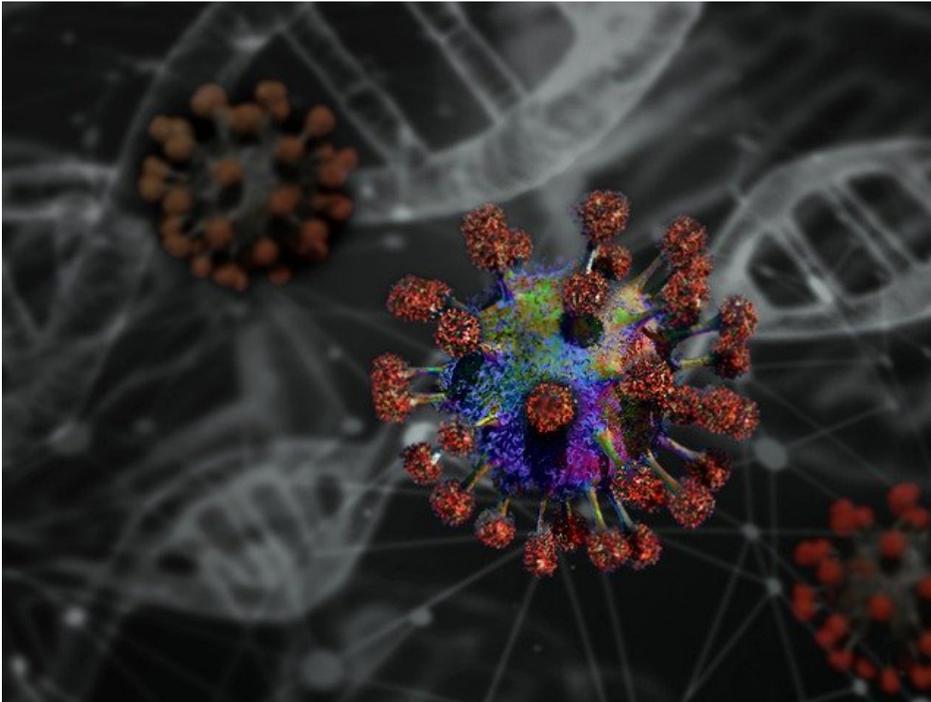


The EEOC has just weighed in on what employers should know about the Coronavirus and the ADA

by [Eric B. Meyer](#)



I've seen enough "What employers should know about the Coronavirus" blog posts to know that I'm sick and tired of reading them.

But then the [U.S. Equal Employment Opportunity Commission posted a Coronavirus update yesterday](#). And since I like clickbait as much as the next blogger, I'm going to summarize the EEOC's Guidance for you today.

How does the ADA relate to the Coronavirus?

The [Americans with Disabilities Act](#) protects applicants and employees from disability discrimination. According to the EEOC, the ADA relates to the Coronavirus in three essential ways:

1. The ADA regulates employers' disability-related inquiries and medical examinations for all applicants and employees, including those who do not have ADA disabilities.
2. The ADA prohibits covered employers from excluding individuals with disabilities from the workplace for health or safety reasons unless they pose a "direct threat" (i.e. a significant risk of substantial harm even with reasonable accommodation).
3. The ADA requires reasonable accommodations for individuals with disabilities (absent undue hardship) during a pandemic.

These three facets of the ADA lend themselves to resolving some questions that may arise in your workplace over the next few months; namely:

- As the Coronavirus pandemic escalates, how much information may an employer request from an employee who calls in sick to protect the rest of its workforce?
- Does the ADA allow employers to require employees to stay home if they have Coronavirus symptoms?
- When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

Let's answer each question.

As the Coronavirus pandemic escalates, how much information may an employer request from an employee who calls in sick to protect the rest of its workforce?

Here's what the EEOC says (with some light editing from yours truly):

ADA-covered employers may ask such employees if they are experiencing influenza-like symptoms, such as fever or chills and a cough or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

If Coronavirus is like seasonal influenza, these inquiries are not disability-related. However, if the Coronavirus becomes severe, the inquiries, even if disability-related, are justified by a reasonable belief based on objective evidence that the severe form of Coronavirus poses a direct threat.

Does the ADA allow employers to require employees to stay home if they have Coronavirus symptoms?

Here's more from the EEOC (with a few more of my edits):

Yes. Employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal

influenza. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat.

When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

What say you, EEOC?

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.

As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

Maybe you have other questions, such as, "During a pandemic, may an ADA-covered employer take its employees' temperatures to determine whether they have a fever?" or "When an employee returns from travel during a pandemic, must an employer wait until the employee develops

influenza symptoms to ask questions about exposure to pandemic influenza during the trip?”