The ADA, Employment and Long COVID

4th Thursday ADA Talks
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The ADA National Network
Information, Guidance, and Training on the
Americans with Disabilities Act

Ten Regional ADA Centers and the ADA Knowledge Translation Center provide a wide range of:
- Information;
- **Informal** Guidance; and
- Training
- Resource for Business and Service Providers

– on the Americans with Disabilities Act (ADA) in order to –

"make it possible for everyone with a disability to live a life of freedom and equality.”
Where are the ten regional ADA Centers located?

• [http://adata.org/national-network](http://adata.org/national-network)

Funding

• Administration for Community Living (ACL)

• National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)
Disclaimer

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ADA Reminders
Overview of the Americans with Disabilities Act (ADA)

- To restore the ADA's broad protections as intended by Congress

- To reject the Supreme Court's view that “disability” should be determined taking into consideration the effects of mitigating measures

- To reject the Supreme Court's holding that the ADA requires a “demanding standard” for establishing coverage and requires that an impairment “severely restrict” major life activities

Americans with Disabilities Amendments Act (ADAAA)

- To restore the ADA's broad protections as intended by Congress

- To reject the Supreme Court's view that “disability” should be determined taking into consideration the effects of mitigating measures

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Defining Disability

• A physical or mental impairment which substantially limits one or more major life activities or
• A person with a record of such impairment or
• A person who is regarded as having such an impairment

ADA Title I – Employment

• An employer may not discriminate against an employee on the basis of disability in any aspect of the employment relationship.
Qualified Individual With a Disability

- A qualified individual with a disability means one who satisfies the requisite skill, experience, education, and other job-related requirements of the position such individual holds or desires, and who:

  with or without reasonable accommodation can perform the essential functions of such position.

- Does the ADA require that an applicant or employee with a disability be qualified for the position?
- WEB:  adata.org/faq/does-ada-require-applicant-or-employee-disability-be-qualified-position

Reasonable Accommodations and Disability

- Under the ADA, an employer must provide reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee with a disability.
When Should an Employee Disclose?

- Need for an accommodation in order to perform essential job functions.
- Receive benefits or privileges of employment.


Why Interactive Process

(slise 1 of 2)

- The interactive process benefits both the employer and employee.
- Helps parties understand what is being considered and why.
- Helps both parties work together and communicate more effectively.
- More effective decision-making.
Why Interactive Process
(slide 2 of 2)

• Shows the effort the organization makes to accommodate.
• Retains qualified employees who feel valued.
• Improves performance and productivity.

• Oh yeah, and the law requires it.
What is Long-COVID?

- Wide range of new, returning, or ongoing health problems experienced after being infected with the virus that causes COVID-19.
- Currently, there is no test to diagnose post-COVID conditions.
- At least four weeks after infection is the start of when post-COVID conditions could first be identified.
- Symptoms can go away and come back again.

Source: Centers for Disease Control and Prevention (CDC)  
Long COVID or Post-COVID Conditions | CDC  
(updated December 16, 2022)

Long-COVID Symptoms  
(slid 1 of 3)

- Tiredness or fatigue that interferes with daily life
- Symptoms that get worse after physical or mental effort (also known as “post-exertional malaise”)
- Difficulty thinking or concentrating (sometimes called “brain fog”)
- Shortness of breath or difficulty breathing
- Headache
- Dizziness on standing

Source: Centers for Disease Control and Prevention (CDC)  
Long COVID or Post-COVID Conditions | CDC  
(updated December 16, 2022)
Long-COVID Symptoms  
(slide 2 of 3)

- Chest pain
- Cough
- Joint or muscle pain
- Depression or anxiety
- Fever
- Loss of taste or smell

Long-COVID Symptoms  
(slide 3 of 3)

- Sleep problems
- Pins-and-needles feeling
- Diarrhea
- Stomach pain
- Rash
- Changes in menstrual cycle
Who Gets Long-Covid?

- People who have experienced more severe COVID-19 illness, especially those who were hospitalized or needed intensive care.
- People who had underlying health conditions prior to COVID-19.
- People who did not get a COVID-19 vaccine.
- People who experience multisystem inflammatory syndrome (MIS) during or after COVID-19 illness.
- Some people affected by health inequities including people from racial or ethnic minority groups and people with disabilities.

