

The lingering COVID-19 pandemic has wreaked havoc across the globe. In addition to inflicting millions of Americans with acute symptoms, some sufferers of the virus have experienced what is known as long COVID (other [terms for this](#) include: post-COVID, long-haul COVID, post-acute COVID-19, long-term effects of COVID, and chronic COVID).

In December of 2021, the U.S. Equal Employment Opportunity Commission (EEOC) issued new requirements for employers under the Americans with Disabilities Act (ADA). This technical guidance expands employers' obligations to employees and applicants who are experiencing long COVID; this means that employer requirements to accommodate employees with long COVID will endure long past the (eventual) end of the pandemic. Under the new guidance, even if an individual's original bout with the illness didn't qualify as a disability under the law, long COVID might.

Employer obligations under the ADA

[The ADA](#) prohibits private employers with at least 15 employees from discriminating against qualified employees and applicants who have a disability.

An individual with a disability is defined as a person with:

- 1) A physical or mental impairment that substantially limits a major life activity, or
- 2) A record of a physical or mental impairment that substantially limited a major life activity, (major life activities include:
 - Bodily functions; for example, respiratory, lung, or heart function, and
 - Activities in which someone engages; for example, walking or concentrating)
- 3) A person who is "regarded" or perceived as having a disability (regardless of whether the disability actually exists).

Now, if an employee falls under any of the three definitions listed above, the employee is protected from discrimination by the employer.

But, if the employee falls under definitions 1 or 2 listed above, the ADA requires employers to provide employees with disabilities with reasonable accommodations. Reasonable accommodations are adjustments or modifications that enable applicants and employees to apply for a job, perform a job, or enjoy the same benefits and privileges of employment (for example, access to training) as employees without disabilities. You may, for example, need to provide special equipment, modify a work schedule, or reassign an employee with a disability to a vacant position.

Not surprisingly, employers have wondered whether long COVID qualifies as a disability that triggers their ADA obligations. Until now, they've had little guidance.

In July 2021, the U.S. Department of Justice (DOJ) and Department of Health and Human Services (HHS) issued [guidance regarding the treatment of long COVID as a disability](#) under federal discrimination law. While the EEOC indicated that it generally agreed with the reasoning in that guidance, the guidance didn't address the employment-related provisions of the ADA, only those pertaining to state and local governments and public accommodations.

The new EEOC guidance, however, specifically considers the employment provisions.

Long COVID, explained

While most people who test positive for COVID infection recover within weeks, some experience "post-COVID conditions." The [CDC defines that term](#) as a wide range of new, returning, or

Even people who had only mild or no COVID symptoms after they were initially infected can have post-COVID conditions. These conditions present as different types and combinations of health problems for different periods of time—from days to months. Patients experiencing long COVID commonly report combinations of the following symptoms:

- Difficulty breathing or shortness of breath
- Tiredness or fatigue
- Symptoms that get worse after physical or mental activities (also known as "post-exertional malaise")
- Difficulty thinking or concentrating (sometimes referred to as "brain fog")
- Cough
- Chest or stomach pain
- Headache
- Fast-beating or pounding heart (also known as heart palpitations)
- Joint or muscle pain
- Pins-and-needles feeling
- Diarrhea
- Sleep problems
- Fever
- Dizziness on standing (lightheadedness)
- Rash
- Mood changes
- Change in smell or taste
- Changes in menstrual period cycles

Some people who become severely ill with COVID experience multi-organ effects or autoimmune conditions (when an individual's immune system attacks healthy cells in the body by mistake) with symptoms lasting weeks or months after the initial illness.

On rare occasions, some people experience multisystem inflammatory syndrome during or immediately after a COVID infection. Different body parts can become inflamed, and post-COVID conditions can develop if the person continues to experience multi-organ effects or other symptoms.

Long COVID as a disability and what this means for employer

The EEOC's December 2021 guidance makes it clear that the initial COVID illness doesn't constitute a disability if an employee has only mild symptoms that resolve in a few weeks, with no other consequences. But an employee with long COVID could have an impairment that substantially limits a major life activity.

For example; the employee:

- Experiences COVID-related intestinal pain, vomiting, and nausea that last for many months—even if off and on—and is substantially limited in gastrointestinal function.
- Has lung damage that causes shortness of breath, fatigue, and is substantially limited in respiratory function.
- Experiences memory lapses and "brain fog" and is substantially limited in brain function, concentrating, or thinking.

Remember that the law also applies to "regarded as" disabilities. So, an employee who has long COVID that doesn't substantially limit a major life activity nonetheless could be covered under the ADA—and protected against discrimination—if you, the employer, regard him as having a disability.

A person is "regarded as" an individual with a disability if you subject him to an adverse action (for example, termination) because he has an impairment, such as long COVID, or you mistakenly believe he has such an impairment—unless the actual or perceived impairment is objectively both transitory (lasting or expected to last six months or less) and minor. Remember, an employee who meets the "regarded as" definition of disability isn't entitled to reasonable accommodations—but is protected against discrimination, which means you, the employer, are prohibited (by law) from taking adverse action against such individuals because of the perceived impairment.

Be sure to educate your managers and supervisors on the possible ADA implications related to long COVID. They should refer all reasonable accommodation requests to HR and avoid taking adverse actions against those whose long COVID could render them disabled under the law.

The employers duty to provide reasonable accommodations

If an employee or applicant with long COVID does have an actual disability or record of disability—and it's best to err on the side of assuming that such a disability exists—you'll need to consider any requests for reasonable accommodation.

Note: There are no "magic words" that are required to submit a reasonable accommodation request. Employees and applicants can let you know informally, orally or in writing, and they don't have to use the words "reasonable accommodation" or refer to the ADA.

You must proceed with caution, though, because the ADA limits the types of information you can seek after receiving a request. For example, you can't request the employee's complete medical records or inquire about other medical conditions or disabilities not targeted by the accommodation or request

Take note that the ADA doesn't require you to eliminate essential functions of a job, reduce production standards (quality or quantity), or produce personal use items such as hearing aids or wheelchairs. Nor do you need to provide the specific accommodation requested or the best accommodation—you're allowed to choose an accommodation that's cheaper or less burdensome as long as it's effective.

Moreover, you aren't required to provide a reasonable accommodation if it causes "undue hardship," defined as significant difficulty or expense. Even in such circumstances, though, that's not the end of the road.

The ADA requires you to try to identify an alternative accommodation that doesn't pose an undue hardship. If the hardship is due to cost, you also must give the individual the opportunity to provide the accommodation or pay the portion that represents the undue hardship.