



## State of Rhode Island and Providence Plantations Governor's Commission on Disabilities

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### COVID-19 Equal Employment Opportunities upon Opening RI Economy Guidance

This is a notification from the Rhode Island Governor's Commission on Disabilities (GCD)<sup>i</sup> with respect to COVID-19. During a pandemic, employers should rely on the latest Center for Disease Control and Prevention (CDC) and state or local public health information. Employers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

Employers are also required to abide by the Americans with Disabilities Act (ADA.) In order to provide employers with ADA assistance, the GCD has extracted the following guidance for employers, local and state government, non-profits, and state regulations, during COVID -19 from the Equal Employment Opportunity Commission (EEOC) website at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-laws>. These EEOC documents reference in the above link provide information regarding the pandemic people with disabilities and pandemic-related harassment based on race, national origin, color, sex, religion, age (40 or over), disability, or genetic information.

An extremely important ADA concept during an influenza pandemic to be aware of is **Direct Threat**. **Direct threat** as stated in <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act> "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."

In the case of COVID-19, there is a tendency to "fear" the unknown and unknowable. We must avoid acting on fear-based assumptions such as believing that people with underlying health conditions or over the age of 60, Latinx, and pregnant individuals may be carriers of COVID-19 or merit special protection from COVID-19.

#### Frequently Asked Questions pertaining to COVID-19:

- **Do people COVID-19 positive or symptomatic, who are present in the workplace at the current time, pose a direct threat?**

**Yes**, based on guidance of the CDC and public health authorities as of March 2020, the COVID-19 pandemic meets the direct threat standard. The CDC and public health authorities have acknowledged community spread of COVID-19 in the United States and have issued precautions to slow the spread, such as significant restrictions on public gatherings. These facts manifestly support a finding that a significant risk of substantial harm would be posed by having someone with COVID-19, or symptoms of it, present in the workplace at the current time. At such time as the CDC and state/local public health authorities revise their assessment of the spread and severity of COVID-19, that could affect whether a direct threat still exists.

- **Do people with disabilities or underlying health conditions present in the workplace at the current time pose a direct threat?**

**No**, people with disabilities or underlying health conditions, **absent** COVID-19, or COVID-19 symptoms are not a direct threat and **may not be** excluded from a workplace, ordered to work from home, refused to be rehired, brought back from furlough or otherwise denied employment on the basis of disability.

- **Can an employer protect the health of people with disabilities or underlying health conditions, from COVID 19, by restricting their access to the workplace?**

**No**, while an employer through the flexible interactive process may suggest reasonable accommodations for employees with specific underlying health conditions to decrease the risk of acquiring COVID-19, employees **may not be** excluded from a workplace, ordered to work from home, refused to be rehired, brought back from furlough or otherwise denied employment on the basis of disability.

- **Are there reasonable accommodations for individuals with disabilities absent undue hardship that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19?**

**Yes**, there may be reasonable accommodations that could offer protection to individuals whose disability puts them at greater risk from COVID-19. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer. Allowing an employee to work from home is one accommodation that may meet the needs of the employee however there may also be accommodations available in the workplace. When an employee requests a reasonable accommodation, the employer and employee should always engage in a flexible interactive process in order to determine if a reasonable accommodation can be made. Employers/employees seeking guidance on reasonable accommodations may contact the GCD for assistance.

- **During a pandemic, may an employer require its employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection?**

**Yes**, an employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves or gowns designed for individuals who use wheelchairs,) the employer should provide these, absent undue hardship.

- **Must Facemasks be worn by everyone in the workplace?**

**Yes, however, no person** whose health would be damaged thereby (e.g. documented respiratory illness) shall be required to wear a face covering. Not wearing a facemask may be a reasonable accommodation given a reasonable accommodations allow a person with a disability who is qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities It may be appropriate for the employee to submit medical documentation attesting to the person respiratory condition rather than a reasonable accommodation request.

