

**EMPLOYEE  
RIGHTS AND THE  
COVID-19  
PANDEMIC**

**DISCRIMINATION, DISABILITY  
PROTECTIONS, AND PRIVACY RIGHTS**

# EMPLOYEE PROTECTIONS

Anti-discrimination laws, protecting from discrimination against disabilities, age, gender, race, pregnancy, and more are still in force during this pandemic.

Although the CDC and public health authorities have relaxed some guidelines protecting employees' privacy, there is a limitation on how far an employer can inquire into your medical information before violating the ADA (Americans with Disabilities Act).

Further, any action that an employer takes, such as allowing individuals in the workplace, laying off employees, or reducing pay, must not be taken in consideration of illegal factors, such as disabilities, age, gender, race, pregnancy, etc. and everyone must be treated equally and fairly across the board.

# AN OVERVIEW OF FEDERAL AND STATE DISCRIMINATION LAW

- Federal:
  - Title VII: preventing discrimination in the workplace for all employers with **15 or more** employees.
  - ADA: preventing discrimination against individuals with disabilities and requiring reasonable accommodations in the workplace, for all employers with **15 or more** employees.
  - ADEA: preventing discrimination against individuals over 40 years old, for all employers with **20 or more** employees.
- Massachusetts:
  - M.G.L. c. 151B: preventing discrimination in the workplace for all employers with **6 or more** employees, which also includes disability discrimination and requires reasonable accommodations in the workplace.



# **PERMISSIBLE EMPLOYER INQUIRIES**

**IN THE TIME OF COVID-19**

# WHAT CAN MY EMPLOYER ASK?

- If you are experiencing any symptoms of COVID-19;
- If you have been in contact with anyone with symptoms or a diagnosis of COVID-19;
- If you have traveled to any areas exposed to COVID-19;
- To stay home if you experiencing any symptoms of COVID-19 or have potentially been exposed;
- Why you were absent from work.

# WHAT ELSE CAN MY EMPLOYER REQUIRE?

- Can measure employees' body temperature before allowing them into the workplace;
  - Note: as long as it is taking the everyone's temperature uniformly. If singling out an employee, must have a reasonable belief based on objective evidence (i.e. showing symptoms) that employee may have COVID-19.
- Can ask for a doctor's note or other document (form, stamp, email) certifying that a worker does not have COVID-19 before allowing them into the workplace;
- Can require safety precautions, such as: hand washing, wearing personal protective equipment, maintaining 6-feet distance, etc.; and
- Can screen job applicants for symptoms or exposure to COVID-19 or taking temperature after making a conditional job offer.
  - Note: needs to be uniform for all employees in similar position.
  - May delay start date or withdraw offer if employee needs to start immediately, if employee cannot safely enter the workplace because of COVID-19.



# **EMPLOYEE PRIVACY PROTECTIONS**

**WHAT IS NOT ALLOWED IN THE TIME  
OF COVID-19**

# EMPLOYERS MUST ADEQUATELY PROTECT EMPLOYEES' CONFIDENTIAL MEDICAL INFORMATION:

- All medical information, including COVID-19 symptoms or temperature, must be kept confidential in a secure location, separate from regular personnel files;
- Information about an employee's disability or medical information should only be shared on a need-to-know basis;
- Employers are not to disclose the identity if an individual diagnosed with COVID-19 to other employees.
  - Only disclose to those with a need-to-know (i.e. HR or a manager).
  - May tell employees generally that they may have been exposed.
  - May interview diagnosed employee to find out who they were in contact with.
  - Employers are permitted to report employee with COVID-19 to appropriate officials or public health authorities.



# EMPLOYEE PROTECTIONS RELATING TO COVID-19:

- An employer is **not** permitted to ask employee if he or she has medical conditions that would make them vulnerable to COVID-19;
- An employer cannot terminate an employee for having COVID-19, having symptoms, or having a family member with COVID-19 or symptoms.
- An employer cannot exclude certain groups of individuals from the workplace, such as individuals over 65 years old, pregnant women, or those with pre-existing conditions, which make them higher risk for COVID-19, for that reason only.
- Employers are permitted to exclude employees based on national origin because of concerns of COVID-19 or tolerate a hostile work environment based on national origin.



# COVID-19 AND DISABILITIES

HOW COVID-19 INTERACTS WITH  
DISABILITY PROTECTIONS

# THE RIGHT TO A REASONABLE ACCOMMODATION

- COVID-19 or related complications may be considered a disability under the ADA.
  - You can ask for a reasonable accommodation if needed.
- If you are high risk for COVID-19, though you are not entitled to emergency paid leaves, you may be able to request a reasonable accommodation such as: working from home, requesting personal protection equipment, reassigning duties, or taking a reasonable period of temporary leave.
  - Employer must provide accommodation, or a reasonable alternative, unless it is overly difficult or expensive to provide.
  - Employers are permitted to verify need for accommodation through alternative documentation, such as insurance documents, prescriptions, bills, etc.;
  - Your employer cannot retaliate against you for asking for a reasonable accommodation.
- NOTE: in Massachusetts, employers are required to provide a reasonable accommodation to women for pregnancy or any pregnancy-related condition. This could include extra protections due to COVID-19 risks.

# ACCOMMODATIONS FOR TELEWORKING EMPLOYEES:

- An individual with a disability may still require a reasonable accommodation when working from home:
  - For employees who are already receiving an accommodation in the workplace, may need an additional or altered accommodation;
  - Employer should consider the need for the accommodation; the feasibility; and whether worker can still perform essential functions at home;
  - Need to explore accommodations through an interactive process, but do not need to provide the **exact same** accommodation as that given in the workplace if not feasible.
- Permissible inquiries for employees entering the workplace **do not apply** for teleworking employees: i.e. cannot take body temperature, or ask about symptoms.
- If an employee is allowing telework to employees in a comparable position, should not withhold that option for others.

# PRACTICAL CONSIDERATIONS ABOUT REASONABLE ACCOMMODATIONS

- An employee in a household with an individual with a disability that causes a greater risk of severe illness if he or she contracts COVID-19 is not necessarily entitled to an accommodation.
  - Reasonable accommodations are only available for an employee for **their own** disability.
  - **However**, if employer is offering accommodations, such as working from home, for individuals in similar positions for other reasons, should not treat an individual with an association with someone with a disability differently.
- Requested accommodations may be offered on a temporary basis.
- COVID-19 crisis can constitute an “extenuating circumstance” that can justify exceeding normal timelines in responding to requests for reasonable accommodations for federal employees.

EEOC guidance:

[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)

[https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)

**HELPFUL  
RESOURCES**