

## What Can I Do If One of My Employees Tests Positive for COVID-19? Employer Rights and Obligations Under the Americans with Disabilities Act

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The impact that COVID-19 continues to have on American businesses cannot be understated. In the wake of this global pandemic, employers may find themselves confronted with employees who have either tested positive for the virus or are exhibiting symptoms. Although the federal Americans with Disabilities Act (“ADA”) prohibits most employers from discriminating against employees on the basis of disability, employers can implement certain measures to protect their workplaces from becoming sites of infection.

The Equal Employment Opportunity Commission (“EEOC”) has issued an updated set of [guidelines](#) to aid employers who wish to lessen the threat of COVID-19 in their workplaces without running afoul of the ADA. Crucially, the EEOC’s guidelines confirm that COVID-19 constitutes a “direct threat” under the ADA, meaning that a significant risk of substantial harm would result if someone with COVID-19—or symptoms of it—remained present in a workplace. The chart below summarizes much of the salient information contained in the EEOC guidelines.

<b>EEOC Guidelines: COVID-19 and the ADA</b>	
<u>Scenario</u>	<u>Permissible Employer Action During Pandemic</u>
The employee has <b>tested positive</b> for COVID-19.	The employer may send the COVID-19-positive employee home from work. The employer should inform fellow employees of their possible exposure to COVID-19 but maintain confidentiality as required by the ADA. The fellow employees should then self-monitor for symptoms ( <i>i.e.</i> , fever, cough, or shortness of breath).
The employee is <b>displaying symptoms</b> of COVID-19.	The employer may send the employee displaying COVID-19 symptoms home from work.
The employee reports <b>feeling ill</b> at work.	The employer may ask the employee questions about their symptoms to determine if the employee has COVID-19.
The employee <b>calls in sick</b> from work.	The employer may ask the employee questions about their symptoms to determine if the employee has COVID-19.
The employer wants to take its employees’ <b>temperatures</b> .	The employer may take its employees’ temperatures, but such information is subject to the ADA’s confidentiality requirements.
The employee <b>returns from travel</b> , whether for business or personal reasons.	If health officials recommend that people who visit specified locations remain at home until they no longer have COVID-19 symptoms, the employer may ask its employees if they are returning from these locations.
The employer wants to implement <b>infection control measures</b> .	The employer may require such measures, including regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal.
The employer wants its employees to wear <b>gloves and masks</b> .	The employer may require employees to wear gloves or masks, subject to the ADA’s reasonable accommodation requirements ( <i>e.g.</i> , providing non-latex gloves to employees allergic to latex absent undue hardship to the employer).
The employee has <b>failed to report to work</b> for some time.	The employer may ask why the employee failed to report to work, even if the employer suspects a medical reason, because asking an employee why they failed to report to work is not a disability-related inquiry under the ADA.
The employer wants a <b>doctor’s note</b> before permitting employees to return to work.	The employer may require employees who have been away from work to provide a doctor’s note or other documentation certifying their fitness to return to work.