

EEOC Provides COVID-19 Guidance for Employers on Excluding High Risk Employees from the Workplace

Insights for Employers Alert | 1 min read

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On May 7, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) updated its guidance on whether employers may bar employees who are at a higher risk of contracting a severe case of COVID-19 from entering the workplace. Employees at a higher risk of COVID-19 include employees aged 65 and older and employees with certain underlying health conditions.

The EEOC's guidance states that the Americans with Disabilities Act (ADA) does not allow employers to exclude employees from the workplace solely because the employee has a disability that places the employee at a higher risk of having a severe case of COVID-19. Employers may only exclude such employees if the employer determines that the employee's disability is a "direct threat" to his health that cannot be eliminated or reduced by reasonable accommodation. The EEOC's guidance also states that "direct threat" is a high standard. According to the EEOC, a direct threat may only be determined by an individualized assessment that considers "the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm."

Even if an employer can meet the high "direct threat" standard, it still cannot exclude the employee unless there is no reasonable accommodation that reduces or eliminates the direct threat. The EEOC guidance provides several examples of potential reasonable accommodations, such as modified work schedules or providing protective gear.

The relevant guidance is found at questions G.4 and G.5 in the EEOC's What You Should Know Series: [COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

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