

COVID-19 and ADA

ADA Coalition of Connecticut

2021 State Conference

December 1, 2021

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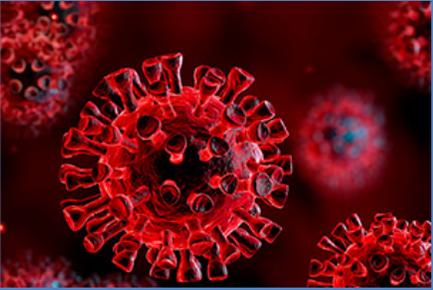
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Workshop Agenda

COVID-19 and ADA

- COVID-19
- COVID-19 as an ADA Disability
- COVID-19 and Direct Threat
- COVID-19 Masks and Face Coverings
- COVID-19 Vaccinations
- COVID-19 in the Workplace
- COVID-19 in the Courts
- COVID-19 Experiences and Questions

COVID-19 Pandemic



Epidemiology
Medicine
Science

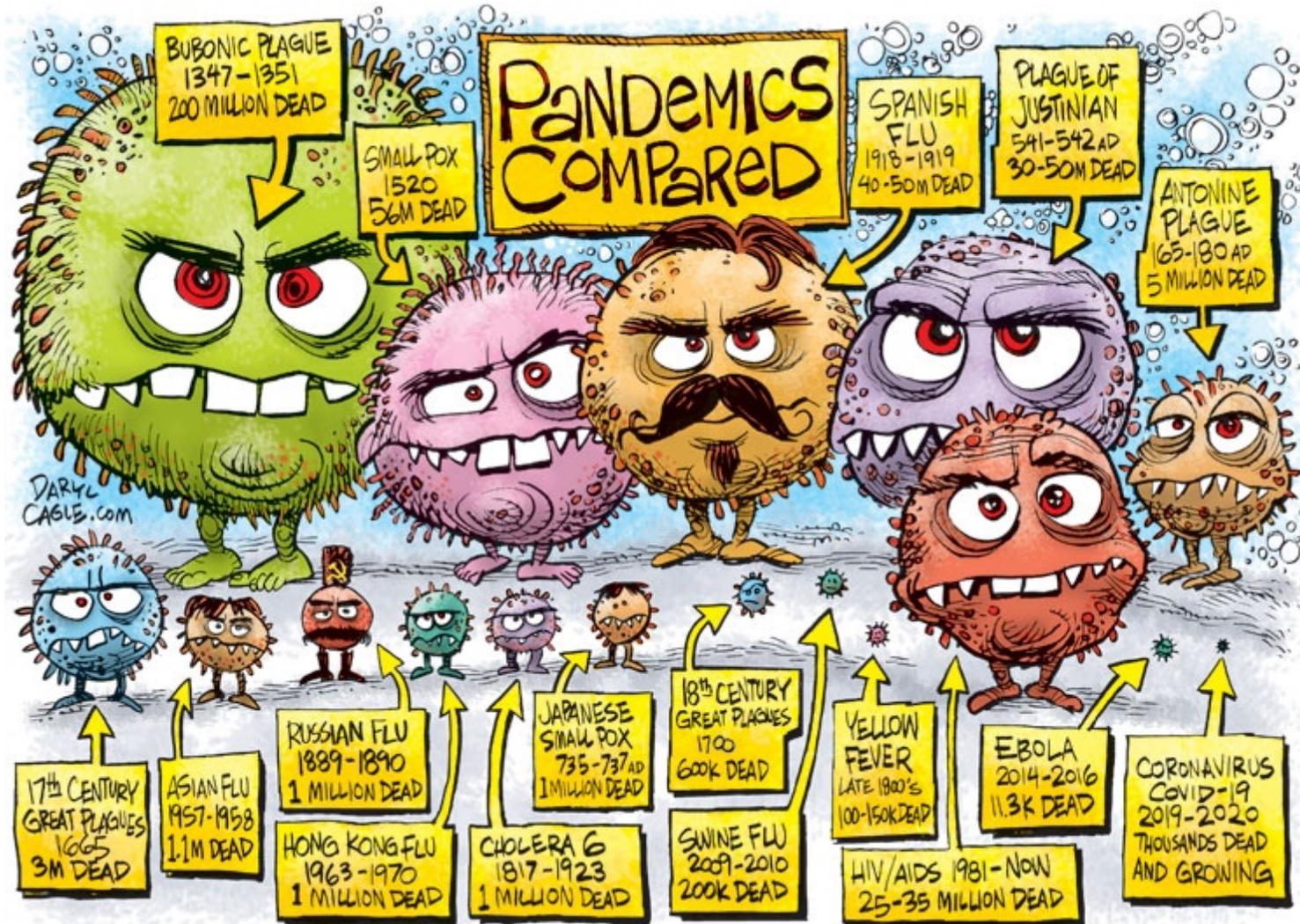
- World Health Organization
- Department of Health and Human Services
- Centers for Disease Control and Prevention
- 20th Century
 - Spanish Flu 1918
 - Asian Flu 1950s
 - Hong Kong Flu 1960s
 - SARS (Pandemic Scare) 2003
 - H1N1 Outbreak 2009
- March 11, 2020 COVID-19 (SARS-CoV-2)
- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> Technical Guidance November 2021

