

## “Long COVID-19”

*An Update on Workplace Accommodation Expectations of Employers*

On July 26, 2021, the 31<sup>st</sup> anniversary of the Americans with Disabilities Act (ADA), the U.S. Department of Health and Human Services and the Department of Justice jointly published a guidance document on Long COVID-19 as a disability under the ADA.

The guidance provides clarity on how nondiscrimination laws apply to people who may be newly covered because of the impact of a COVID-19 infection.

### **Workers With Long COVID-19 May Be Entitled to Workplace Accommodations**

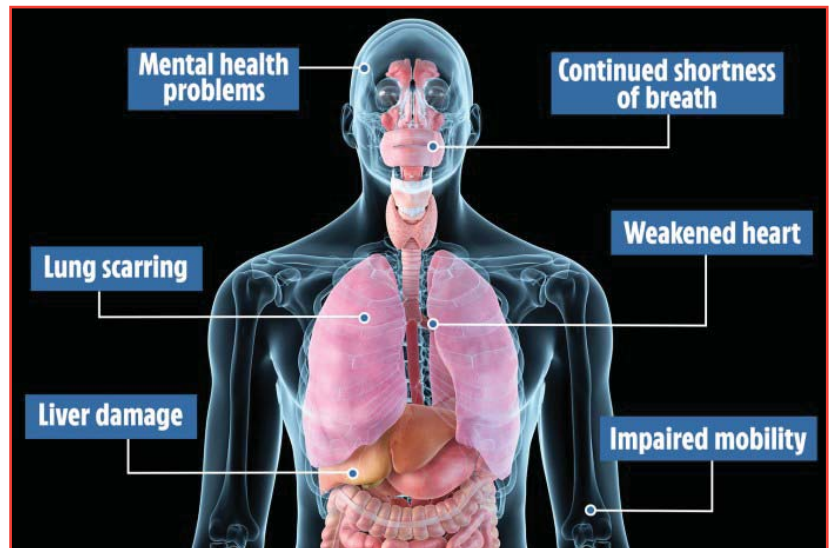
Some people who have had COVID-19 continue to experience ongoing symptoms for months afterward, known as Post-Acute COVID-19 Syndrome or Long COVID-19 – and it has caused a wide variety of limitations.

Workers impacted by Long COVID-19 might have difficulty working in the same way they did before and may be entitled to workplace accommodations so they can do their job. It is important for company management to understand, that even if workers dealing with Long COVID-19 don't think of themselves as having a disability, they still may meet the Americans with Disabilities Act definition and must be offered reasonable accommodations. The ADA requires that employers be knowledgeable on these laws in order to offer assistance to employees who may not be aware of these laws.

Here are answers to some of the most frequently asked questions regarding Long COVID-19 and worker rights under the ADA:

### **How does an employer know if the employee is entitled to workplace accommodations?**

If an employee needs an accommodation, the employee should ask for it. Under the ADA, the employee is entitled to accommodations if they meet the definition of an individual with a disability and are qualified for the job with the reasonable accommodation. An individual with a disability is a person who has a physical or mental impairment that substantially limits major life activities, has a record of such an impairment, or is regarded as having such an impairment. Whether a particular condition is a disability as defined by the ADA requires a case-by-case determination. Employers



are free to provide accommodations even if someone doesn't meet the definition of disability – and they must provide accommodations if they do meet it, absent undue hardship. The Job Accommodation Network has guidance to help determine if the employee meets the ADA definition of disability.

### **How does an employee ask for an accommodation?**

There is no official method or form to request an accommodation under the ADA as long as the employee lets the employer know that they are asking for accommodation because of a medical condition.

### **What kind of accommodations can an employee ask for?**

There is no exhaustive list but here are some general categories:

- ▲ providing or modifying equipment or devices
- ▲ part-time or modified work schedules
- ▲ reassignment to a vacant position
- ▲ adjusting or modifying examinations, training materials or policies

### **What employers don't have to do:**

- ▲ remove essential job functions
- ▲ lower production standards
- ▲ provide personal need items such as hearing aids and wheelchairs

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- ▲ provide any accommodation that creates an undue hardship
- ▲ provide an employee’s preferred accommodation as long as the employer provides an effective accommodation

If an employee is not sure whether the accommodation they need is something an employer must consider, they could mention other ideas and options to the employer for consideration.

**What type of information can an employer request when asked for an accommodation?**

**An employer can:**

- ▲ Ask the employee to provide limited medical documentation to show that they are covered under the ADA if it isn’t obvious that they have a disability or need an accommodation.
- ▲ Ask questions to help clarify why an employee needs an accommodation and to explore alternative accommodations, if necessary.

**An employer cannot:**

- ▲ Ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation.
- ▲ Ask the employee about other medical conditions they might have or request their complete medical records.

**Can an employee get an accommodation if it is only needed temporarily or if their limitations change over time?**

Yes. If the employee is a qualified individual with a disability, the employer must consider providing accommodations for any limitations they have related to their disability, even if temporary or episodic, for when the accommodation is needed.

**Can an employer deny an accommodation?**

If an employer denies an employee’s request because medical information did not show that they have a disability, the employee can provide additional information. As an employer you may find that the accommodation requested would pose an undue hardship, in which case the employer can suggest other options.

If an employer has a valid reason to deny a request for accommodation, the employee can appeal the decision by going up the chain of command, filing a grievance with a union if they have one, or filing a complaint with the U.S. Equal Employment Opportunity Commission or their state enforcing agency.

*This article was adapted from the US DOL Blog by Linda Carter Batiste, a principal consultant/legislative specialist at the Job Accommodation Network.*

Employers may request information from the employee so that an objective decision regarding a needed accommodation can be made. The request should cover the items below.

**ADA Reasonable Accommodation Request**

**CONFIDENTIAL**

*(This can be a formal document or a verbal discussion that the supervisor later documents.)*

Date: \_\_\_\_\_

Employee’s Name & Job Title: \_\_\_\_\_

Supervisor’s name: \_\_\_\_\_

Describe the nature, extent and duration of your disability:

- ▲ Identify your specific problematic job tasks.
- ▲ Describe your accommodation ideas that you believe are needed to enable you to perform the essential functions of this job.
- ▲ Attach any supporting documentation that may be helpful in evaluating this request for accommodation.
- ▲ Please provide health care provider information. The provider may receive a request from us for information regarding your impairment/disability and recommendations for accommodations.

I authorize the release of information regarding my disability to [Company name] management as deemed necessary by human resources to facilitate this request for accommodation.

Employee signature: \_\_\_\_\_

Date: \_\_\_\_\_