

## WHAT YOU SHOULD KNOW ABOUT COVID-19 AND DISCRIMINATION

1. Employers may take steps, such as testing, to determine if employees entering the workplace have COVID-19 because the employee could pose a direct threat to the health of others;
2. Employers may ask employees if they are experiencing symptoms of the pandemic including whether they suffer from a fever, cough, chills, shortness of breath, sore throat, chills, muscle pain, headache, or a new loss of taste or smell. If they are, an employer may send the employee home and may require a return-to-duty certification;
3. Employers may ask employees with disabilities to request accommodations that they believe they may need when the workplace re-opens, now and start the "interactive process";
4. Employers may measure employee's body temperatures however because temperature-taking is a medical examination, it is deemed a confidential medical record;
5. Employers should let employees know if a coworker(s) has been exposed to COVID-19 without disclosing the employee's name but may disclose the name to a public health agency;
6. Employers may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols) however modifications may be required by both the ADA and Title VII for disability-related or religious-related reasons. For example, an employee with a disability may request non-latex gloves or modified equipment due to religious garb;
7. Employers should not withdraw job offers, terminate employees, or take other "adverse action" against employees because they are in vulnerable classes. However, an employer may revoke an offer if the employee cannot enter the workplace due to being diagnosed or symptomatic of the virus and the employer needs the employee to start immediately;
8. If a job can only be performed in the workplace and an employee has a disability that places that employee at higher risk from COVID-19, employers must still engage in the interactive process;
9. Pandemic-related harassment and discrimination is prohibited. For example, harassment of Asian employees or a policy subjecting only Asian employees to COVID-19 testing may be considered discriminatory;
10. When considering layoffs and offering severance packages the agreement generally is valid when an employee knowingly and voluntarily consents to the waiver, the offer has some sort of consideration, does not require the employee to waive future rights and complies with applicable state and federal laws including the Older Workers Benefit Protection Act.

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

This information is not intended to constitute legal advice