COVID-19

Worldwide
Cases/Deaths
260M/5.18M

U.S.
Cases/Deaths
48.1M/777K

November 25, 2021



COVID-19 Pandemic

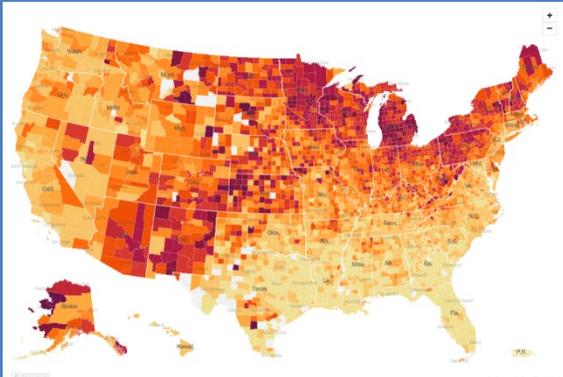


Evolving Science Decision-making Factors

<https://www.uptodate.com/contents/coronavirus-disease-2019-covid-19-epidemiology-virology-and-prevention#H2513094760>

- Geographic Distribution and Case Counts
- Means of Transmission and Risks
- Period and Degree of Infectiousness
- Environmental Contamination
- Immunity Following Infection
- Reducing Risks and Prevention Methods
- Managing Symptomatic and Asymptomatic Individuals in Different Settings
- Vaccines
- CDC, DHHS, IDPH, OSHA, FDA, DOL, WHO
- Executive Orders

COVID-19



Essential Resources

<https://www.uptodate.com/contents/coronavirus-disease-2019-covid-19-epidemiology-virology-and-prevention#H2513094760>

- **What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws:**
<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.
- **CDC Data Tracking Maps:** <https://covid.cdc.gov/covid-data-tracker/#county-view>
- **CDC Interim Guidance for Fully Vaccinated People:**
<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>
- **COVID 19: Federal Disability-Specific and Other Related Guidance** https://seed.csg.org/covid-19-federal-disability-specific-other-related-guidance/?utm_source=govdelivery&utm_medium=email&utm_campaign=ODEP_Newsletter_6-25-21
- **Guidance on “Long Covid” as a Disability Under the ADA, Section 504, and Section 1557** <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>
- **Post-COVID Conditions:** www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html
- **A Compendium of Guidance on the Civil Rights Implications of the COVID-19 Pandemic,**
<https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/index.html>

COVID-19 and ADA

Issues and Concerns

- **Definition of Disability**
- **Workplace, Business, Government, Transportation**
- **Non-Discrimination and Affirmative Obligations**
- **Reasonable Accommodations and Policy Modifications**
- **Direct Threat and Other Defenses**
- **Employment: Screening, Testing, Disability-Related Questions, Medical Exams, Privacy, Reasonable Accommodations**
- **Retaliation and Interference**
- **Privacy and Confidentiality**

COVID-19 and ADA

Definition of Disability



COVID-19 and ADA

Is COVID-19 an ADA Disability?

- A physical or mental impairment that substantially limits one or more major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment and subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity (but not for impairments that are transitory expected to last 6 months or less and minor.)

COVID-19 and ADA

Is COVID-19 an ADA Disability?

- Definition of disability should be interpreted in favor of broad coverage of individuals
- Primary focus is whether discrimination occurred, the determination of disability should not require extensive analysis
- Asymptomatic Individual
- Symptomatic Individual
- Presently healthy individual with potential for exposure
- Association with a person with a disability

Long Haul COVID ADA Disability



Guidance on “Long COVID” as a Disability Under the ADA, Section 504, and Section 1557

Physical or Mental Impairment? Tiredness or fatigue, Difficulty thinking or concentrating (sometimes called “brain fog”), Shortness of breath or difficulty breathing, Headache, Dizziness on standing, Fast-beating or pounding heart (known as heart palpitations), Chest pain, Cough, Joint or muscle pain, Depression or anxiety, fever, Loss of taste or smell, damage to heart, kidneys, lungs, skin and brain.

That Substantially Limits? Limitation does not have to be severe, permanent, or long-term. To be construed broadly, and do not take into account medications, treatments or measures to compensate except eyeglasses.

A Major Life Activity? Seeing, hearing, eating, performing manual task, communicating and interacting with others, concentrating, breathing, bending, reaching, standing, sitting, and operation of a major bodily function such as immune, cardiovascular, circulatory, neurological system.

ADA Disability

Who is
Protected?

Who is Not
Protected?

- Predisposed
- Heightened Risk
- Regarded As
- Transitory and Minor
- Associational

COVID-19 Direct Threat 2020/2021



ADA Title I
Employment
29 C.F.R. 1630.15.

ADA Title II
State & Local Gov't Entities
28 C.F.R. 35. 136

ADA Title III
Public Accommodations
28 C.F.R 36.302

- 29 C.F.R. 1630.2.r Direct Threat means a significant risk of substantial harm to the health or safety of *the individual or others* that cannot be eliminated or reduced by reasonable accommodation. § 1630.15 Defenses. 2) Direct threat as a qualification standard. The term “qualification standard” may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace.
- 28 C.F.R. § 35.139 Direct threat. (a) This part does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.
- 28 C.F.R 36.208 (a) This part does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others. (b) Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

COVID-19 Direct Threat Defense Individualized Assessment

ADA Title I
Employment
29 C.F.R. 1630.15.

