



National Business
& Disability Council
at The Viscardi Center

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What You Should Know About The ADA And COVID-19

National Business & Disability
Council (NBDC) at The Viscardi
Center

What You Should Know About The ADA And COVID-19



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The Viscardi Center



National Business & Disability Council (NBDC) at The Viscardi Center

- Member-Driven organization focused on:
 - Workforce
 - Consumers
 - Community
- Programs and services supporting organizations of all sizes and government agencies in the enhancement of disability-inclusion efforts
- In-person and online trainings, consultations, assistance with talent acquisition of qualified candidates with disabilities, support with physical and digital accessibility, and more
- Visit us at www.NBDC.com to learn more



Housekeeping

- For audio call: **415-655-0045**
 - Access code: **127 909 1166#**
- Contact WebEx tech support at 1-866-229-3239
- Submit questions via Q&A window
- Having trouble posting to the Q&A window? Email NBDCinfo@viscardicenter.org
- Live captioning is located at the bottom right of the screen in the "Multimedia Viewer" window
- Receive 1.0 general recertification credit hours through the HR Certification Institute (HRCI) and the Society for Human Resource Management (SHRM) (via email following the event)

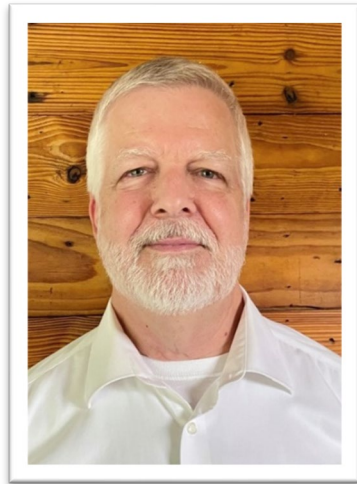


Audience Assessment Question

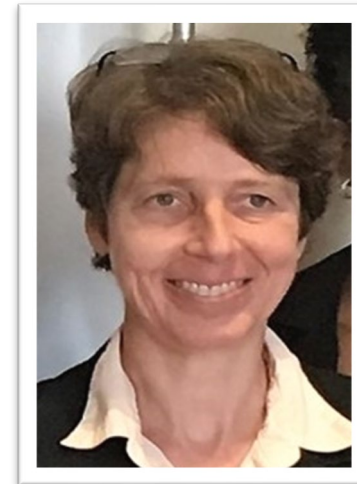
On a scale of one to five (1 = very little understanding and 5 = extensive understanding), how would you rate your understanding of The ADA and COVID-19?



What You Should Know About The ADA And COVID-19



Brian East
Senior Attorney
Disability Rights Texas



Jennifer Mathis
Director of Policy and Legal Advocacy
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Employer Coverage

- ADA—private employers with 15 or more employees, non-federal governmental employees, unions, employment agencies
- Sec. 501—federal-sector employees
- Sec. 503—contractors or subs with contracts worth > \$10,000
- Sec. 504—recipients of federal financial assistance
- State or local laws—varies



Is COVID-19 a Disability?

- “Actual” disability—probably
- “Regarded as”—probably
- Fear of future—probably not



Employer Actions

- Closing down
 - Normally not an ADA issue
 - Watch out for discrimination in RIFs, transfers, or alternate employment
- Going online
 - Normally not an ADA issue
 - Employer may need to accommodate to make tech accessible to employees



Employer Actions—OK Screening

- Taking temp or asking about symptoms
- Asking why employee was absent
- Asking about known exposure
- Requiring quarantining if employee has COVID, symptoms, or exposure
- Requiring infection-control practices
- Requiring use of PPE (accommodations?)
- Encouraging getting available vaccine



Employer Actions—OK Screening

- Require medical input certifying fitness for duty on return to work
- Taking temp and screening for symptoms of applicants, if make conditional job offer, and done for all entering same job type
- Delay start date of applicant w/ symptoms
- Withdraw offer if applicant has COVID-19 or symptoms, and must start immediately



Employer Actions—Improper Screening

- Asking asymptomatic employees if they have medical conditions that would make them especially vulnerable
- Compelling employees to take vaccine if they have a medical condition that prevents doing so safely
- Sharing medical info beyond those with a need to know



Reasonable Accommodations—May Be Required Because Of:

- COVID-19 diagnosis, if it's an “actual” or “record of” disability
- Another disability that creates heightened risk in case of COVID-19
- Because of exacerbation of mental disability (e.g., anxiety disorder)
- Need for alternatives in screening, connectivity, PPEs, etc.



Types of Accommodations

- Telework
 - Especially common now
 - Reasonable in many (but not all) cases
 - Make sure tech is accessible to worker
- Leave
 - Probably easy because of virus's short duration
 - Can be unpaid unless contract or company policy provide paid leave
 - Longer leave to avoid exposure?



Types of Accommodations (cont'd)

- Masks, face shields, gloves
- Physical barriers, separate offices
- Distancing, staggered schedules, isolation
- Disinfecting
- Hygiene policies
- Other ideas

Resources: CDC, WHO, OSHA



More About Masks

- The CDC and many other health authorities recommend using them
- Some state or local laws may require them
- Employers can require staff to wear them
- But employers may also need to consider or offer accommodations:
 - Masks to fit over disability-related equipment
 - Masks with clear plastic to allow lip-reading
 - Alternatives if disability prevents wearing



More on Accommodations

- “Undue hardship” is statutory defense
- Confidentiality—employer must keep confidential the info disclosed during accommodation process (need to know)
- Retaliation—Requesting accommodation is protected activity
- Caring for family members—ADA does not require accommodations (e.g., leave) to care for others, but employer can’t treat requests differently from others



Can an Employer Fire an Employee?

- Probably not on basis of having COVID-19, or because of association with one who has it, because it is likely a disability, and because contract rights, leave policies, or accommodations will likely address any safety concerns
- Probably not, if based on mistaken belief that employee has COVID-19
- Probably not based on an underlying risk factor (e.g., diabetes, hypertension)



Final Points

- Resources—The EEOC has information on, or linked to, the following webpage:

<https://www.eeoc.gov/coronavirus>



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Audience Questions



Takeaways

- Reasonable Accommodations may be required if a disability creates heightened risk for COVID-19, because of exacerbation of mental health disability (e.g., anxiety), or there is a need for alternatives in screening, connectivity, PPEs, etc.
- Types of Accommodations include leave or telework
- Employers should follow CDC guidelines as well as state and local laws



Audience Assessment Question

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