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## *Latest EEOC Guidance for Employers in the COVID-19 Pandemic*

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In the latest guidance from the EEOC, issued June 11, 2020, there are several critical clarifications for employers to be conscious of as the COVID-19 pandemic continues:

### **Family Concerns and Caregiver Responsibilities**

- 1. No accommodation under the Americans with Disabilities Act (“ADA”) must be given to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition.**

The ADA does *not* require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom he or she is associated.

- 2. Accommodations for childcare must be gender-neutral.**

Employers who offer accommodations, such as telework or modified schedules to employees with children, cannot treat employees differently based on sex or any other EEO-protected characteristic. For example, under Title VII, female employees must not be treated more favorably than male employees due to gender-based assumptions regarding caretaking responsibilities.

### **Harassment**

- 3. Employers should ensure employees know pandemic-related harassment is prohibited in general and also, in particular, with respect to employees who are or are perceived to be Asian.**

Employers should clearly communicate policies prohibiting pandemic-related harassment, which can occur when employees are in the workplace, teleworking, on leave or away from the workplace, and can originate from contractors, customers, or clients, including patients or their family members at healthcare facilities, assisted living facilities, and nursing homes. It is good practice to send the entire workforce a reminder of policies against harassment, and invite anyone who experiences or witnesses workplace harassment to report it, noting the anti-retaliation policy.



## Accommodations

### **4. Employers should invite employees to request flexibility in work arrangements in advance of having some or all employees return to the workplace.**

As a best practice, employers should offer information in advance of returning to work to *all* employees, with instructions on who to contact to request accommodations that an employee may need upon his or her return to the workplace, *even if no return date has been announced*. This notice should state that the employer is willing to consider requests for accommodation on an individualized basis. If requests for accommodation based on disability are received in advance, the required interactive process under the ADA and Rehabilitation Act may begin then, also in advance of return. Consider including in this notice all [CDC-listed medical conditions](#) that put people at higher risk for severe illness if they get COVID-19. Employers also should specify if the person to contact differs based upon the reason for the request, i.e., if the person to contact is different for employees with disabilities or pregnant workers than for employees who have age-related or child-care responsibility requests.

### **5. An employee's request for an alternative method of screening due to a medical condition must be treated like any other request for accommodation under the ADA.**

In this situation, employers must proceed as they would for any other request for accommodation under the ADA or the Rehabilitation Act. Consider voluntarily making a requested change available to anyone who asks, without the interactive process, if the change is easy to provide and inexpensive. If a requesting employee's disability is not obvious or already known, employers can inquire of the employee information to establish that the condition is a disability, as well as what limitations require accommodation. If required, employers may request medical documentation supporting an employee's request, then determine if that accommodation (or another effective accommodation) can be provided, absent undue hardship to the employer. Note, likewise, if the requested alternative method of screening is sought for religious accommodation, the employer should determine if the accommodation is available under Title VII, as it does in all other requests for religious accommodation.

### **6. Employers cannot exclude employees who are 65 and older, or who are pregnant, from the workplace.**

Employers are not permitted to single out employees based upon age or pregnancy for any adverse employment actions—including involuntary leave—even if the employer is motivated by a well-meaning concern for the employee.

Unlike the ADA, the Age Discrimination in Employment Act ("ADEA") does not include a right to reasonable accommodation based on age. *Note:* Employers can choose to offer greater flexibility to workers 65 and older. The ADEA does not prohibit this and the latest EEOC guidance explicitly permits it.

Similarly, while pregnancy itself is not an ADA disability, pregnancy-related medical conditions can be. Thus, if an employee requests a reasonable accommodation due to a pregnancy-related medical condition, employers must consider it under the usual ADA rules.



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