ADA Title II
State & Local Gov't Entities
28 C.F.R. 35.136

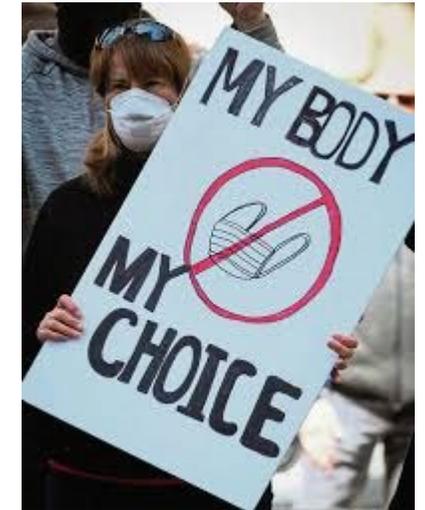
ADA Title III
Public Accommodations
28 C.F.R. 36.302

- An individualized assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:
 - (1) The duration of the risk;
 - (2) The nature and severity of the potential harm;
 - (3) The likelihood that the potential harm will occur; and
 - (4) The imminence of the potential harm.
- EEOC Pandemic Response: EEOC laws do not interfere with or prevent employers from following guidelines and suggestions from the CDC or state and local public health authorities.

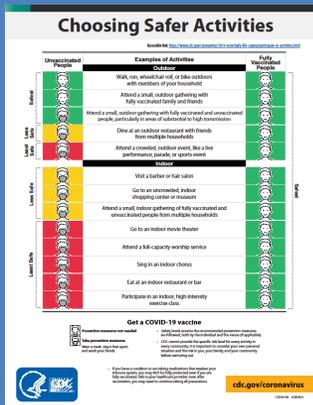
COVID-19 Face Masks and Vaccines

Public Responses

Polar Extremes
Accept
Demand
OMDB
(OYDB)



COVID-19 Masks and Face Coverings



State Laws
and Orders
Federal Laws and
Guidance
ADA

- Masks recommended by CDC, IDPH, Executive, and other health authorities
- Masks required by some cities and counties in public spaces, public transportation, and when physical distancing cannot occur
- Persons with a disability
- Persons with medical conditions who cannot tolerate a mask – not ADA-disabled
- Mask or Face Covering legitimate safety requirement necessary for safe operation

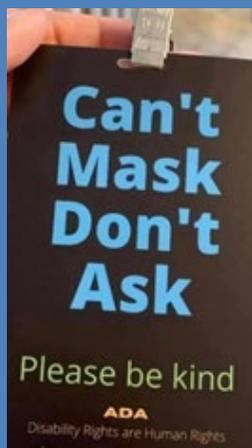
COVID-19 Face Masks and Coverings



Needed Alternatives and Reasonable Modifications

- **Why Accommodations Are Needed:**
 - Masks interfere with breathing and communication
 - PTSD, anxiety, dexterity, touch, or feeling, mouth control devices
- **Possible Reasonable Modifications:**
 - Full face shield, scarf, loose face covering
 - Video or telephone appointments
 - Online ordering, curbside pick-up, no contact delivery
 - Wait in car for appointment until called or texted
- **Defenses:**
 - Fundamental Alteration
 - Undue Burden
 - Direct Threat

Face Masks and Coverings



Fakes Frauds

FACE MASK EXEMPT CARD

I AM EXEMPT FROM ANY ORDINANCE REQUIRING FACE MASK USAGE IN PUBLIC.

Wearing a face mask poses a mental and/or physical risk to me. Under the Americans with Disability Act (ADA), I am not required to disclose my condition to you.

**Department of Justice ADA Violation
reporting number: (800) 514-0301**

If found in violation of the ADA you could face steep penalties. Organizations and businesses can be fined up to **\$75,000** for your first violation and **\$150,000** for any subsequent violations.



