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COVID-19
SPECIAL PUBLICATION

Employment Law

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EEOC Provides Further ADA, Rehabilitation Act Guidance During Pandemic

On March 18, 2020, the [Equal Employment Opportunity Commission](#) (EEOC) provided additional guidance to employers with respect to their workforce and the COVID-19 pandemic. The guidance specifically provides information on how employers can comply with the [Americans with Disabilities Act](#) (ADA) and the [Rehabilitation Act](#) while still taking precautionary measures to mitigate the effects of the novel coronavirus. Such measures include an employer's ability to ask an employee who calls in sick to work whether the employee is experiencing symptoms of COVID-19, which includes a sore throat, shortness of breath, and/or a fever.

The guidance also provides that an ADA-covered employer may permissibly measure an employee's body temperature during the COVID-19 pandemic, although this is typically considered a medical examination under the ADA. Also included in this guidance are measures an employer can take during the hiring process (*i.e.*, delaying the start date of an applicant who is experiencing symptoms of COVID-19). [View the guidance in its entirety.](#)

Before implementing temperature checks, individually or more broadly across the workforce, employers should evaluate other federal laws that may be implicated, as well as state and local law. Relevant issues to consider include the possible need to pay wages during wait times; health and safety requirements applicable to employees conducting the checks and those waiting to have their temperatures taken; required or recommended trainings or medical certifications; the need to keep results confidential; and religious or other accommodation requests. And, of course, employers must ensure the process is completed in a manner that does not discriminate against any legally protected status.

From a practical standpoint, employers also need to consider how to handle an elevated temperature, given that not every elevated temperature is indicative of the coronavirus, and current medical data suggests not everyone with the coronavirus will develop a temperature. Ultimately, employers should be thoughtful in setting their procedures before launching into this practice.

The United States Department of Labor also has issued guidance on OSHA, the FMLA and the FLSA and the application of those laws in the context of the COVID-19 pandemic. That guidance can be accessed at the links below:

- OSHA's "[Guidance on Preparing Workplaces for COVID-19](#)" (PDF)
- Department of Labor's [FAQs on COVID-19 and FLSA](#)
- Department of Labor's [FAQs on COVID-19 and FMLA](#)

If you have any questions related to how this guidance affects your enterprise, please contact your Kutak Rock attorney, or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you.

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