- **May employers tell the workforce the name of the employee with COVID-19?**

**No**, the name of the employee should not be disclosed. The ADA does not prohibit the broad disclosure of a COVID-19 positive occurrence in the workplace, but the name of the employee should not be revealed. Also, in addition to the Health Insurance Portability and Protection Act (HIPAA) regulations protecting an employee's confidential health information, the CDC recommends that an employer should maintain the confidentiality of an employee with COVID-19 as one strategy to reduce stigma.

Maintaining privacy and confidentiality of people with COVID-19 and those receiving reasonable accommodations is an ADA requirement.

- **Can an employer restrict older employees' access to the workplace in order to protect them from COVID-19?**

**No**, an employer may not treat older employees differently based on age. State and federal employment anti-discrimination laws prohibit employers from making employment decisions, including refusing to hire, placing on involuntary leave or requiring them to telework, based on an employee's age if that employee is 40 years of age or older.

- **Can an employer make employment decisions based on an employee's race, ethnicity or other protected class if membership within that class makes it more likely, or the employer perceives it to be more likely, that the employee has contracted COVID-19?**

**No**, an employer may not treat employees differently based on any protected class (The following classes are protected from employment discrimination in Rhode Island: race, color, religion, national origin, age (40+), sex (including pregnancy and pregnancy-related conditions) in addition to disability, sexual orientation, gender identity/expression and, in certain circumstances, conviction status. That a particular class of people has, or is perceived to have been, disproportionately impacted by COVID-19, does not excuse employment actions that are otherwise unlawful under anti-discrimination laws.

**Additional information regarding civil rights and COVID-19 can be found in:**

ADA National Network: <https://adata.org/factsheet/reasonable-accommodations-workplace>

National Response Coordination Center (NRCC) Healthcare Resilience Task Force:

<https://asprtracie.hhs.gov/technical-resources/resource/8126/crisis-standards-of-care-and-civil-rights-laws>

US Centers for Disease Control and Prevention (CDC): Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19) [https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html)

[response.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html); and

US Department of Health and Human Services, Office of Civil Rights In Action:

<https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>;

US Department of Justice: COVID 19 Resources: Emergency preparedness & response

[https://www.ada.gov/emerg\\_prep.html](https://www.ada.gov/emerg_prep.html);

US Department of Justice: Protecting Civil Rights While Responding to the Coronavirus Disease 2019 (COVID-19):

[https://www.ada.gov/aag\\_covid\\_statement.pdf](https://www.ada.gov/aag_covid_statement.pdf);

US Equal Employment Opportunities Commission: [https://www.eeoc.gov/wysk/what-you-should-know-about-](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws)

[covid-19-and-ada-rehabilitation-act-and-other-eeo-laws](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws)

**State resources:**

Commerce RI <https://commerceri.com/covid-19/> 278-9100 or [info@commerceri.com](mailto:info@commerceri.com)

Governor's Commission on Disabilities <http://www.gcd.ri.gov/> 574-9116 or [christine.rancourt@gcd.ri.gov](mailto:christine.rancourt@gcd.ri.gov)

Office of Diversity, Equity & Opportunity <http://odeo.ri.gov/> 222-6398 or [Krystal.Waters@doa.ri.gov](mailto:Krystal.Waters@doa.ri.gov)

RI Commission for Human Rights [www.richr.ri.gov/](http://www.richr.ri.gov/) 222-2661 [RICHr.Info@richr.ri.gov](mailto:RICHr.Info@richr.ri.gov)

RI Department of Business Regulation <https://dbr.ri.gov/covid/covid19updates.php> 889-5550 or

<https://dbr.ri.gov/critical/>

RI Department of Health <https://health.ri.gov/diseases/ncov2019/> 222-8022 or

[RIDOH.COVID19Questions@health.ri.gov](mailto:RIDOH.COVID19Questions@health.ri.gov)



TTY: 711 to contact any of the agencies listed above.

Sincerely,

*Bob Cooper*

Bob Cooper,

Executive Secretary

Rhode Island Governor's Commission on Disabilities

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