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EEOC Clarifies When COVID-19 May Be a Disability



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The U.S. Equal Employment Opportunity Commission (EEOC) has updated its [guidance on COVID-19](#) (*What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*) to address when COVID-19 might be considered a disability under the Americans with Disabilities Act (ADA).

Under the ADA, an individual is considered “disabled” if the person’s medical condition or any of its symptoms results in a physical or mental impairment that “substantially limits one or more major life activities.” The EEOC clarified that not all individuals who have or have had COVID-19 will automatically be considered disabled: “Determining whether a specific employee’s COVID-19 is an actual disability always requires an individualized assessment, and such assessments cannot be made categorically.”

The EEOC stated that an individual infected with COVID-19 who is “asymptomatic” or has only “mild symptoms similar to those of the common cold or flu that resolve in a matter of weeks—with no other consequences” does not have an actual disability under the ADA. Addressing those mild symptoms, the EEOC stated that “congestion, sore throat, fever, headaches, and/or gastrointestinal discomfort, which resolve within several weeks” without other symptoms or effects would not rise to the level necessary to establish an actual disability. In short, an asymptomatic or a mild case of COVID-19 will generally not constitute a disability under the ADA.

On the other hand, persons with “long COVID” who are experiencing COVID 19-symptoms such as headaches, chest pain, heart palpitations, shortness of breath, fatigue and intestinal issues may be disabled if any of these symptoms substantially limit a major life activity. Also, COVID-19 could constitute a disability if it causes impairments such as heart inflammation, a stroke or diabetes “that are themselves disabilities under the ADA.”

As to the issue of whether someone with COVID-19 could be “regarded as” disabled, the EEOC said it is possible. However, it noted that someone would not be regarded as disabled if “*the actual or perceived impairment is objectively both transitory (lasting or expected to last six months or less) and minor.*” As with its position on an actual disability, the EEOC drew a line between a mild case of COVID-19 and “long COVID.”

The EEOC’s updated guidance addresses what has been a concerning issue for employers since the pandemic began – are all employees who have gotten COVID-19 considered disabled under the ADA? Unless it equates to something more than the flu, the answer is “no.”

If you would like more information or would like to discuss these issues further, please contact a member of Gould & Ratner’s [Human Resources and Employment Practice](#).