Q&A: Covid-19 and Employment Discrimination

QUESTION: Is COVID-19 a disability?

ANSWER: A determination of whether a diagnosis of COVID-19 alone would qualify as a disability under the Americans with Disabilities Act (“ADA”) must be made on a case-by-case basis since people’s responses to the virus will vary. If an employee who has tested positive seeks reasonable accommodations, the employer should conduct the same analysis as for any employee seeking reasonable accommodations due to a qualifying disability. If the employee who has tested positive for COVID-19 can demonstrate with appropriate medical documentation that she is experiencing symptoms that could be considered physical or mental impairments that substantially limit one or more major life activities, she may be deemed disabled under the ADA. Individuals who continue to experience long-term mental and physical effects from COVID-19, also referred to as ‘long haulers,’ may also qualify as having a disability under the ADA. Such an employee could also qualify as disabled under the ADA by demonstrating a history or record of a substantially limiting impairment. Additionally, an employee may qualify as being “regarded as” disabled under the ADA if her COVID-19 symptoms do not substantially limit a major life activity but the symptoms are not transitory and minor, and the employer nevertheless mistakenly perceives the symptoms as substantially limiting.

QUESTION: Can my employer screen me for COVID-19?

ANSWER: Yes. Employers may administer COVID-19 tests and measure employee body temperatures before employees enter the workplace.

QUESTION: Can employers screen job applicants for COVID-19?

ANSWER: Yes, but only if the employer has already made a conditional job offer and is screening all employees entering the same type of job.

QUESTION: What are some reasonable accommodations for individuals with disabilities who are at a greater risk from COVID-19?

ANSWER: Employees may be able to work from home. If a job may only be performed in the workplace, employees may be reassigned or may modify their work schedule so as to reduce exposure. Physical changes to the work environment may also be made.

QUESTION: What if I'm an employee who was already receiving a reasonable accommodation?

ANSWER: Employees who were already receiving reasonable accommodations before the COVID-19 pandemic
QUESTION: Can employers require employees to wear personal protective equipment (PPE)?

ANSWER: Yes. If an employee with a disability needs a PPE accommodation, the employer must provide a feasible alternative that doesn’t pose undue hardship on the employer.

QUESTION: Can employers provide temporary accommodations?

ANSWER: Yes, they can.

QUESTION: If I'm covered under the ADA, can my employer ask if I'm experiencing COVID-19 symptoms?

ANSWER: Yes. These currently include fever, chills, cough, shortness of breath, fatigue, muscle and body aches, headache, new loss of taste or smell, sore throat, runny nose, nausea or vomiting, and diarrhea.

QUESTION: What should I tell my employer if my disability may put me at higher risk for severe illness from COVID-19?

ANSWER: An employee must request accommodation in conversation or writing. The employer may then engage in the interactive process by requesting medical documentation or asking questions to determine if a reasonable accommodation can be provided.
The Disability Law Center (DLC) is a private, non-profit organization, designated by the governor as Utah's Protection and Advocacy agency. The DLC believes in a society where abilities, rather than disabilities, are recognized; all people have an equal opportunity to participate; and where all people are treated with equity, dignity, and respect. We work toward our vision by enforcing and advancing the legal rights, choices, and opportunities of Utahns with disabilities. DLC services are available free of charge statewide, regardless of income, legal status, language, or place of residence.

If you have further questions, please contact us. Even though our focus is on cases that can help as many people as possible - because time and resources are limited - we at least offer information and/or referral options to everyone who contacts us. Materials are also available in alternative formats such as audio, large-print, Braille and Spanish. Call (800) 662-9080 or apply for help online, and our staff will contact you within 1-3 business days.

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