

## WHAT ARE YOUR OBLIGATIONS TO EMPLOYEES WHO MAY BE AT GREATER RISK DURING THE COVID-19 CRISIS?

The EEOC has provided elaboration on how employers can navigate between compliance with the Equal Employment Opportunity laws and COVID-19 protocols issued through myriad government orders. The following represents the EEOC's response to certain commonly posed questions from employers concerning their obligations solely under laws enforced by the EEOC (as opposed to, for example, laws enforced by the DOL such as FLSA), recognizing that this guidance may change over the course of time as the COVID-19 landscape evolves.

**May an employer exclude from the workplace an employee who is 65 years old or older and who does not have COVID-19, or symptoms associated with this disease, solely because the CDC has identified this age group as being at a higher risk of severe illness if they contract COVID-19?** The answer is no. The Age Discrimination in Employment Act prohibits employment discrimination against workers aged 40 and over. If the reason for an action is older age, over age 40, the law would not permit employers to bar older workers from the workplace, to require them to telework, or to place them on involuntary leave. One way to show that an action was based on age would be if the employer did not take similar actions against comparable workers who are under the age of 40.

**Do the EEO laws require an employer to grant a request to telework from an employee who is 65 years old or older because the CDC says older people are more likely to experience severe symptoms if they get COVID-19?** The answer, again, is no. If, however, an employer is allowing other comparable workers to telework, it should make sure it is not treating older workers differently based on their age.

**What are an employer's ADA obligations when an employee says that he has a disability that puts him at greater risk of severe illness if he contracts COVID-19, and therefore he asks for reasonable accommodation?** The CDC has identified a number of medical conditions -- including, for example, chronic lung disease and serious heart conditions -- as potentially putting individuals at higher risk. Therefore, this should be treated as a request for reasonable accommodation, meaning it is a request for a change in the workplace due to a medical condition. Because the ADA would not require an accommodation where the employee has no disability, the employer may verify that the employee does have a disability, as well as verifying that the accommodation is needed because the particular disability may put the individual at higher risk. There could also be situations where accommodations are requested because a current disability is exacerbated by the current situation.

As added by the EEOC with respect to this question, the employer can verify the existence of the disability and discuss both why an accommodation is needed and the type of accommodation that would meet the employee's health concerns. In either situation, and as with any requests for reasonable accommodation, an employer may also consider whether a reasonable accommodation would pose an undue hardship, meaning the employer may assess whether a specific form of accommodation would pose significant expense or significant difficulty. Given the demands placed on the healthcare system due to the COVID-19 crisis, employers seeking documentation from a health care provider to support the employee's request should recognize that because of the health crisis many doctors may have difficulty responding quickly. There may be other ways to verify the existence of a disability. For example, a health insurance record or a prescription may document the existence of the disability. If the employer is waiting to receive documentation, it may want to provide the accommodation on a temporary basis. This could be particularly critical where the request is for telework or leave from an employee whose disability puts them at higher risk for COVID-19 -- from COVID-19.

**What are an employer's ADA obligations to provide reasonable accommodation if an employee says that he lives in the same household as someone who due to a disability is a greater risk of severe illness if he contracts COVID-19?** The employee only has a right to reasonable accommodation for his own disability. In the situation being raised here, the employee does not have a disability, only a member of his household. The employer should consider, however, if it is treating the employee differently than other employees with a similar need before it responds to the request.



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If you need any assistance in understanding or addressing these issues, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at [info@garfunkelwild.com](mailto:info@garfunkelwild.com).

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