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COVID-19 and the EEOC Definition of “Disability”

On December 14, 2021, the U.S. Equal Employment Opportunity Commission (“EEOC”) updated its guidance to confirm that COVID-19, including “long COVID”, can qualify as a disability under the Americans with Disabilities Act (“ADA”). COVID-19 may be a disability under the ADA if it causes a physical or mental impairment that substantially limits one or more major life activities. Similarly, a person with a history of COVID-19 may qualify as a person with a “record of” a disability under the ADA. *An individualized assessment is always necessary to determine whether the effects of a person’s COVID-19 substantially limit a major life activity and constitutes a disability under the ADA.* An individual who meets either the “actual” or “record of” definitions of disability may be eligible for a reasonable accommodation under the ADA.

The EEOC provided the following examples where COVID-19 might qualify as a disability under the ADA:

- An individual diagnosed with COVID-19 who experiences ongoing but intermittent multiple-day headaches, dizziness, brain fog, and difficulty remembering or concentrating, which the employee’s doctor attributes to the virus.
- An individual diagnosed with COVID-19 who initially receives supplemental oxygen for breathing difficulties and has shortness of breath, associated fatigue, and other virus-related effects that last, or are expected to last, for several months.
- An individual who has been diagnosed with COVID-19 experiences heart palpitations, chest pain, shortness of breath, and related effects due to the virus that last, or are expected to last, for several months.
- An individual diagnosed with “long COVID,” who experiences COVID-19-related intestinal pain, vomiting, and nausea that linger for many months, even if intermittently.

The EEOC provided the following examples where COVID-19 would *not* qualify as a disability under the ADA:

- An individual who is diagnosed with COVID-19 who experiences congestion, sore throat, fever, headaches, and/or gastrointestinal discomfort, *which resolve within several weeks, but experiences no further symptoms or effects.*
- An individual who is infected with the virus causing COVID-19 but is asymptomatic.

This is the case even if such person is still subject to CDC guidance for isolation during the period of infectiousness.

In some cases, an individual’s COVID-19 may end up causing impairments that are themselves disabilities under the ADA. For example:

- An individual who had COVID-19 develops heart inflammation. This inflammation itself may be an impairment that substantially limits a major bodily function, such as the circulatory function, or other major life activity, such as lifting.



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Page 2

- During the course of COVID-19, an individual suffers an acute ischemic stroke. Due to the stroke, the individual may be substantially limited in neurological and brain (or cerebrovascular) function.
- After an individual’s COVID-19 resolves, the individual develops diabetes attributed to the COVID-19. This individual should easily be found to be substantially limited in the major life activity of endocrine function.

In some cases, an individual’s COVID-19 may also worsen the individual’s pre-existing condition that was not previously substantially limiting, making that impairment now substantially limiting. For example:

- An individual initially has a heart condition that is not substantially limiting. The individual is infected with COVID-19. The COVID-19 worsens the person’s heart condition so that the condition now substantially limits the person’s circulatory function.

Employers should be aware that they may engage in unlawful discrimination if an employee is unlawfully “regarded as” an individual with a disability if the employee has COVID-19 or if the employer mistakenly believes the employee has COVID-19; however, such individuals are not entitled to receive reasonable accommodations. An employer risks violating the ADA if it relies on myths, fears, or stereotypes about a condition to disallow the employee’s return to work once the employee is no longer infectious.

Employers can voluntarily provide accommodations beyond what is required by the ADA. However, preventing an employee from returning to the workplace when they are no longer infectious could lead to an ADA violation.

The new guidance contains a lot of details regarding how to handle accommodation requests due to “long COVID” and other ADA issues related to COVID-19. Please contact us for more information.

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm’s attorneys:

Deborah Buyer, 212-225-8483 x1, deborah@deborahbuyerlaw.com

Lydia Fan Wong, 212-225-8483 x2, lydia@deborahbuyerlaw.com

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