**DENYING ACCESS TO YOUR
BUSINESS/ORGANIZATION WILL BE ALSO
REPORTED TO FTBA FOR FURTHER ACTIONS**

Face Masks and Coverings



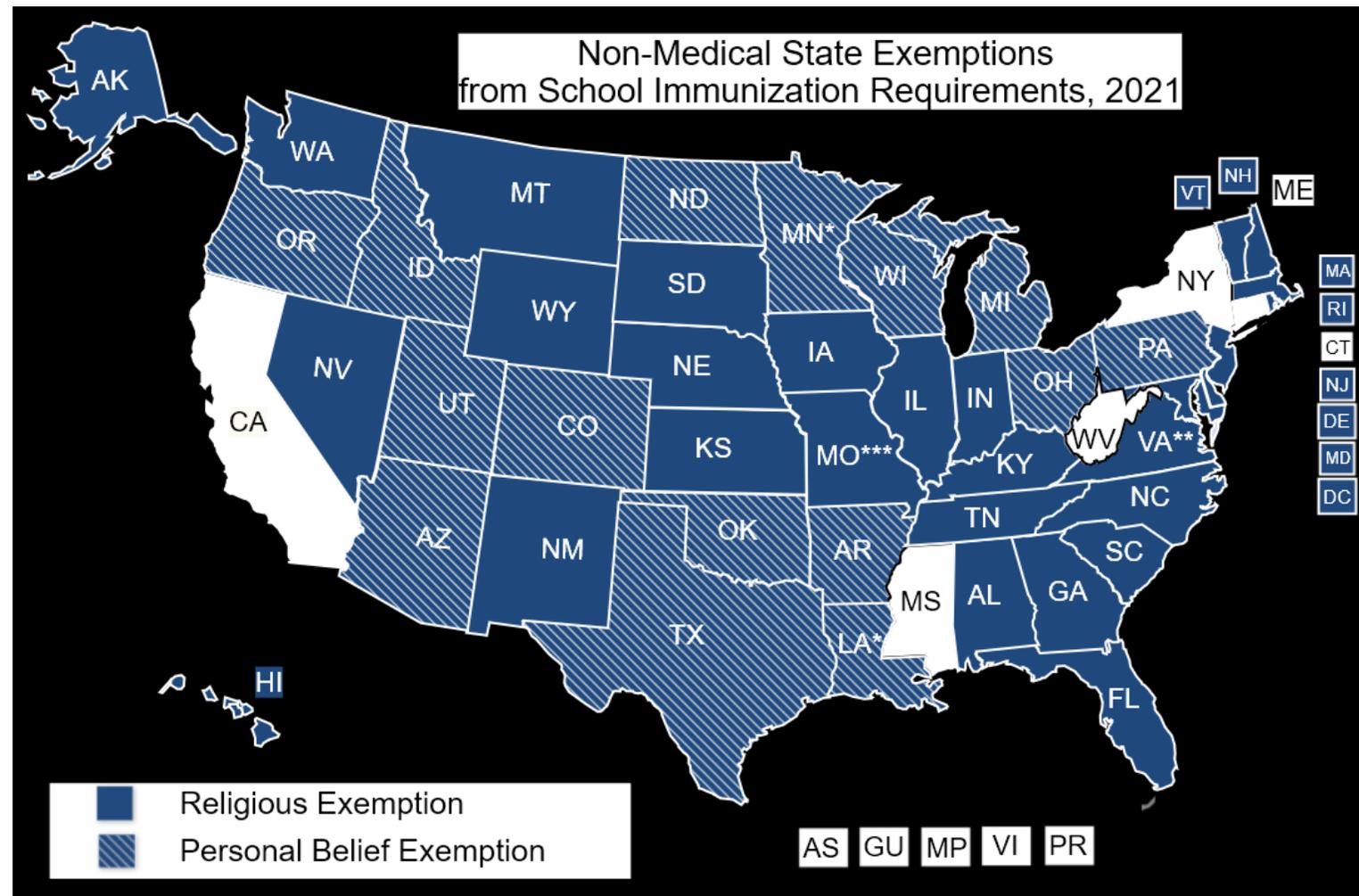
Mask Mandates

- Schools
 - Cities and States
 - Federal facilities
 - Health care workers
 - Stores and business
 - Employers
-
- <https://www.aarp.org/politics-society/government-elections/info-2020/coronavirus-state-restrictions.html>
 - Emanuel v. Walt Disney Co., Pennsylvania, June 2021
 - Warner v. Delano, California, November 2021
 - CT Freedom Alliance, LLC v. State Dep't Educ., Hartford, March 2021 <https://ctmirror.org/2021/05/17/judge-raises-question-of-whether-school-mask-lawsuit-should-proceed/> Moot

State Vaccine Laws Exemptions

<https://www.cdc.gov/php/publications/topic/vaccinationlaws.html>

<https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>



University Vaccine Mandate



[https://www.cdc.gov/php/publications/
topic/vaccinationlaws.html](https://www.cdc.gov/php/publications/topic/vaccinationlaws.html)

[https://www.ncsl.org/research/health/s
chool-immunization-exemption-state-
laws.aspx](https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx)

- **Klaassen v. Trustees of Indiana University**
- **Students at Indiana University have a significant liberty protected by the Constitution—refusing unwanted medical treatment based on bodily autonomy. The Fourteenth Amendment says no state may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV § 1.**
- **This case presents that question: whether Indiana University has acted constitutionally in mandating the COVID-19 vaccine for its students, as announced on May 21, 2021. Albeit, and this should not be overlooked, this case does so only in the context of a preliminary injunction motion, not for a final decision on the merits.**
- **Be vaccinated**
- **Apply for religious exemption or medical exemption**
- **Apply for medical deferral**
- **Take a semester off**
- **Attend another university online**
- **No online or hybrid option**

COVID-19 ADA



Employment Rights Vaccinations

K.1. Under the ADA, Title VII, and other federal employment nondiscrimination laws, may an employer require all employees physically entering the workplace to be vaccinated against COVID-19? (Updated 10/13/21)

The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be fully vaccinated against COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other EEO considerations discussed below. (See Section L, Vaccinations – Title VII and Religious Objections to COVID-19 Vaccine Mandates). K.1. Under the ADA, Title VII, and other federal employment nondiscrimination laws, may an employer require all employees physically entering the workplace to be vaccinated for COVID-19? (5/28/21)

As with any employment policy, employers that have a vaccination requirement may need to respond to allegations that the requirement has a disparate impact on—or disproportionately excludes—employees based on their race, color, religion, sex, or national origin under Title VII (or age under the Age Discrimination in Employment Act [40+]). Employers should keep in mind that because some individuals or demographic groups may face barriers to receiving a COVID-19 vaccination, some employees may be more likely to be negatively impacted by a vaccination requirement.

It would also be unlawful to apply a vaccination requirement to employees in a way that treats employees differently based on disability, race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, or genetic information, unless there is a legitimate non-discriminatory reason.

COVID-19 ADA



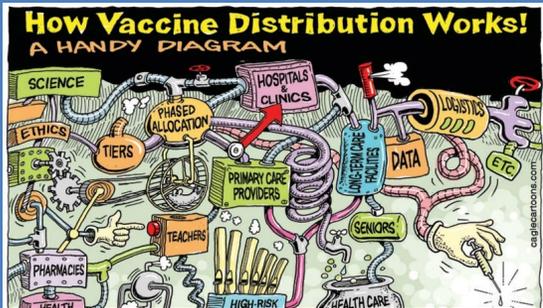
Vaccinated Workers

K.2. What are some examples of reasonable accommodations or modifications that employers may have to provide to employees who do not get vaccinated due to disability; religious beliefs, practices, or observance; or pregnancy? (5/28/21)

An employee who does not get vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice, or observance (covered by Title VII) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. For example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.

