

NEWS & INSIGHTS

EEOC updates guidance for return to work for at-risk employees

INSIGHTSLEGAL UPDATE

MAY 21, 2020



The Equal Employment Opportunity Commission (EEOC) recently published updated guidance clarifying that employees with underlying medical conditions rendering them high risk for COVID-19 cannot be excluded from returning to the workplace solely on that basis. Centers for Disease Control (CDC) guidelines recognize that individuals over the age of 65, those with conditions rendering them immunocompromised, and those with serious medical conditions such as heart disease, asthma, and severe obesity are higher risk for severe complications if they contract COVID-19. High-risk workers, while more susceptible to the virus and complications, enjoy protections under the Americans with Disabilities Act (ADA) to ensure they are not singled-out due to their condition.

High-risk employees cannot be excluded from return to work unless their condition poses a “direct threat” of substantial harm to oneself or to others which cannot be eliminated or otherwise addressed by reasonable accommodation. The “direct threat” threshold is a high standard and the analysis involves consideration, using reasonable medical judgment, of all circumstances, including the severity of the pandemic in the employer’s geographic location, the likelihood of exposure to COVID-19 at the workplace and the employee’s specific condition.

Even if a high-risk employee is found to pose a direct threat, employers must still engage in this interactive process to identify whether and if the threat can be ameliorated with an accommodation. As employers begin to develop return to work plans, particular care should be taken to ensure the interactive process is implemented. Once an accommodation request is made, employers may ask questions to help ascertain whether and what accommodation is reasonable. The new guidance also provides examples of reasonable accommodations that might reduce a high-risk employee’s risk of a direct threat and thus facilitate rejoining the physical workforce. The EEOC recommends reconfiguration of workspaces to ensure appropriate separation; consideration of modified work schedules; and use of personal protective equipment.

Thought should also be given to ensuring consistency of accommodations. For example, some accommodations might single out an employee. Consideration should be given to whether implementation of the safety measure is appropriate for the entire workforce or whether less conspicuous measures might be available.

Saxton & Stump attorneys [Morgan Hays](#) and [Rick Hackman](#) are available to further discuss your organization’s return to the physical workplace and how to navigate that process for high-risk employees.

Related People

[Richard L. Hackman](#)
[Stephen J. Fleury, Jr.](#)

Related Services and Industries

[Labor and Employment](#)