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Maintaining a Safe Workplace and Complying with the ADA: A Balancing Act

Given the continued rapid spread of COVID-19 globally, employers are facing new challenges in which they must balance individual employees' legal rights with the equally-important responsibility to maintain a safe workplace. One such challenge employers have faced is how is how to appropriately communicate an employee's potential or confirmed exposure to the virus to the rest of the staff.

The Americans with Disabilities Act ("ADA") mandates that all information about applicants or employees obtained through disability-related inquiries or medical examinations must be kept confidential, meaning that such information must be collected and maintained on separate forms and in separate files from the personnel file, and only those employees with a legitimate business-related reason to know should be granted access. Many state laws, including for example the California Confidentiality of Medical Information Act, mandate that employers take similar measures.

The question then arises as to what information an employer may share with its employees upon learning that a fellow employee has been exposed to COVID-19. Guidance promulgated by the EEOC, which addresses the application of the ADA during global pandemics, including but not limited to COVID-19, does not speak to this issue specifically, but it does confirm that even during

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a pandemic "employers must maintain all information about employee illness as a confidential medical record," consistent with the provisions of the ADA.

With this guidance and legal framework in mind, upon learning that an employee has been exposed to or diagnosed with COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace. In doing so, employers can and should state when the employee was physically present in the workplace, and if possible, which specific areas of the workplace may be affected. In addition, employers may ask the infected employee to share with whom he/she had close contact in the workplace so as to reach out to those specific individuals directly, if appropriate. However, employers should not disclose to others the identity of the infected employee, as doing so would violate the employee's rights under the ADA, notwithstanding pandemic conditions or an employee's request for this information devoid of a legitimate, business-related reason to know.

If you have any questions regarding the Americans with Disabilities Act or other Labor and Employment issues, please do not hesitate to contact **Corey Biller** or your Neal Gerber Eisenberg attorney.

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