda

- **Best Practices for Minimizing Risk**

Executing an effective Communications strategy

- Communicating with respect and empathy

Enforcing workplace policies

- Health and safety-based
- Flexible work, leave policies, attendance procedures
- Nondiscrimination rules



Poll Question #1:

How worried are you about an increase in ADA-related claims as employees begin to return to work?

- A) Not worried
- B) Somewhat worried
- C) Extremely worried

Poll Question #1

If you answered “A”, “Not worried” ...

- We love your enthusiasm and optimism!
- You’ve probably thought about and anticipated potential return-to-work issues and have a plan to address them
- Still, there may be value in hearing about some of the unique/emerging COVID-19-related ADA issues on the horizon
- You’re in the right place!

Poll Question #1

If you answered “B”, “Somewhat worried”...

- You’ve probably spent a bit of time thinking about (or dealing with) possible ADA issues and scenarios already
- You may be looking for tips and strategies for addressing ADA concerns in a fair and consistent manner
- You’re in the right place!

Poll Question #1

If you answered “C”, “Extremely worried” ...

- It may not be as bad as you fear
- There are a number of resources available to help guide your compliance efforts
- You’re in the right place!

Legal Considerations

- The Americans with Disabilities Act (ADA), as amended
 - Nondiscrimination
 - Duty to Accommodate
 - Restrictions on Disability Inquiries and Medical Exams
 - Confidentiality
- Enforced by U.S. Equal Employment Opportunity Commission (EEOC)

Legal Considerations

- How have the rules changed in light of COVID-19?

Novel and emerging ADA issues

- Intersection with new health and safety mandates and protocols

Examples include:

- COVID-19 screening and test administration protocols
- COVID-19 vaccination mandates

Legal Considerations

- How have the rules changed in light of COVID-19?

Employer response and actions must account for COVID-related changes

- Reasonable Accommodations
 - Undue hardship considerations
 - “Direct threat” analysis
- Workplace policy adjustments
 - i.e., revisiting inflexible leave rules and/or WFH policies
- Other issues, i.e. medical documentation, coordinating logistics

Poll Question #2:

Do your safety protocols include taking employee temperature scans and/or conducting antibody testing?

- A) Yes to both
- B) Yes to temperature scans only
- C) Yes to antibody testing only
- D) No to both
- E) Undetermined/unsure

Poll Question #3:

Once a vaccine is available, will you require staff to be inoculated?

- A) Yes, in all instances
- B) No, we will not mandate vaccinations
- C) Yes, but only on a case-by-case basis

Legal Considerations

- EEOC COVID-19 Guidance: “What you Should Know about COVID-19 and the ADA, Rehabilitation Act, and other EEO Laws”:

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

- Responds to frequently-asked compliance questions
- Last updated on September 8, 2020

Legal Considerations

- EEOC 2009 Pandemic Guidance: “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act”:

<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

- Preparedness publication issued in connection with H1N1 outbreak in 2009
- Updated to address COVID-19 issues

Legal Considerations

- ⇒ The EEOC's guidance documents reiterate that employers should also follow COVID related guidelines from public health authorities, such as the Centers for Disease Control and Prevention (CDC)

Legal Considerations

- Be mindful of other compliance risks
 - “Association,” “regarded as” disability discrimination
 - Protected-basis harassment (disability and non-ADA)
 - Retaliation

Practical Considerations

- Anticipating ADA return-to-work issues
 - Handling EEO vs. non-EEO COVID related complaints
 - The “my-coworker-refuses-to-wear-a-mask-and-he’s-making-me-uncomfortable” vs. the “my-coworker-refuses-to-wear-a-mask-and-she’s-placing-my-health-at-risk” complaint
 - Should they be handled differently?
- Managing reasonable accommodation requests
 - What’s your process?
 - Who’s the point person?
- Addressing novel issues without “reinventing the wheel”
- Using the RA “Interactive Process” effectively



Best Practices for Minimizing Risk

- Communicating and enforcing workplace policies
 - COVID-19 health and safety-based rules
 - Flexible work, leave policies, attendance procedures
 - EEO, nondiscrimination, anti-harassment, Code of Conduct
- Proactively monitoring for and preventing discrimination, harassment, and retaliation



Best Practices for Minimizing Risk

- Looking for opportunities to promote employee sense of safety and well-being
 - ⇒ Constant reinforcement of safety-based message ---
“we got you” – and backing it up with action
 - ⇒ Reminding employees of other available resources



Additional Resources

- CDC Guidance
 - General COVID-19 related information:
<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>
 - Businesses and the Workplace:
<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
 - Job Accommodation Network
askjan.org
 - Updated regularly
- State and/or local agency guidance
 - May speak to issues impacting a particular geographic area

Q&A

Submit questions to our presenters using
the Q&A box

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Thank You

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