Employees who are not vaccinated because of pregnancy may be entitled (under Title VII) to adjustments to keep working, if the employer makes modifications or exceptions for other employees. These modifications may be the same as the accommodations made for an employee based on disability or religion.

COVID-19 ADA



Employment Rights Vaccinations

K.4. Is information about an employee's COVID-19 vaccination confidential medical information under the ADA? (Updated 10/13/21)

Yes. The ADA requires an employer to maintain the confidentiality of employee medical information. Although the EEO laws do not prevent employers from requiring employees to provide documentation or other confirmation of vaccination, this information, like all medical information, must be kept confidential and stored separately from the employee's personnel files under the ADA.

Mandatory Employer Vaccination Programs

K.5. Under the ADA, may an employer require a COVID-19 vaccination for all employees entering the workplace, even though it knows that some employees may not get a vaccine because of a disability? (12/16/20, updated 5/28/21)

Yes, provided certain requirements are met. Under the ADA, an employer may require an individual with a disability to meet a qualification standard applied to all employees, such as a safety-related standard requiring COVID-19 vaccination, if the standard is job-related and consistent with business necessity. If a particular employee cannot meet such a safety-related qualification standard because of a disability, the employer may not require compliance for that employee unless it can demonstrate that the individual would pose a "direct threat" to the health or safety of the employee or others in the workplace. A "direct threat" is a "significant risk of substantial harm" that cannot be eliminated or reduced by reasonable accommodation. 29 C.F.R. 1630.2(r). This determination can be broken down into two steps: determining if there is a direct threat and, if there is, assessing whether a reasonable accommodation would reduce or eliminate the threat.

COVID-19 ADA



Medical Information Confidentiality

- **B.1. May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information? (4/9/20)**
- The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this confidential information. An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms.
- **B.2. If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results? (4/9/20)**
- Yes. The employer needs to maintain the confidentiality of this information.

COVID-19 and ADA

In the Workplace



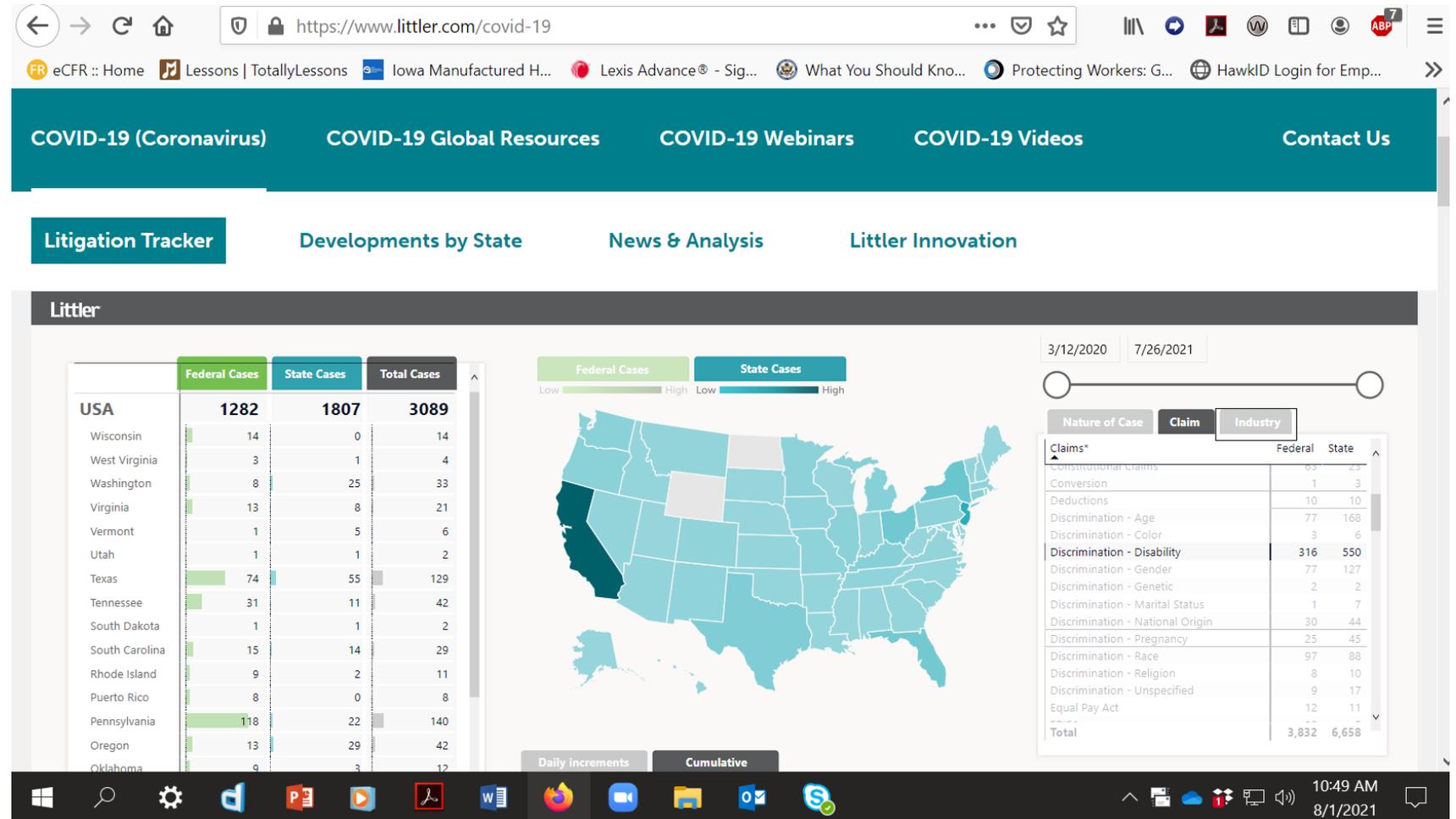
COVID-19 Workplace Disability Discrimination Lawsuits

