

## Publication

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### The ADA and COVID-19: Can Employers Consider Employee Medical Conditions When Bringing Employees Back to Work?

The Americans with Disabilities Act (ADA) prohibits discrimination against employees with disabilities and requires employers to provide reasonable accommodations that will permit disabled employees to perform the essential functions of their job. *What are employer obligations under the ADA when employers begin bringing employees back to work, particularly with regard to those employees have known disabilities that may make them more vulnerable to COVID-19 and its effects?* This week the EEOC issued guidance on the subject.

According to the EEOC, just because an employee has a medical condition that makes him or her more vulnerable to COVID-19 does not, in and of itself, allow an employer to refuse to return the employee to work. Rather, according to the EEOC, the employer must analyze, on an individualized basis, whether the risk of contracting COVID-19 can be reduced through a reasonable accommodation that does not impose an undue hardship on the employer. Employees may only be excluded from the workplace if the employee's disability poses a direct threat to his or her health that, based upon "reasonable medical judgments," cannot be reduced by reasonable accommodation.

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Further, according to the EEOC, if a reasonable accommodation allowing the employee to return to the workplace doesn't exist, employers must consider other options like telework, leave of absence or reassignment to other jobs.

In view of this latest guidance from the EEOC, employers should be cautious before imposing any restrictions on employees based upon known or suspected medical conditions and the risks they may represent in the face of COVID-19. Clearly all employers must remain mindful of their obligations under the ADA along with all the other issues which must be considered in the current health crisis caused by COVID-19 and its impact on the workplace.

If you have any questions regarding the EEOC guidance or other labor and employment issues, please do not hesitate to contact Gerald Golden or your Neal Gerber Eisenberg attorney.

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