

HENDERSON BROTHERS UPDATE

EEOC Releases New COVID-19 Return to Work FAQs

Date: April 22, 2020

Employers with questions about how to deal with the coronavirus without violating discrimination laws as employees start to return to the workplace may find answers in new guidance from the Equal Employment Opportunity Commission (EEOC). The EEOC has updated its [Technical Assistance Questions and Answers](#) page to include 10 new FAQs covering reasonable accommodations under the Americans with Disabilities Act, harassment and return to work, including the following:

May an employer ask employees now if they will need reasonable accommodations in the future when they are permitted to return to the workplace? (posted 4/17/20)

Yes. Employers may ask employees with disabilities to request accommodations that they believe they may need when the workplace re-opens. Employers may begin the “interactive process” - the discussion between the employer and employee focused on whether the impairment is a disability and the reasons that an accommodation is needed.

An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests? (4/17/20)

An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols).

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer’s business under the ADA or Title VII.

Are there steps an employer should take to address possible harassment and discrimination against coworkers when it re-opens the workplace? (4/17/20)

Yes. An employer may remind all employees that it is against the federal EEO laws to harass or otherwise discriminate against coworkers based on race, national origin, color, sex, religion, age (40 or over), disability, or genetic information. It may be particularly helpful for employers to advise supervisors and managers of their roles in watching for, stopping, and reporting any harassment or other discrimination. An employer may also make clear that it will immediately review any allegations of harassment or discrimination and take appropriate action.

EEOC website: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

