

HR COMPLIANCE OVERVIEW



EEOC Guidance on COVID-19 and Confidentiality of Medical Information Under the ADA

The Equal Employment Opportunity Commission (EEOC) has issued [FAQ guidance](#) about how employers should comply with the Americans with Disabilities Act (ADA) and other federal fair employment laws while also observing workplace safety guidelines during the COVID-19 pandemic. The FAQs were originally released on March 17, 2020, and were most recently updated on March 14, 2022.

In section B of the guidance, the EEOC clarifies how employers must handle any medical information they obtain about their employees or applicants. Most of the FAQs in this section were added on April 9, 2020; others were added Sept. 8, 2020.

This Compliance Overview provides the eight FAQs contained in section B of the EEOC's full COVID-19 guidance, as updated March 14, 2022.

LINKS AND RESOURCES

- EEOC's full COVID-19 guidance: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act and Other EEO Laws](#)
- [Section B](#) of the EEOC's full COVID-19 guidance
- EEOC's [Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA](#), published July 27, 2000

Highlights

Section B of COVID-19 FAQs

Section B of the EEOC's guidance on COVID-19 and fair employment laws includes eight FAQs about confidentiality of medical information under the ADA.

ADA Prohibitions

The EEOC's FAQs clarify, among other things, that employers must:

- Keep all employee medical information confidential, even if it does not relate to a disability;
- Store all COVID-19 related information about a particular employee separately from the employee's personnel file; and
- Inform all managers, supervisors and personnel who know about an employee's COVID-19 diagnosis of their obligation to keep the information confidential.



B. Confidentiality of Medical Information

B.1. (Added April 9, 2020): May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information?

The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this [confidential information](#). An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms.

B.2. (Added April 9, 2020): If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results?

Yes. The employer needs to maintain the confidentiality of this information.

B.3. (Added April 9, 2020): May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19?

Yes.

B.4. (Added April 9, 2020): May a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19?

Yes. The staffing agency or contractor may notify the employer and disclose the name of the employee, because the employer may need to determine if this employee had contact with anyone in the workplace.

B.5. (Added Sept. 8, 2020): Suppose a manager learns that an employee has COVID-19, or has symptoms associated with the disease. The manager knows she must report it but is worried about violating ADA confidentiality. What should she do?

The ADA requires that an employer keep all medical information about employees confidential, even if that information is not about a disability. Clearly, the information that an employee has symptoms of, or a diagnosis of, COVID-19, is medical information. But the fact that this is medical information does not prevent the manager from reporting to appropriate employer officials so that they can take actions consistent with guidance from the CDC and other public health authorities.

The question is really what information to report: is it the fact that an employee—unnamed—has symptoms of COVID-19 or a diagnosis, or is it the identity of that employee? Who in the organization needs to know the identity of the employee will depend on each workplace and why a specific official needs this information. Employers should make every effort to limit the number of people who get to know the name of the employee.

The ADA does not interfere with a designated representative of the employer interviewing the employee to get a list of people with whom the employee possibly had contact through the workplace, so that the employer can then take action to notify those who may have come into contact with the employee, without revealing the employee's identity. For example, using a generic descriptor, such as telling employees that "someone at this location" or "someone on the fourth

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floor” has COVID-19, provides notice and does not violate the ADA’s prohibition of disclosure of confidential medical information.

For small employers, coworkers might be able to figure out who the employee is, but employers in that situation are still prohibited from confirming or revealing the employee’s identity. Also, all employer officials who are designated as needing to know the identity of an employee should be specifically instructed that they must maintain the confidentiality of this information. Employers may want to plan in advance what supervisors and managers should do if this situation arises and determine who will be responsible for receiving information and taking next steps.

B.6. (Added Sept. 8, 2020): An employee who must report to the workplace knows that a coworker who reports to the same workplace has symptoms associated with COVID-19. Does ADA confidentiality prevent the first employee from disclosing the coworker's symptoms to a supervisor?

No. ADA confidentiality does not prevent this employee from communicating to his supervisor about a coworker’s symptoms. In other words, it is not an ADA confidentiality violation for this employee to inform his supervisor about a coworker’s symptoms. After learning about this situation, the supervisor should contact appropriate management officials to report this information and discuss next steps.

B.7. (Added Sept. 8, 2020): An employer knows that an employee is teleworking because the person has COVID-19 or symptoms associated with the disease, and that he is in self-quarantine. May the employer tell staff that this particular employee is teleworking without saying why?

Yes. If staff need to know how to contact the employee, and that the employee is working even if not present in the workplace, then disclosure that the employee is teleworking without saying why is permissible. Also, if the employee was on leave rather than teleworking because he has COVID-19 or symptoms associated with the disease, or any other medical condition, then an employer cannot disclose the reason for the leave, just the fact that the individual is on leave.

B.8. (Added Sept. 8, 2020): Many employees, including managers and supervisors, are now teleworking as a result of COVID-19. How are they supposed to keep medical information of employees confidential while working remotely?

The ADA requirement that medical information be kept confidential includes a requirement that it be stored separately from regular personnel files. If a manager or supervisor receives medical information involving COVID-19, or any other medical information, while teleworking, and is able to follow an employer’s existing confidentiality protocols while working remotely, the supervisor has to do so. But to the extent that is not feasible, the supervisor still must safeguard this information to the greatest extent possible until the supervisor can properly store it. This means that paper notepads, laptops, or other devices should not be left where others can access the protected information.

Similarly, documentation must not be stored electronically where others would have access. A manager may even wish to use initials or another code to further ensure confidentiality of the name of an employee.

Source: Equal Employment Opportunity Commission