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KD Alert - EEOC Issues Guidance to Employers During the Coronavirus Pandemic

Due to the outbreak of COVID-19 (coronavirus), the EEOC has issued technical assistance regarding the Americans with Disabilities Act, as amended (ADA) and pandemic related issues in the workplace. It identifies established ADA principles that are relevant to questions frequently asked about workplace pandemic planning and management. Below is a summary of the guidance issued by the EEOC. For more information please visit: https://www.eeoc.gov/facts/pandemic_flu.html

During the Pandemic

If an employee displays influenza-like symptoms, an employer may require them to stay home. While employers may ask employees questions about their symptoms, employers must remember not to ask "medical questions" and to maintain all information about employee illness as a confidential medical record in compliance with the ADA. Also remember that the virus can be spread by individuals who exhibit no symptoms.

During a pandemic, employers may also measure their employees' body temperatures, even though it be considered a "medical examination," but they should use caution. These employees may still be infected if they show a negative body temperature.

Employers are also permitted to ask employees who traveled to certain areas with an outbreak to stay home or quarantine for a certain amount of time before returning to work. With respect to COVID-19 outbreak, the CDC recommends a fourteen (14) day quarantine.

Employers should keep in mind that at no time may they ask employees who do not have flu-like symptoms to disclose whether they have a medical condition that the CDC states could make them especially vulnerable to influenza complications. If an employee voluntarily discloses (without a disability-related inquiry) that he or she has a specific medical condition or disability that puts him or her at increased risk of influenza complications, the employer must keep this information confidential.

Employers should remember that they can, and in many cases should, take certain actions that will control or slow the spread of infections, including, but not limited to:

(1) encouraging employees to telework, if and when they can;

(2) requiring infection control practices such as washing hands; and/or

(3) requiring employees to wear protective equipment, such as gloves, so long as it does not interfere with an employee's disability (i.e. latex allergy).

While there is no vaccine for COVID-19 yet, employers should keep in mind that if and when one is developed and approved, an employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA-covered disability.

Employers must also remember that they are still required to provide their employees with reasonable accommodations for disabilities unrelated to the pandemic. If an employee with a disability needs the same reasonable accommodation at a telework site that he or she had at the workplace, the employer should provide that accommodation, absent undue hardship and no other reasonable accommodation.

After the Pandemic

Once the pandemic is over, an employer may take the following steps to ensure the safety of its employees:

(1) If an employee has been absent from work, an employer may ask if it was due to a medical reason. (An employer is always entitled to know why an employee has not reported to work, but not the specific medical condition); and

(2) Require employees who have been absent to provide a doctor's note certifying they are fit to return to work. (The EEOC recommends being lenient with this rule due to the likely overcrowding of our healthcare system due to COVID-19).

This new Guidance from the EEOC is but one of many expected by other federal and state agencies. For instance, an upcoming KD Alert will discuss the new DOL Guidance for complying with the Fair Labor Standards Act in these remote work times. Certainly, more changes are afoot if and when the Emergency Relief Act passes.

The attorneys at Kaufman Dolowich & Voluck are available to provide clarity and guidance on an employer's legal obligations due to the current coronavirus pandemic. For instance, most federal employment-related laws are and will remain unchanged in many respects. For guidance or more information please contact the members of Kaufman Dolowich & Voluck's Labor & Employment Law Practice Group at (516) 681-1100.

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