



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Updated EEOC COVID-19 Guidance on Telework, Medical Inquiries, Testing and Return to Work under The Americans with Disabilities Act and Other Discrimination Laws

If a nonprofit organization has 15 or more employees, it is subject to the Americans with Disabilities Act (“ADA”), which prohibits discrimination against individuals with disabilities in the workplace and requires the reasonable accommodation of disabilities. On September 8, 2020, the Equal Employment Opportunity Commission (“EEOC”) updated its guidance entitled “[What You Should Know about COVID-19 and the ADA, Rehabilitation Act, and Other EEO Laws](#).” The updated guidance provides employers with information about several topics related to return to work and COVID-19 including the following:

- **Compliance with CDC Guidance:** While the EEOC points out that the ADA and other discrimination laws continue to apply during the pandemic, it also indicates that these laws do not prevent employers from following the guidelines and suggestions made by the Centers for Disease Control (“CDC”) or state and local public health authorities about steps employers should take regarding COVID-19. Since guidance from public health authorities and the CDC has continued to evolve regularly throughout the pandemic, it is important for employers to follow the most current information. Please see this [link](#) for current CDC guidance on workplace safety. Many common workplace inquiries about the COVID-19 pandemic are addressed in this CDC publication: “[General Business Frequently Asked Questions](#).”
- **Testing:** The new guidance reiterates that employers are permitted to require COVID-19 testing (but not antibody testing) so long as the testing is “job-related and consistent with business necessity.” The updated guidance also confirms that employers who follow CDC recommendations regarding whether, when, and for whom testing is appropriate will be considered as compliant with the “job-related and consistent with business necessity” standard. An employee who refuses to be tested may be denied entry into the workplace.
- **Taking Temperature or Other Medical Inquiries:** If employees will be physically present in the workplace, the updated guidance confirms that employers are generally permitted to take employee temperatures and to ask employees whether they have symptoms associated with COVID-19, whether they have been diagnosed with COVID-19, or whether they have been exposed to anyone with symptoms or a diagnosis. Any employee who responds positively to these inquiries or who refuses to cooperate may be denied entry into the workplace in accordance with CDC guidance. However, employers are generally not entitled to take temperatures or ask symptom-related questions of employees who will be teleworking or who will not be in close contact with coworkers or others while performing their jobs. Employers are also not permitted to ask specifically whether a family member of the employee has symptoms or a diagnosis of COVID-19 because the Genetic Information Non-Discrimination Act prohibits medical inquiries about an employee’s family. In addition, the guidance reiterates that employers should use caution in singling out employees for testing or

inquiries rather than addressing inquiries or testing to all employees. The ADA requires the employer to have a “reasonable belief based on objective evidence” that the particular employee may have COVID-19, such as exhibiting symptoms associated with COVID-19, before singling out that employee to answer questions or to take a test.

- **Absences from Work:** The guidance confirms that employers are permitted to ask employees why they were absent from work, even if the reason may be health-related. If the employee responds that the reason for the absence is related to the employee’s health (such as sickness), the employer may follow up to ask about symptoms that may be related to COVID-19 as part of its screening process, but cannot ask other health-related questions. The guidance also confirms that an employer may ask employees returning from personal travel where they have been, and may require that employees comply with quarantine guidance before returning to work depending on the location of their travel.
- **Confidentiality and Medical Documentation.** All medical information, including but not limited to temperature, testing results, and responses to medical questions related to symptoms or diagnoses, and any documents containing such information must be kept confidential by the employer. Please remember that any documentation with medical information should not be included in an employee’s personnel file but should be stored in a separate confidential medical file for the employee. If an exposure to COVID-19 has occurred in the workplace, even in informing other employees or third parties that they may have been exposed to COVID-19, the employer should not disclose the name or identity of any employee who has symptoms, has tested positive or has been exposed to others.
- **Telework and Reasonable Accommodations:** Some employers who have adopted temporary, pandemic-related work from home policies are concerned that employees will request permanent telework as a “reasonable accommodation” under the ADA, even after the pandemic subsides. The new guidance confirms that employers are not required to grant every telework request as a “reasonable accommodation,” even if employees have demonstrated the ability to perform their jobs remotely during the pandemic. Rather, the EEOC states that if there is no disability-related limitation that requires teleworking, then the employer does not have to provide telework as an accommodation. In addition, if the employee has a disability-related limitation that can be effectively addressed with another form of accommodation in the workplace, the employer can choose the worksite accommodation as an alternative to telework.
- **Furloughs and Layoffs:** The EEOC guidance reminds employers that they should never consider disability, race, color, religion, national origin, sex, age, protected genetic information or other legally protected personal characteristics in making selection decisions for furloughs or layoffs necessitated by the pandemic.

If you have questions about COVID-19, its impact on the workplace, teleworking, what you can or cannot ask employees, or accommodating disabilities in the workplace, please contact your PBPA attorney.

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