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## *The EEOC's Updated Technical Assistance Q&A, Including New Return to Work Guidance*

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On April 17, 2020, the Equal Employment Opportunity Commission ("EEOC") posted [updated guidance](#) addressing questions arising under federal equal employment opportunity laws related to the COVID-19 pandemic. The new guidance provides additional answers to common inquiries from the public, and expands beyond the agency's previous technical assistance Q&A issued last week (our earlier client alerts discuss the prior versions of the Guidance, including from [April 9th](#) and [March 17th](#), as well as the EEOC's [March 27, 2020 webinar](#)). Key takeaways from the new Q&A include the following:

### **Reasonable accommodation during the pandemic:**

- Regardless whether employees are working from home or in the workplace, employers may continue to ask questions or request medical documentation to determine whether disabilities necessitate accommodations under the ADA. Employers may likewise still engage in the interactive process and request information from employees about why accommodations are needed.
- In light of the pandemic, employers may adapt the interactive process by forgoing or shortening the exchange of information with employees.
- Employers may choose to place an end date on employees' accommodations, such as a specific date or when the employees ultimately return to the workplace. Employers may also opt to provide employees' requested accommodations on an interim or trial basis, with an end date, while awaiting receipt of medical documentation.
- Employers may proactively ask employees to request accommodations that may be needed when workplaces reopen. Employers may also begin the interactive process regarding such accommodations before employees return to work. Because of the pandemic, there may be circumstances where an accommodation that would not have previously posed an undue hardship (i.e., significant difficulty or expense) does so now. To make the determination, an employer should weigh the difficulty or cost of providing an accommodation against its current budget, while taking into account constraints created by the pandemic. Relevant considerations may include: (1) the sudden loss of some or all of an employer's income stream because of the pandemic, (2) the amount of discretionary funds available at the time when considering other expenses, and (3) whether there is an expected date the current restrictions on business operations will be lifted or new restrictions will be added or substituted.



## **Pandemic-related harassment prevention:**

- Employers have a role in helping to reduce the chance of harassment by explicitly communicating to their employees that fear of the COVID-19 pandemic should not be misdirected against individuals because of protected characteristics, including national origin, race, or other protected characteristics. The EEOC suggests it may be particularly helpful for employers to (1) advise supervisors and managers of their roles in watching for, stopping, and reporting any harassment or other discrimination, and (2) make clear that they will immediately review any allegations of harassment or discrimination and take appropriate action.

## **The expanded Q&As also contain an entirely new section addressing return to work issues:**

- As stay-at-home orders and other government restrictions are modified or lifted, employers may take steps to screen employees for COVID-19 when entering the workplace. The EEOC's guidance states that employers' screening measures will be consistent with the ADA so long as such measures are consistent with advice from the CDC or other health authorities for that type of workplace at that time. For example, permissible measures may include taking temperatures and asking about symptoms (or requiring self-reporting) of all those entering the workplace. The EEOC cautions that employers should make sure not to engage in unlawful disparate treatment based on employees' protected characteristics in decisions related to screening measures.
- The EEOC recommends that employers with critical workers follow the [CDC interim guidance](#) regarding return to work measures. Refer to our [April 13th client alert](#) for further information about the CDC's guidance.
- Employers may require returning workers to wear Personal Protective Equipment ("PPE") such as masks and gloves. Employers may also require employees to observe infection control practices like regular hand washing and following social distancing protocols. However, employers should be prepared to evaluate accommodation requests related to any PPE requirements (e.g., non-latex gloves, modified face masks for lip reading, and gowns designed for individuals in wheelchairs) and Title VII (e.g., modified equipment due to religious dress).



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