

Long-Haul COVID Can Be Covered under ADA

The Equal Employment Opportunity Commission has issued guidance stating that employees suffering from "long COVID-19" may be protected under workplace disability discrimination statutes.

The guidance states that someone suffering from impairments resulting from long-haul COVID-19 symptoms can be considered "disabled" under the Americans with Disabilities Act and entitled to the same treatment as other disabled workers. But not in every case.

The EEOC emphasized that long-haul COVID symptoms can vary greatly from person to person and that eligibility would have to be determined on a case-by-case basis.

Employers should read [the guidance](#), posted on the EEOC's website on Dec. 14, to ensure they stay on the right side of the law if they are confronted with a worker who is battling COVID-19 symptoms for more than a few weeks and they ask for special accommodation under the ADA.

According to the guidance, a person infected with COVID-19 who is asymptomatic "or who has mild symptoms similar to those of the common cold or flu that resolve in a matter of weeks and with no other consequences" will not have an actual disability within the meaning of the ADA.

But for those who have COVID-19 symptoms lasting more than a few weeks, and depending on their specific symptoms, a worker may have a "disability" if the illness is affecting them in any of the following ways:

Physical or mental impairment The EEOC states that COVID-19 is a physiological condition affecting one or more body systems, which would be considered a disability under the ADA.

Substantially limiting a major life activity "Major life activities" include both major bodily functions, such as respiratory, lung or heart function, and major activities, such as walking or concentrating. COVID-19 has been known to cause these issues. An impairment need only substantially limit one major bodily function or other major life activity to be substantially limiting.

Examples of COVID-19 cases that may be considered a disability under the ADA include:

- An employee who experiences ongoing but intermittent multiple-day headaches, dizziness, brain fog and difficulty remembering or concentrating, which their doctor attributes to the coronavirus.
- Someone who received supplemental oxygen for breathing difficulties during initial stages of treatment and continues to have shortness of breath, associated fatigue and other virus-related effects that last for several months.
- Someone with heart palpitations, chest pain, shortness of breath and related effects due to the virus that last for several months.

What to do

As a result of this guidance, an employee experiencing long-haul COVID with symptoms that could be considered a disability may ask for reasonable accommodation for work. To determine if the employee is eligible, the employer and the employee must enter into an interactive process.

The employer can ask the worker to provide backup documentation about their disability or need for reasonable accommodation, such as notes from doctors outlining restrictions. The employer can also request that the employee sign a limited release allowing the employer to contact the employee's health care provider directly.

If the worker doesn't cooperate in providing the information, the employer can deny the accommodation request.

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