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EEOC Provides Additional Guidance on When COVID-19 May Qualify as a Disability

On December 14, 2021, the Equal Employment Opportunity Commission (EEOC) published additional guidance addressing when an individual infected with COVID-19 may qualify as disabled under the Americans with Disabilities Act (ADA). The publication expands on the EEOC's September 2021 guidance regarding whether "long-haul" COVID-19 is a disability under the ADA.

Title I of the ADA prohibits discrimination on the basis of disability in the workplace. An employee may be disabled, for purposes of the ADA, in one of three ways:

- The individual has an "actual" disability;
- The individual has a "record of" disability; or
- The individual is "regarded as" having a disability.

COVID-19 may be an actual disability under the ADA when the effects of COVID-19 substantially limit an individual's major life activity. According to the EEOC's latest guidance, an individual diagnosed with COVID-19 may be disabled when the virus causes an individual to experience ongoing but intermittent headaches, dizziness, brain fog and difficulty remembering or concentrating. Moreover, an impairment caused by COVID-19, such as a stroke and resulting affects on brain function, may also qualify as a disability.

The limitations from COVID-19 do not need to last for a specific period of time to qualify as an actual disability; the individual may be disabled even if the symptoms are sporadic.

However, not all cases of COVID-19 will qualify as a disability. Individuals infected with SARS-CoV-2 who are asymptomatic or have mild symptoms similar to the common cold or the flu and that resolve in a matter of weeks with no other consequences are not considered disabled.

In light of the EEOC's guidance, employers should be prepared to review an employee's request for an accommodation related to COVID-19. Employers should engage in a fact-specific analysis to determine whether an individual case of COVID-19 qualifies as a disability under the ADA and, if so, be prepared to consider reasonable accommodations.

POSTED:

Dec 16, 2021

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If you have any questions about the implications of the EEOC's guidance, or whether an employee infected with COVID-19 qualifies as disabled under the ADA, please contact Robert Driscoll, Brittany Lopez Naleid or your Reinhart attorney.

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