

**EEOC ISSUES GUIDANCE ON EMPLOYERS BARRING AT-RISK  
EMPLOYEES FROM WORK, THEN RETRACTS AND ISSUES NEW GUIDANCE**

Like many other federal and state agencies, the Equal Employment Opportunity Commission (“EEOC”) has been issuing ever-changing guidance on how workers and employers should respond to new issues arising from the Covid-19 pandemic. On May 5, 2020, the EEOC issued guidance under the Americans With Disabilities Act (“ADA”) and the Rehabilitation Act, in which the EEOC seemed to suggest that employers could legally bar any employees with known medical conditions from the workplace if the employer reasonably believed that those medical conditions would create a “direct threat” to the employee’s safety by increasing the likelihood of contracting Covid-19. Later that same day, the EEOC retracted its guidance, stating that its earlier guidance “was subsequently misinterpreted in press reports and social media. We have removed it and are revising the information to ensure that it is clear.”

On May 7, 2020, the EEOC released updated guidance. This latest guidance clarified that even if an employer already knows about an employee’s medical condition that could put that employee at risk of infection, that does not mean that the employer is free to send the employee home. Instead, the EEOC’s legal counsel explained, the employer must do a “thorough direct threat analysis,” considering the specific circumstances and determining whether the “direct threat” can be reduced or eliminated through a reasonable accommodation. Reasonable accommodations could include telework or a temporary job reassignment, among other options. This requires an interactive process between the employer and the employee to determine whether any reasonable accommodation would allow the employee to continue to safely perform their job.

Workers and unions should push back against any efforts by employers to bar employees from the workplace or force employees onto unpaid leave based solely on the employee’s preexisting medical conditions. Additionally, it is important to note that the EEOC’s guidance only deals with situations where an employee’s medical condition is already known to the employer. Federal law does not allow for employers to ask employees who do not have Covid-19 symptoms to disclose information about their medical history to determine whether are at greater risk of infection. These types of disability-related inquiries are generally prohibited under the ADA. The EEOC’s current guidance is available at: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

ASHER, GITTLER & D’ALBA, LTD.  
200 West Jackson Boulevard, Suite 720  
Chicago, IL 60606 – 312.263.1500

© 2020 Asher, Gittler & D’Alba, Ltd.  
All rights reserved.  
Dated: May 15, 2020

This release informs you of items of interest in the field of labor relations. It is not intended to be used as legal advice or opinion.

U.S. News & Report’s Best Law Firms Designation is for Chicago Tier 1 rankings in Employment Law (Individuals), Labor Law (Union), and Litigation (Labor and Employment) and a National Tier 2 ranking in Litigation (Labor and Employment).



