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## EEOC Helps Employers Navigate Employing Persons With Underlying Health Conditions During The COVID-19 Pandemic

On May 7, the EEOC issued guidance to help employers deal with employees with medical conditions that could put them at increased risk of Covid-19. The guidance clarifies that employers may not exclude an employee from the workplace solely because the employee has a disability that puts the employee at higher risk for severe illness if the employee gets Covid-19, but should instead be prepared to analyze potential reasonable accommodations.

If an employer is aware that an employee has a condition that may jeopardize the employee's health upon returning to the workplace, an employer may analyze whether the individual's disability poses a "direct threat" or "significant risk of substantial harm" to his or her own health. But an employer should not rely exclusively on the CDC identifying any one condition as putting an employee at risk. Rather, after identifying an employee who may be at risk, an employer should undertake an individualized analysis with the goal of reducing the threat to the specific employee.

The employer's assessment must be based on reasonable medical judgment about the employee's disability using the most current medical knowledge and/or the best available objective evidence. Employers should consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. To analyze these factors, the EEOC encourages employers to review measures they are already taking to prevent the spread of the virus, the severity of the pandemic in the particular locale of work, the employee's own health and whether the disability is well-controlled, and the employee's particular job duties and whether those duties make the employee particularly likely to be exposed to the virus at work. The EEOC notes that the ADA direct threat requirement is a high standard, and the analysis must be appropriately thorough.

If the direct threat requirement is met, an employer must next consider reasonable accommodations that would eliminate or reduce the risk so that the employee may return and perform essential functions of the job. Once again, the analysis should be tailored to the individual, and the EEOC encourages involving the employee in this discussion. Specific accommodations that may help to eliminate or reduce a direct threat to self include protective gowns, masks, gloves, or other gear, erecting barriers to separate the employee from others, not requiring an employee to perform less critical or incidental job duties, modified work schedules, modified work locations, telework, leave, and even reassignment. Despite the wide variety of options, an employer is not required to provide an accommodation if that accommodation would pose an undue hardship.

If, after going through all of these steps, and considering possible reasonable accommodations, an employer determines that there is no way to eliminate or reduce the risk for a particular individual absent undue hardship, then an employer may bar that employee from the workplace.

Any employer seeking guidance to undertake this analysis or navigate other employee relations challenges during the Covid-19 pandemic is encouraged to reach out to one of Ryley Carlock & Applewhite's Labor & Employment Attorneys.

Nate Niemuth | 602.440.4810 | [nniemuth@rcalaw.com](mailto:nniemuth@rcalaw.com)

Michael D. Moberly | 602.440.4821 | [mmoberly@rcalaw.com](mailto:mmoberly@rcalaw.com)

Robert M. Warzel | 602.440.4888 | [rwarzel@rcalaw.com](mailto:rwarzel@rcalaw.com)

### Related Attorneys

- [Nathan R. Niemuth](#)

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