



## **Pennsylvania Human Relations Commission and COVID-19**

### **The Pennsylvania Human Relations Commission Enforces Laws that Protects Certain Rights Pertaining to Where you Live, Work, Learn, and Obtain Services Offered to the Public**

The PHRC enforces two anti-discrimination statutes, the Pennsylvania Human Relations Act ("PHRA") and the Pennsylvania Fair Educational Opportunities Act ("PFEOA"), which prohibit discrimination in employment, housing, commercial property, public accommodations, and educational institutions.

- The PHRA prohibits discrimination because of an individual's **race, color, religious creed, ancestry, age** (not in public accommodations), **sex, national origin, disability, use of a guide or support animal, and familial status** (housing only).
- With respect to employers, the PHRA applies to employers who employ four or more individuals in the Commonwealth of Pennsylvania.
- The PHRA and PFEOA include requirements for reasonable accommodations for persons with a disability.
- The requirements for reasonable accommodations apply to employers, housing providers, and proprietors of public accommodations, among others, as provided by the PHRA and implementing regulations.
- The PHRA and implementing regulations also provide rules for employers about medical examinations and inquiries.

### **Laws Enforced by The Pennsylvania Human Relations Commission Do Not Conflict with Requirements of the Center for Disease Control or Other Federal, State, or Local Authorities**

The PHRA, PFEOA, and implementing regulations continue to apply to entities subject to these laws, but they do not interfere with or prevent employers, housing providers, or proprietors of public accommodations from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers, housing



providers, or proprietors of public accommodations should take regarding COVID-19. Employers, housing providers, and proprietors of public accommodations should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers, housing providers, and proprietors of public accommodations should continue to follow the most current information on maintaining workplace safety and providing reasonable accommodations to persons with a disability.

### **For Employers:**

The EEOC has provided guidance (a publication entitled [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act \[PDF version\]](#)), consistent with the workplace protections and rules provided in the ADA and the Rehabilitation Act that can help employers implement strategies to navigate the impact of COVID-19 in the workplace. The EEOC's pandemic publication, which was written during the prior H1N1 outbreak, is still relevant today and identifies established ADA and Rehabilitation Act principles to answer questions frequently asked about the workplace during a pandemic. It has been updated as of March 21, 2020, to address examples and information regarding COVID-19 (the new information appears in bold).

- The information in the EEOC's pandemic publication is also generally applicable to employers under the PHRA. While claims brought under the PHRA are generally analyzed under the same standards as their federal counterparts, the PHRA may be interpreted more broadly than the corresponding federal statutes if there is something specifically different between the PHRA and the applicable federal statute.

### **Answers to Common Questions in Employment Setting:**

The World Health Organization (WHO) has declared COVID-19 to be an international pandemic. The EEOC pandemic publication includes a [separate section](#) that answers common employer questions about what to do after a pandemic has been declared. Applying these principles to the COVID-19 pandemic, the following answers to common questions may be useful.

*Updated on March 25, 2020*



### **How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?**

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

### **When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?**

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

### **Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?**

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

### **When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?**

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a

*Updated on March 25, 2020*



stamp, or an e-mail to certify that an individual does not have the pandemic virus.

### **If an employer is hiring, may it screen applicants for symptoms of COVID-19?**

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

### **May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?**

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

### **May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?**

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

### **May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?**

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

## **HOW CAN THE PENNSYLVANIA HUMAN RELATIONS COMMISSION ASSIST ME?**

If employees, housing seekers, or members of the public feel that they have been a victim of unlawful discrimination, they may file a complaint

*Updated on March 25, 2020*



with the Pennsylvania Human Relations Commission. A copy of the current complaint forms may be found at:

<https://www.phrc.pa.gov/File-A-Complaint/ComplaintForms/Pages/default.aspx>.

The form may be mailed or emailed to the PHRC at [phrc@pa.gov](mailto:phrc@pa.gov). For individuals who are in need of emergency assistance or guidance, please call our COVID-19 Hotline at 717-787-9780 between the hours of 9:00 AM-5:00 PM.