Number of People with Long COVID

- 1 in 13 adults in the U.S. (7.5%) report having long COVID symptoms.

Source: Disability Management Employer Coalition (DMEC)
Long COVID’s Impact on the Work Place (slide 1 of 6)

• Likelihood of missing work for medical reasons is **3.6 times higher** for those with long COVID than those with baseline COVID-19
  ▪ results in **significant time and productivity loss** for both patients and employers and exposes all parties to business and financial risk.

*Long COVID: Assessing and Managing Workforce Impact (PDF)*
*Source:* Disability Management Employer Coalition (DMEC)

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Long COVID’s Impact on the Work Place (slide 2 of 6)

• **1 in 4 adults** with long COVID reported **significant limitations in day-to-day activities.**

*Long COVID: Assessing and Managing Workforce Impact (PDF)*
*Source:* Disability Management Employer Coalition (DMEC)
Long COVID’s Impact on the Work Place (slide 3 of 6)

According to research by the U.S. Department of Health and Human Services (HHS), Long COVID is keeping approximately 1 million people out of work.

Supporting Employees with Long COVID: A Guide for Employers (PDF)
Source: EARN and Job Accommodation Network

Long COVID’s Impact on the Work Place (slide 4 of 6)

• 203% increase in medical spending per-member, per-month within the first six months following an initial COVID-19 diagnosis, with a predicted $9,000 per case increase in medical spending compared with similar patients who had COVID but not symptoms of long COVID

Source: Long COVID: Assessing and Managing Workforce Impact
Long COVID’s Impact on the Work Place (slide 5 of 6)

• 421% increase in in-patient hospital spending within the first six months following the initial COVID-19 diagnosis, resulting in a predicted increase of $6,000 compared to similar patients without long COVID

Source: Long COVID: Assessing and Managing Workforce Impact

Long COVID’s Impact on the Work Place (slide 6 of 6)

• 126% increase in costly diagnostic laboratory and imaging procedures; and
• 110% increase in outpatient visits for patients, resulting in rising actual costs and “opportunity costs.”

Source: Long COVID: Assessing and Managing Workforce Impact
Is Long-COVID a Disability?

It Depends!

COVID Caused Substantially Limited Major Life Activities

• A person with long COVID who has lung damage that causes shortness of breath, fatigue, and related effects is substantially limited in respiratory function, among other major life activities.

• A person with long COVID who has symptoms of intestinal pain, vomiting, and nausea that have lingered for months is substantially limited in gastrointestinal function, among other major life activities.

• A person with long COVID who experiences memory lapses and “brain fog” is substantially limited in brain function, concentrating, and/or thinking.
Rights of People with Long-COVID
(slide 1 of 2)

• Entitled to the same protections from discrimination as any other person with a disability under the ADA.

• Put simply, they are entitled to full and equal opportunities to participate in and enjoy all aspects of civic and commercial life and employment.

Rights of People with Long-COVID
(slide 2 of 2)

• “Retaliation is the most frequently alleged form of discrimination in the EEOC’s charges overall and has been at the top for too many years,” said EEOC Chair Charlotte A. Burrows. “The COVID-19 pandemic has created new situations and additional challenges, but it is no excuse to retaliate against people for opposing employment discrimination. This updated technical assistance provides additional clarity on how our laws balance workers’ rights to speak up without fear of retaliation against employers’ responsibilities to create a healthy and safe work environment.”

Source: https://www.eeoc.gov/newsroom/us-department-labor-national-labor-relations-board-us-equal-employment-opportunity
Meet Courtney Garvin

- $62,000 and three years later: Long COVID continues to upend this California couple’s lives


Long COVID Accommodation Solutions

Slides 34 - 42

Source: Job Accommodation Network (JAN) Searchable Online Accommodation Resource (SOAR)

Web: askjan.org/soar.cfm
Transitional, Modified, and Flexible Work Arrangements

• Transition back to full-time work over a short period
• Modified/light duty is temporary or permanent work that is physically or mentally less demanding than normal job duties
• Work anytime, anywhere, as long as business needs are met
• Flexible scheduling (e.g., flextime, compressed week, part-time)
• Alternative scheduling (e.g., shift work, staggered schedules)
• Hybrid work
• Telework/remote work

