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Updated Guidance from EEOC States Workers with COVID-19 May Be Protected Under ADA

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On December 14, 2021, the EEOC published updated guidance which states workers who contract COVID-19 can be protected from discrimination under the Americans with Disabilities Act (“ADA”).

Depending on each worker’s circumstances, the virus can cause impairments that meet one of the ADA’s three definitions for a “disability,” which cover actual, physical, or mental impairments that substantially limit a major life activity; an employer’s perception that a worker has a disability; or the worker’s record of impairment. Employers must individually assess each employee to determine if they meet one of the appropriate definitions. Employees diagnosed with COVID-19 who experience multiple-day headaches, dizziness, and brain fog or heart palpitations, chest pain, and shortness of breath that are expected to last for several months and attributed to the virus are examples of impairments under the ADA. Similarly, conditions that are caused or worsened by a previous COVID-19 diagnosis such as heart inflammation that limits circulatory functions or a stroke that limits neurological functions may be considered impairments. However, not every person with COVID-19 will qualify as disabled. For example, a worker who tests positive and is asymptomatic or has mild symptoms similar to the common cold or flu that resolve in a matter of weeks would not qualify.

The key take away here is that the EEOC guidance specifically references, together, COVID-19 symptoms and potential “disability” protection under the ADA. This triggers the employers’ obligation to engage in the ADA interactive process regarding the extent of a disability caused by COVID-19 and provide a reasonable accommodation when required.

Employers with questions about the EEOC’s updated guidance should contact any member of **Bodman’s Workplace Law Group**. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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