

# Electronic Alert

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## EEOC Updates COVID-19 Technical Assistance to Address the Conclusion of the Federal Public Health Emergency

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On May 15, 2023, the U.S. Equal Employment Opportunity Commission (EEOC) released an updated version of its [COVID-19 technical assistance guide](#), titled “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws.” This resource provides employers with guidance on various employment-related issues in response to the conclusion of the federal declaration of the COVID-19 public health emergency.

Key updates include:

- **Continuation of Reasonable Accommodations:** The end of the COVID-19 public health emergency does not grant employers automatic authority to cease providing reasonable accommodations that were initially implemented due to pandemic-related circumstances. Instead, employers should assess the accommodations granted during the public health emergency in consultation with the respective employee and evaluate whether there is still a need for reasonable accommodation based on the employee’s individualized circumstances. When an employee requests a reasonable accommodation related to COVID-19 or Long COVID under the ADA, the employer may request supporting medical documentation before granting the request, particularly when the need for accommodation is not obvious or already known.
- **Long COVID Support:** The update also addresses reasonable accommodation for employees with Long COVID. The EEOC’s examples of reasonable accommodations include providing a quiet workspace, utilizing noise-canceling devices, allowing uninterrupted worktime to address brain fog, adjusting lighting to reduce headaches, offering rest breaks to alleviate joint pain or shortness of breath, allowing a flexible schedule or telework option to combat fatigue, and eliminating physically strenuous “marginal functions” to accommodate breathing difficulties.
- **Awareness of COVID-Related Harassment:** The update reminds employers to stay vigilant in recognizing instances of COVID-related harassment targeting applicants or employees with disabilities who may require the continued use of face masks or adherence to other COVID-19 precautions in the workplace.
- **Medical Screening & GINA Compliance:** The update reminds employers that they have the right to ask employees who will be physically present at the workplace about COVID-19 or related symptoms. Employers can also inquire whether these employees have undergone COVID-19 testing and request information about the test results. However, employers are prohibited by the Genetic Information Nondiscrimination Act (GINA) from inquiring about an employee’s family members’ medical conditions, which

include family members' COVID-19 test results. Instead, employers can ask employees if they have had contact with anyone diagnosed with COVID-19 or anyone exhibiting symptoms of COVID-19. If consistent with CDC-recommended isolation protocols, employers may exclude from the workplace individuals with COVID-19 or COVID-19 symptoms.

- **Vaccination Incentives:** The update clarifies that the ADA does not impose limitations on the value of incentives, encompassing both rewards and penalties, that employers may provide to encourage employees to receive a COVID-19 vaccination from a healthcare provider not affiliated with their employer. This distinction arises because the ADA's regulations regarding disability-related inquiries and mandatory medical examinations apply only when the employer initiates such inquiries or examinations. If an employer offers incentives to employees for voluntarily receiving a vaccination administered by the employer or its representative, the ADA's rules pertaining to disability-related inquiries come into play. In such cases, the value of the incentive must not be so significant as to be deemed coercive.
- **Safeguarding Employee Medical Information:** The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, 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 the employee has the disease or suspects so, or the employer's notes or other documentation from questioning an employee about symptoms. Similarly, information about an employee having Long COVID must also be treated as confidential.

The EEOC's updated technical assistance offers more specific information and tools for employers to navigate the post-public health emergency landscape while ensuring equal opportunities for employees.

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