

EEOC Addresses Thorny COVID-19 Issues

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With more and more facets of the workforce returning to work, the Equal Employment Opportunity Commission has updated its guidance on COVID-19 issues to address multiple pandemic-related topics.

Older Workers

[The guidance](#) addresses the issue of integrating older workers back into the workplace in light of CDC guidance highlighting that individuals over the age of 65 are more vulnerable to the virus. The EEOC underscored that employers cannot prohibit older workers from returning to the workplace simply because they are vulnerable to the pandemic and may become severely ill. However, employers are "free to provide flexibility" to employees in the over-65 age pool and such accommodation does not violate the Age Discrimination in Employment Act even if workers in the 40 to 64 age category are treated less favorable.

Pregnancy

The guidance also addresses pregnant employees. An employer is not permitted to bar a pregnant employee from the workplace because of the pandemic, although the employer may have reasonable accommodation obligations under the Americans with Disabilities Act (ADA) for pregnancy-related medical conditions. Furthermore, when it comes to accommodations, an employer cannot treat a pregnant employee less favorably than similarly situated employees with temporary medical conditions under the Pregnancy Discrimination Act.

Harassment

The guidance addresses workplace harassment in the context of the pandemic. For example, an employee who is telecommuting may report harassment via email and employers must take those reports seriously. The EEOC underscores that harassment targeted at employees of Chinese or Asian heritage about the origins of the virus may create a hostile work environment under Title VII of the Civil Rights Act. Managers should watch for such behaviors from coworkers, contractors or customers. In addition, harassment via email or other forms of electronic communication directed at employees, including those who are telecommuting, must be addressed by employers. Companies should consider reminding employees of that anti-harassment policies apply even while working from home.

Disability Accommodation

The guidance addresses the issue of whether an employer must accommodate an employee who does not have a disability, but who requests to work from home because the employee's family member is at-risk for COVID-19. The ADA does not require the employer to provide an accommodation in this circumstance since the employee does not have a disability. However, the ADA prohibits adverse treatment or harassment on the basis of an employee's association with a disabled person.

Caregiver Responsibilities

The EEOC cautions employers that they cannot single employees out for adverse treatment based on gender. For example, if females are being permitted to work from home because of childcare responsibilities, men must also be given the same opportunities for caregiving.

If you have any questions about the guidance or COVID-19-related employment issues, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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