COVID Realities and Implications for People with Disabilities

Applying the Americans with Disabilities Act

ADA National Network

• Ten regional centers provide guidance, training, and materials on the ADA
• 1-800-949-4232
• ADA.org
• Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services

Disability

• When is COVID-19 or Long COVID a disability under the ADA?
  • ADA definition of disability
    • Physical or mental impairment that substantially limits one or more major life activities
    • Record of such an impairment
    • Being regarded as having such an impairment
    • Individualized assessment
Employment

Reasonable Accommodation

- Covered employers need to provide reasonable accommodations to qualified applicants and employees with disabilities; may include:
  - Individuals who have COVID or Long COVID when it meets the definition of disability
  - Individuals who have disabilities that make them more vulnerable to contracting COVID and/or experiencing severe effects of COVID
  - Individuals who are "regarded as" having disabilities or "associated with" people with disabilities
    - Protected from discrimination, entitled to equal treatment
    - Not entitled to reasonable accommodations

Limitations

- Undue hardship
  - Significant difficulty or expense
- Direct threat
  - Significant risk of substantial harm to the health or safety of one’s self or others, which cannot be eliminated or reduced with reasonable accommodation
    - Based on individualized assessment
Workplace Policies

• Requirements such as ...
  • Use of face masks or other PPE, social distancing and other separation protocols, cleaning procedures, etc.
  • Vaccination

• Generally may be considered valid requirements
  • Subject to obligation to provide reasonable accommodations to workers with disabilities

Public Programs and Private Businesses

Core Obligations

• Covered entities must ...
  • Ensure access to programs, goods, services, activities
    • Including non-discrimination in provision of services for which individuals are eligible (medical care, vaccinations, testing, etc.)
  • Make reasonable modifications in policies, practices, and procedures when necessary
  • Communicate effectively with individuals who have hearing, vision, or speech disabilities
Limitation on Obligations

• Covered entities are not required to take any action that would cause...
  • Fundamental alteration
    • Changing the essential nature of goods, services, activities
  • Undue burden
    • Significant difficulty or expense

• When fundamental alterations or undue burdens arise, entities must consider alternatives!

Health and Safety

• Covered entities may establish legitimate, necessary safety requirements based on actual risks

• Covered entities do not have to allow an individual with a disability to pose a direct threat to the health or safety of others
  • Individualized assessment

Policies

• Requirements such as ...
  • Use of face masks or other COVID-related safety protocols
  • Vaccination, in some settings (e.g., schools)

• Generally may be considered valid requirements
  • Subject to obligation to make reasonable modifications, provide auxiliary aids/services for effective communication, etc.

COMMON QUESTION
Testing, Vaccines, and Treatment

Sites and Facilities: State and Local Governments

- Program accessibility
  - Not all testing, vaccination, or treatment sites need to be accessible, BUT if not all are accessible:
    - A reasonable number of comparable sites must be accessible
    - Information about which sites are accessible should be readily available to the public

Sites and Facilities: Businesses That Serve the Public

- Existing buildings are subject to requirements to remove barriers when readily achievable
  - All existing buildings may not be accessible
Sites and Facilities: Temporary Facilities

• Services provided in temporary or mobile facilities are covered

Effective Communication

• Auxiliary aids and services may be needed to ensure effective communication with individuals who have vision, hearing, or speech disabilities
  • For example, exchanging notes/using whiteboards, assistive listening devices, amplification or speech-to-text apps, printed materials, accessible digital information
  • Telephone systems used to get information or make appointments must be effective for individuals using telecommunications relay services (TRS)

Digital Access

• Access to websites and mobile apps to find information, make appointments, etc.
  • Effective communication for people with hearing or vision disabilities (websites compatible with assistive technologies used by many people who are blind or have low vision, captioned videos, etc.)
  • Compatibility with assistive technologies used by people with disabilities that affect mobility or dexterity (input other than mouse, time-out features, etc.)
  • Low flash rates (or no flashing elements)
  • Simple designs with plain language
Reasonable Modifications

- Examples:
  - Adjusting communication methods to accommodate individuals with intellectual, developmental, or cognitive disabilities
  - Modifying a limited visitation policy in a medical facility to enable an individual with a disability to have a needed support person or service provider present
  - Admitting service animals
  - Providing seating to accommodate individuals who have difficulty standing for long periods of time

Connecting with Communities

- Things to consider:
  - How will people learn about testing, vaccination, and treatment options?
    - Use multiple methods, languages to reach out
    - Consider proximity to public transit where available, as well as other options (collaborations, volunteer programs)
  - Will any testing/vaccination sites be able to accommodate individuals who may need to lie down, or who cannot wear face masks?

Questions?
Thank You for Joining Us!

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