316 of 1,282
Federal

550 of 1,807
State

March 2020 – July 26, 2021

<https://www.littler.com/covid-19>



COVID-19

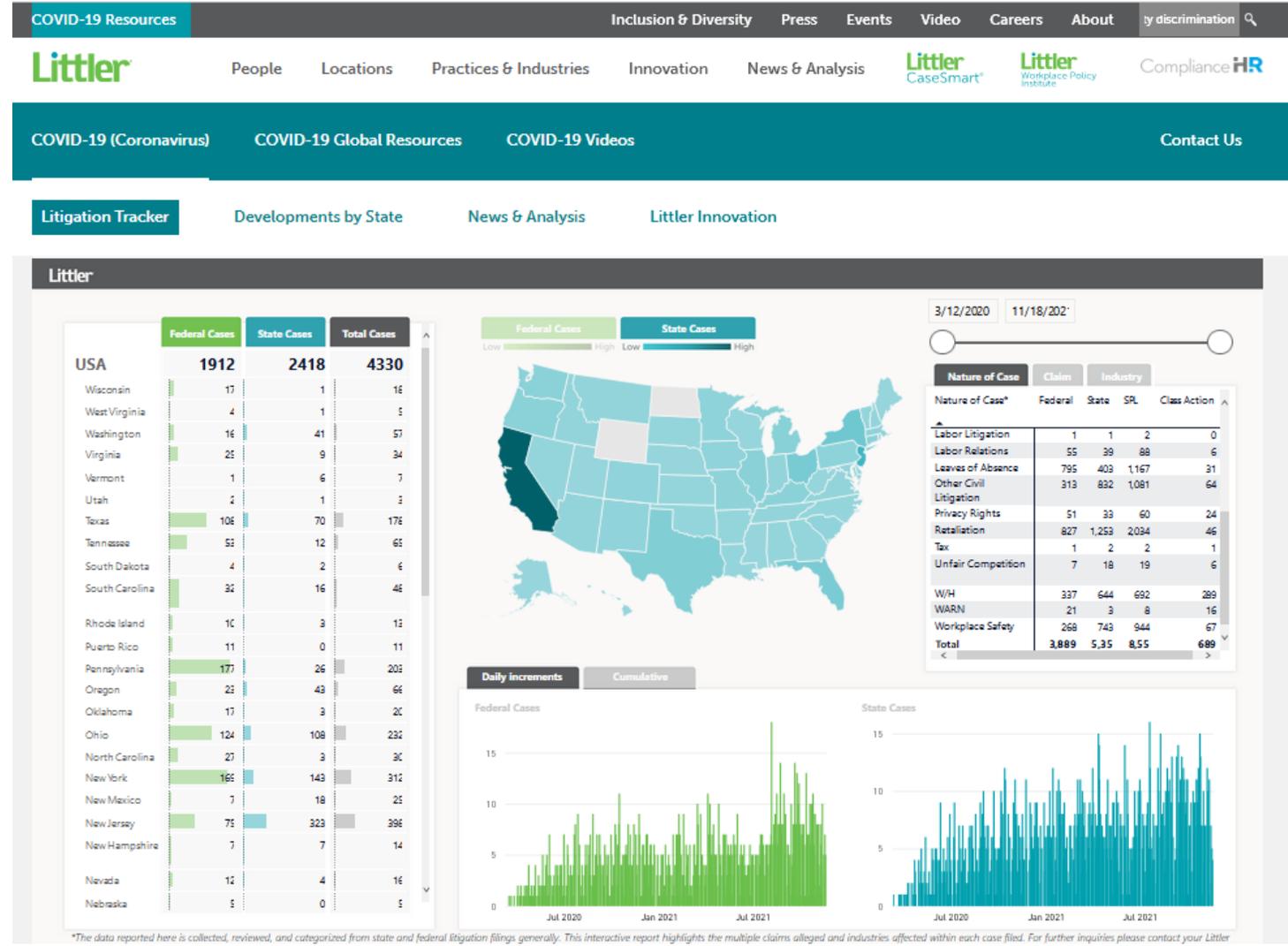
Workplace Discrimination Lawsuits

1,982 of 4330
Federal

2,418 of 4330
State

March 12, 2020 -November 11, 2021

<https://www.littler.com/covid-19>



COVID-19 ADA



In the Workplace

- **EEOC: What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws Technical Assistance Questions and Answers - Updated on November 17, 2021.**
- **EEOC: Pandemic Preparedness in the Workplace and the Americans with Disabilities Act**
- **Job Accommodation Network (JAN) Select Resources**
 - [Engaging in the Interactive Process During the COVID-19 Pandemic](#)
 - [The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19](#)
 - [Accommodation Strategies for Returning to Work During the COVID-19 Pandemic](#)
 - [Masks for COVID-19 Management and ADA Accommodations](#)
 - [Coronavirus \(COVID-19\), Stress, and Mental Health Conditions](#)

COVID-19 ADA



Department of Labor and OSHA

29 CFR 1977.12(b)

Generally, your employer may require you to come to work during the COVID-19 pandemic. However, some government emergency orders may affect which businesses can remain open during the pandemic. File confidential complaint, ask for inspection, without fear of retaliation:

- The worker believes that they faced death or serious injury (and the situation is so clearly hazardous that any reasonable person would believe the same thing)
- The worker tried, where possible, to get his or her employer to correct the condition, was unable to obtain a correction, and there is no other way to do the job safely; or
- The situation is so urgent that the worker does not have time to eliminate the hazard through regulatory channels, such as calling OSHA.

