Long COVID Implications under the Americans with Disabilities Act (ADA)

By Erica O. Nolan and Lauren M. Green

As we prepare to enter into the third summer of the COVID-19 pandemic, approximately 60% of Americans have now been infected by COVID-19 despite significant advances in vaccines and boosters. While mild or moderate COVID-19 symptoms may last anywhere from a few days to two weeks, others may experience lingering health problems months after the infection period, a condition now recognized as "Long COVID." Even if an individual only experienced mild COVID symptoms while infected, these persistent symptoms have significant implications for the day-to-day lives of Americans, including their ability to work. Individuals who experience Long COVID symptoms are often referred to as "long-haulers," and studies indicate that about 10% of people infected with COVID-19 will experience long-haul symptoms. As such, employers should be aware of their obligations to accommodate employees with COVID-19 or Long COVID. Similarly, employees should understand their rights if they experience Long COVID symptoms that substantially affect their ability to work.

Last year, the Biden Administration, Departments of Justice, Health & Human Services ("HHS"), and Labor announced protection under the Americans with Disabilities Act ("ADA") for individuals suffering from Long COVID. The guidance issued from these Departments specifically state that Long COVID can be an "actual disability" under the ADA.

What is "Long COVID"?

According to the Centers for Disease Control and Prevention ("CDC"), people with Long COVID have a range of symptoms that can last weeks or months and can worsen with physical or mental activity. Examples of common symptoms of Long COVID include:

- Tiredness or fatigue
- Difficulty thinking or concentrating (sometimes called "brain fog")
- Shortness of breath or difficulty breathing
- Headache
- Dizziness on standing
- Fast-beating or pounding heart (known as heart palpitations)
- Chest pain
- Cough
- Joint or muscle pain
- Depression or anxiety
- Fever
- Loss of taste or smell

This list is not exhaustive. Some people also experience damage to multiple organs including the heart, lungs, kidneys, skin, and brain.

Employer Obligations under the ADA

Title I of the ADA is a civil rights law that guarantees equal employment opportunities for individuals with disabilities. Under Title I, private employers with 15 or more employees may not discriminate on the basis of a disability and must provide reasonable accommodations to qualified applicants or employees. The ADA defines "disability" as a physical or mental impairment that substantially limits a major life activity and is broadly construed—symptoms that come and go can qualify as a disability if they substantially limit a major life activity when active.

Long COVID *can* qualify as a disability under the ADA if it substantially limits one or more major life activities, including the ability to work. However, each case of Long COVID requires an individual assessment, and does not always rise to the level of a disability. Once an employer is aware that an employee is experiencing Long COVID symptoms, the obligation is on the employer to engage in an interactive process with its applicants and employees to determine whether the person's Long COVID symptoms substantially limits major life activities.

Employer Response and Possible Accommodations

While not every case of Long COVID will trigger obligations under the ADA, employers should treat requests for accommodations due to Long COVID as they would any other disability under the ADA. There are many reasons why employees request work-related modifications around COVID-19, but the ADA will only apply when a worker has a documented *medical* reason for requesting accommodations. If a reasonable accommodation is needed and requested by an individual with a disability to apply for a job, perform a job, or enjoy benefits and privileges of employment, the employer must provide it unless it would pose an undue hardship, meaning significant difficulty or expense. However, the employer has the discretion to choose among effective accommodations, meaning that the employee may not receive the exact accommodation they request if not practicable for the employer.

When faced with a request for a reasonable accommodation, employers are permitted to ask questions to determine whether the condition is a disability, discuss with the employee the requested accommodations and any alternative accommodations to assist the employee and allow them to continue working, and request medical documentation if needed.

Businesses will sometimes need to make changes to the way that they operate to accommodate a person's Long COVID-related limitations. For example, for individuals whose Long COVID symptoms qualify as a disability, a reasonable accommodation might include:

- Providing a quiet workspace for an employee who has "brain fog";
- Reducing physical exertion of an employee with shortness of breath;
- Modifying procedures so an employee who finds it too tiring to stand at a register can sit down at their station;
- Provide an ergonomic workstation for an employee with joint paint or body aches;

- Allowing an employee with extreme fatigue rest breaks or a flexible schedule;
- Develop a plan of action with the employee to address sudden exacerbations of their symptoms; and/or
- Permitting employees time off or scheduling flexibility for doctors' appointments or treatment of their Long COVID conditions.

Accommodations are not one-size-fits-all and flexibility by both the employer and employee is crucial to determine the appropriate accommodations. Given the unpredictable nature of COVID-19 and its related conditions, employers should remain up-to-date on the latest COVID-19 guidance and consult with an employment attorney before taking any adverse action against an employee who complains of COVID-19 or Long COVID symptoms. Similarly, employees should be aware of the protections afforded them by state and federal laws, enforced by agencies such as the Connecticut Commission on Human Rights and Opportunities (CHRO) and the Equal Employment Opportunities Commission (EEOC).

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