

EEOC Issues Updated Guidance Regarding COVID-19 Response

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The U.S. Equal Employment Opportunity Commission has issued new FAQs regarding COVID-19 in the workplace. The following is our summary of the new advice:

Is an employee entitled to an accommodation under the Americans With Disabilities Act (ADA) in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to the family member's underlying medical condition?

No. An employer has no obligation under the ADA to accommodate an employee who does not have a disability.

How should employers respond to pandemic-related harassment, in particular against employees who are, or are perceived to be, of Chinese or other Asian national origin?

Employers should remind their entire staff that harassment based on race and national origin is prohibited by law and will not be tolerated.

Title VII of the Civil Rights Act of 1964 protects employees against pandemic-related harassment if the harassment is because of a protected characteristic (race, color, national origin, sex, or religion).

How should an employer respond to a claim of harassment by an employee teleworking due to the pandemic?

Employers are advised to respond as they would respond to any workplace harassment claim. Harassment via telephone, email, or other online platforms should be treated the same way as in-person harassment.

What should an employer do if an employee entering the worksite requests an alternative method of COVID-19 screening due to a medical condition?

The employer should respond to the request as it would respond to any request for reasonable accommodation under the ADA.

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The employer may require medical documentation to support the employee's request, and then determine whether an alternative effective accommodation can be provided without undue hardship to the employer.

How should employers treat employees over age 65, in light of this group's high-risk status for COVID-19 and guidance from the Centers for Disease Control and Prevention (CDC) recommending flexible work arrangements for this group?

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against individuals age 40 or older. Therefore employers may not exclude employees from the workplace based on their age.

Employers do not violate the ADEA if they allow employees age 65 and older to telework, even if younger workers are denied such an arrangement.

If an employer provides flexible working arrangements to employees with school-age children due to school closures during the pandemic, are there sex discrimination considerations?

Employers may provide flexible working arrangements to employees with school-age children, but employers may not treat male and female employees differently.

During the pandemic, may an employer exclude an employee from the workplace involuntarily due to pregnancy?

No. Sex discrimination is prohibited, and includes discrimination based on pregnancy. Employers may allow pregnant employees to stay home, but may not exclude them from the workplace if they wish to work onsite.

Is there a right to accommodation based on pregnancy during the pandemic?

Sometimes. The ADA requires employers to provide accommodations to employees with pregnancy-related medical conditions that qualify as a disability, even though pregnancy itself is not a disability under the ADA.

The Pregnancy Discrimination Act requires that a pregnant employee be treated the same as other employees in similar circumstances. For example, if non-pregnant employees are offered flexible work arrangements, pregnant employees must be offered the same opportunities.

However, the Pregnancy Discrimination Act does not require that pregnant employees be offered accommodations or benefits that are not offered to other employees.

May an employer require employees to take the COVID-19 antibody test before entering the workplace?

No. However, employers may require employees to take a COVID-19 viral test to determine whether someone has an active case of COVID-19.

The full list of FAQs can be found [here](#).

If you have any questions, please contact **Rebecca Green**.