COVID-19 ADA



Employment
Rights
Screen?
Test?
Ask Questions?
Exclude?
Accommodate?

- Explore Reasonable Accommodations
- Carefully Consider Incentives
- Treat Vaccination Records Confidentially
- Administer medical exams only when job-related and consistent with business necessity: COVID-19 is a direct threat that justifies exams
- Administer COVID-19 tests that are accurate and reliable, not antibody tests
- Take the temperature of employees entering the workplace
- Ask questions:
 - Do you have COVID symptoms?
 - Have you had a COVID test?
 - Have you had contact with anyone diagnosed with COVID or with symptoms?
 - Do not ask about employee's family
- If employee refuses, can bar from the workplace or make reasonable and necessary accommodations

COVID-19 ADA



Employment Rights Vaccinations

D.1. If a job may only be performed at the workplace, are there reasonable accommodations for individuals with disabilities, absent undue hardship, that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19? (4/9/20)

There may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer.

Low-cost solutions achieved with materials already on hand or easily obtained may be effective. If not already implemented for all employees, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers whenever feasible per CDC guidance or other accommodations that reduce chances of exposure.

Flexibility by employers and employees is important in determining if some accommodation is possible in the circumstances. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace or while commuting.

COVID-19 ADA



Employment Rights Reasonable Accommodations

D.2. If an employee has a preexisting mental illness or disorder that has been exacerbated by the COVID-19 pandemic, may he now be entitled to a reasonable accommodation (absent undue hardship)? (4/9/20)

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

As with any accommodation request, employers may: ask questions to determine whether the condition is a disability; discuss with the employee how the requested accommodation would assist him and enable him to keep working; explore alternative accommodations that may effectively meet his needs; and request medical documentation if needed.

COVID-19 ADA



Employment Rights All Employees EEOC FAQ

- **A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) when evaluating an employee's initial or continued presence in the workplace? (4/23/20; updated 9/8/20 to address stakeholder questions about updates to CDC guidance)**
- **The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take screening steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others.**

COVID-19 ADA



Employment
Rights
All Employees
EEOC FAQ

- **A.8. May employers ask all employees physically entering the workplace if they have been diagnosed with or tested for COVID-19? (9/8/20; adapted from 3/27/20 Webinar Question 1)**
- **Yes. Employers may ask all employees who will be physically entering the workplace if they have COVID-19 or symptoms associated with COVID-19 and ask if they have been tested for COVID-19. Symptoms associated with COVID-19 include, for example, fever, chills, cough, and shortness of breath. The CDC has identified a current list of symptoms.**

COVID-19 ADA



Employment Rights Specific Employees

- A.9. May a manager ask only one employee—as opposed to asking all employees—questions designed to determine if she has COVID-19, or require that this employee alone have her temperature taken or undergo other screening or testing? (9/8/20; adapted from 3/27/20 Webinar Question 3)
- If an employer wishes to ask only a particular employee to answer such questions, or to have her temperature taken or undergo other screening or testing, the ADA requires the employer to have a reasonable belief based on objective evidence that this person might have the disease. So, it is important for the employer to consider why it wishes to take these actions regarding this particular employee, such as a display of COVID-19 symptoms. In addition, the ADA does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate.

COVID-19 ADA



Employment Rights All Employees EEOC FAQ

- **A.12.** During the COVID-19 pandemic, may an employer request information from employees who work on-site, whether regularly or occasionally, who report feeling ill or who call in sick? (9/8/20; adapted from Pandemic Preparedness Question 6)
- Due to the COVID-19 pandemic, at this time employers may ask employees who work on-site, whether regularly or occasionally, and report feeling ill or who call in sick, questions about their symptoms as part of workplace screening for COVID-19.
- **A.13.** May an employer ask an employee why he or she has been absent from work? (9/8/20; adapted from Pandemic Preparedness Question 15)
- Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

COVID-19 ADA



Employment
Rights
Telecommute
Remote Work

- Pre-pandemic: Telework need only be provided where telework meets all essential functions of a job and no alternative workplace arrangements could meet the employee's needs.
- Courts are divided on whether teleworking can ever be a reasonable accommodation.
 - Physical presence is essential job function. Most jobs require teamwork and interaction that cannot take place via telework.
 - Physical presence at or by specific time is not, as a matter of law, an essential function of all employment.

COVID-19 ADA



Employment Rights Telecommute Remote Work

<https://www.eeoc.gov/laws/guidance/work-hometelework-reasonable-accommodation>

- ADA does not require employers to have telework program.
- Permitting an employee to work at home could be a reasonable accommodation even if the employer has no telework program?
- Employers must use a flexible "interactive process"
- Jointly identify and review all essential job functions and which can be performed at home or must be done onsite
- Factors to Consider: Supervision; use of equipment and tools; need for face-to-face interaction with co-workers, clients, customers; access to documents, available technology, etc.
- Remote work lasts only so long as disability necessitates it.
- Employer may select any effective accommodation, even if it is not the one preferred by the employee.