Solutions To Address Difficulty Concentrating

• Reduce distractions in the work area
• Provide space enclosures or a private office
• Allow use of an environmental sound machine or a headset/earbuds to listen to music
• Increase natural lighting or provide full-spectrum lighting
• Reduce clutter in the employee’s work environment
• Plan for uninterrupted work time
• Divide large assignments into smaller tasks and steps
Solutions To Address Memory Deficits

• Written instructions and checklists
• Use a voice recorder
• Additional training time for new tasks
• Environmental cues for locations of items (e.g., labels, color coding, or bulletin boards)
• Training refreshers
• Minutes of meetings/trainings
• Flowchart to indicate steps in a task
• Verbal or pictorial cues
• Color-coding scheme to prioritize tasks
• Notebooks, planners, or sticky notes to record information/as reminders of dates/tasks

Solutions To Address Anxiety & Depression

• Identify and reduce things that affect your emotional state
• Flexible schedule
• Modified break schedule
• Contact a support person when anxiety appears
• Rest area/private space
• Support animal
• Support person
Solutions To Address Fatigue, Difficulty Standing, sitting

- Periodic rest breaks
- Reduced or flexible work schedule
- Time for sitting if job requires a lot of standing (low task chair/stand-lean stool)
- Breaks to change position (adjustable workstation)
- Anti-fatigue matting/wearable anti-fatigue matting
- Job restructuring
- Telework

Solutions To Address Difficulty Lifting

- Reallocate lifting duties if marginal
- Assist when moving objects/people, to reduce weight
- Organize items in a way that reduces the need to move items
- Place frequently used tools and supplies at or near waist height
- Reduce weight by separating items into smaller groups
- Use a compact material handling device to lift, push, pull
- Use a lift cart to move/raise items
Reassignment to a Vacant Position

- Can be a form of accommodation when there is no alternative effective solution in the original position
- Temporary or permanent reassignment can be explored
- ADA does not require employer to create a position; explore equivalent vacant positions for which individual is qualified
- May require other forms of accommodation (e.g., telework, equipment, schedule modification)
- Accommodation of last resort

Leave (slide 1 of 2)

There are many situations that will require an employer to consider allowing an employee with a disability to use leave as an ADA accommodation, barring undue hardship. For example:
- when there is no other effective accommodation;
- when an employee is not eligible to take leave under the federal Family Medical Leave Act (FMLA), but has a qualifying disability under the ADA;
Leave (slide 2 of 2)

• when an employee is FMLA eligible, but requires additional time off beyond the twelve-week allowance under that statute; or
• when an employee has exhausted paid vacation and sick leave and requires additional intermittent time off because of a qualifying medical impairment.

Employer Rights When Accommodating Long Haulers (slide 1 of 2)

• Employers are not required to honor accommodation requests that:
  • Create an undue hardship for the business;
  • Are extensive, disruptive, too costly, or fundamentally change the essential function of the job; and/or
  • Are dangerous or illegal.
Employer Rights When Accommodating Long Haulers  
(slide 2 of 2)

• If an employer recalls employees to workplace, continued telework need not automatically be granted as accommodation.
• Employer can restore essential functions if they were temporarily altered due to mandatory telework.
• Whether telework was effective during pandemic shutdown will be relevant to deciding employee’s request for telework after workplace re-opens

Vaccinations

• If an employer has a vaccination requirement and an employee claims to be unable to vaccinated due to a disability, the employer must show the requirement is job-related and consistent with business necessity for the employee.
• The employer would have to show that the employee with a disability poses a direct threat if they remain unvaccinated.
• Direct threat is an individualized assessment.
Confidentiality of Medical Information

• COVID diagnosis, symptoms of COVID-19, vaccination status all subject to ADA confidentiality.
• Supervisor/Manager may only share name of someone with COVID-19 or symptoms with other supervisors/managers who have need to know.
• Employer cannot disclose name of employee with COVID-19 to workforce but may say “someone at this location has tested positive for COVID-19.”

Tying it All Together
Questions?

Southeast ADA Center

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