

# Coronavirus (COVID-19) Update

April 23, 2020

**The Coronavirus (COVID-19) is impacting businesses of all sizes, industries and locales. Our goal is to provide you with currently available information regarding COVID-19’s impact on leave of absence programs, but please know that this information is subject to change as the situation continues to evolve.**

On April 17<sup>th</sup> & 23<sup>rd</sup>, 2020 the EEOC provided new guidance to employers dealing with reasonable accommodation requests, returning an employee to work, and testing related to COVID-19. This bulletin provides a summary of the information posted.

This memo covers the following:

## Updates

### EEOC Guidance Updates

- a. Reasonable Accommodations
- b. Return to Work
- c. COVID-19 Testing

The EEOC guidance can be found on their webpage [here](#).

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## Risk Services – Workforce Absence Management

### *Update: EEOC Guidance Updates*

#### Reasonable Accommodations:

The EEOC clarified that during the current pandemic, employers should still be engaging in the interactive process for employees who are at their worksite or working remotely who request an accommodation due to their own medical condition. Under accommodation requests covered by the Americans with Disabilities Act (ADA), employers are still allowed request medical documentation to determine if the disability requires an accommodation, but it is important to remember that medical documentation can only be requested if the disability is not obvious or already known. While not an exhaustive list, questions that could be posed include:

- What limitations does the disability create
- How the requested accommodation will address those limitations
- Are there other accommodations that could address the limitations
- How the proposed accommodations enable the employee to perform their essential job functions
- Are the proposed accommodations for an employee at home still needed if the employee returns to the workplace

The EEOC notes that employers may choose to shorten or adapt their interactive process for those cases where urgency is needed to provide an accommodation, and instead grant the accommodation request on an interim or trial basis while awaiting medical documentation. It is also noted that employers may adopt end dates for accommodations to take into consideration changes in government restrictions and public health guidance.

The EEOC also pointed out that the undue hardship consideration for employers may play a greater role in determining the end result of an accommodation request. This is because an accommodation that may or may not have been considered a “significant difficulty” to accommodate in the workplace may be eliminated or enhanced due to remote work. The ability to acquire certain items needed for an accommodation (such as a sit-stand workstation or ergonomic keyboard) or longer delivery times of those items may be impactful to employers’ decisions. This could be in part to the employers’ income stream being negatively impacted due to downturns in business. Whereas accommodations may have been reasonably priced in the physical work setting, they may be significantly higher at a residential location and ultimately not needed when employees are allowed to return the workplace.

## Risk Services – Workforce Absence Management

### Return to Work:

The EEOC advised that as stay-at home orders or other restrictions are slowly lifted, employers must be mindful of the steps they take to safely return employees to work. The ADA will still permit disability-related questions and medical exams if they are job related or a “direct threat” to health or safety. This means that employers are still allowed to take temperatures and ask medical questions about symptoms of those entering the workplace. They advise the employers should be careful not to single out certain individuals based on protected characteristics in decisions related to screening or questions on symptoms. Additional information and context surrounding medical inquiries can be found in the HUB FAQ E-Book [here](#).

The guidance from the EEOC also advised that employers may require employees that are returning to the workplace wear certain personal protective equipment (PPE) and observe infection control practices. Employers need to remember that employees with disabilities may require reasonable accommodations under the ADA related to the use of PPE (such as non-latex gloves or modified face masks), and that these requests should be taken into account through the normal interactive process under the ADA.

### COVID-19 Testing

The EEOC has also confirmed that employers can administer COVID-19 testing for employees re-entering the workplace because individuals with COVID-19 would pose a direct threat to the health of others. They advised that in order to be consistent with ADA standards, employers need to ensure that the tests are accurate and reliable. Employers should take care to ensure that they understand the pros and cons of tests that they are considering using and that tests indicate if the virus is currently present. They caution that a negative test at one point in time does not mean that employees cannot contract the virus in the future.

***Get the latest information, guidance and resources on Coronavirus (COVID-19) to help you protect what matters most at [hubinternational.com/coronavirus](https://hubinternational.com/coronavirus). For additional support, please reach out to your local HUB office.***