COVID-19 ADA

COVID-19 AND EMPLOYER RETALIATION

Employment Rights

- **M.1. Do job applicants and employees (including former employees) have protections from retaliation for exercising equal employment opportunity (EEO) rights in connection with COVID-19? (11/17/21)**
- **Yes.** Job applicants and current and former employees are protected from retaliation by employers for asserting their rights under any of the federal [EEO laws](#). The EEO laws prohibit workplace discrimination based on race, color, sex (including pregnancy, sexual orientation, and gender identity), national origin, religion, age (40 or over), disability, or genetic information. Speaking out about or exercising rights related to workplace discrimination is called “protected activity.”

COVID-19 ADA

COVID-19 AND EMPLOYER RETALIATION

Employment Rights

- **M.2. What are some examples of employee activities that are protected from employer retaliation?**
(11/17/21)
- **Filing a charge**, complaint, or lawsuit, regardless of whether the underlying discrimination allegation is successful or timely.
- **Reporting alleged EEO violations** to a supervisor or answering questions during an employer investigation of the alleged harassment.
- **Resisting harassment**, intervening to protect coworkers from harassment, or refusing to follow orders that would result in discrimination.
- **Requesting accommodation of a disability** (potentially including a pregnancy-related medical condition) or a religious belief, practice, or observance regardless of whether the request is granted or denied.

COVID-19 ADA



Employment Rights Retaliation

- **M.3. Who is protected from retaliation? (11/17/21)**
 - Retaliation protections apply to current employees, whether they are full-time, part-time, probationary, seasonal, or temporary. Retaliation protections also apply to job applicants and to former employees (such as when an employer provides a job reference). In addition, these protections apply regardless of an applicant's or employee's citizenship or work authorization status.
- **M.4. When do retaliation protections apply? (11/17/21)**
 - Participating in an EEO complaint process is protected from retaliation under all circumstances.
- **M.5. When is an employer action based on an employee's EEO activity serious enough to be unlawful retaliation? (11/17/21)**
 - Retaliation includes any employer action in response to EEO activity that could deter a reasonable person from engaging in protected EEO activity. Depending on the facts, this might include actions such as denial of promotion or job benefits, non-hire, suspension, discharge, work-related threats, warnings, negative or lowered evaluations, or transfers to less desirable work or work locations. Retaliation could also include an action that has no tangible effect on employment, or even an action that takes place only outside of work, if it might deter a reasonable person from exercising EEO rights. The fact that an individual is not actually deterred from opposing discrimination or participating in an EEO complaint-related process or activity does not preclude an employer's action from being considered retaliatory.

COVID-19 ADA

Employment Rights Retaliation Interference

- **M.6. Does this mean that an employer can never take action against someone who has engaged in EEO activity?** (11/17/21)
 - No. Engaging in protected EEO activity does not prevent discipline of an employee for legitimate reasons. Employers are permitted to act based on *non-retaliatory and non-discriminatory* reasons that would otherwise result in discipline. For example, if an employee performs poorly, has low productivity, or engages in misconduct, an employer may respond as it normally would, even if the employee has engaged in protected activity. Similarly, an employer may take non-retaliatory, non-discriminatory action to enforce COVID-19 health and safety protocols, even if such actions follow EEO activity (e.g., an accommodation request).
- **M.7. Does the law provide any additional protections to safeguard ADA rights?** (11/17/21)
 - Yes. The ADA prohibits not only retaliation for protected EEO activity, but also “interference” with an individual’s exercise of ADA rights. Under the ADA, employers may not coerce, intimidate, threaten, or otherwise interfere with the exercise of ADA rights by job applicants or current or former employees. For instance, it is unlawful for an employer to use threats to discourage someone from asking for a reasonable accommodation. It is also unlawful for an employer to pressure an employee not to file a disability discrimination complaint. The ADA also prohibits employers from interfering with employees helping others to exercise their ADA rights.
 - The employer’s actions may still violate the ADA’s interference provision even if an employer does not actually carry out a threat, and even if the employee is not deterred from exercising ADA rights.

COVID-19

Pets

Centers for Disease
Control Prevention
and Prevention

[https://www.cdc.gov/coronavirus/
2019-ncov/daily-life-
coping/pets.html](https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/pets.html)

A small number of pets worldwide, including cats and dogs, have been reported to be infected with the virus that causes COVID-19, mostly after close contact with people with COVID-19.

Based on the limited information available to date, the risk of animals spreading COVID-19 to people is considered to be low.

It appears that the virus that causes COVID-19 can spread from people to animals in some situations.

There is no evidence that virus can spread to people from skin, fur, or hair of animals.

Treat pets as you would other human family members – do not let pets interact with people outside the household.

If a person inside the household becomes sick, isolate that person from everyone else, including pets.

This is a rapidly evolving situation and information will be updated as it becomes available.

COVID-19

Guidance for Handlers of Service & Therapy Animals

Centers for Disease
Control and Prevention

<https://www.cdc.gov/coronavirus/2019-ncov/animals/service-therapy-animals.html>

CDC Do's and Don'ts

Do:

- Ask a veterinarian for advice
- Call a vet if the animal is sick
- Stay six feet from other people and animals
- Avoid settings where people are infected or you cannot prevent interaction
- Clean and disinfect collars, vests, leashes, harnesses, toys, bowls, blankets and supplies frequently

Do Not:

- Wipe or bathe the animal with chemical disinfectants, alcohol, hydrogen peroxide or other industrial or surface cleaners
- Go out in public if the animal is sick or you are sick
- Put a mask on your service animal

**Questions
and
Comments**

Contact

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