



Employee Rights in COVID-19

The COVID-19 pandemic has changed work conditions for individuals worldwide. In this time of crisis, Disability Rights Pennsylvania recognizes the importance of protecting your employment rights. These FAQs can help you understand how federal and state laws can protect your job, your wages, and your livelihood.

The Equal Employment Opportunity Commission (EEOC) enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), which require employers to try to reasonably accommodate an employee's disability and which limit medical examinations and inquiries by employers. The Pennsylvania Human Relations Commission (PHRC) enforces the Pennsylvania Human Relations Act (PHRA), which prohibits discrimination in employment for a number of reasons, including on the basis of disability.

In response to the COVID-19 pandemic, Congress passed the Families First Coronavirus Response Act (FFCRA); the President signed the FFCRA into law on March 18, 2020, and it became effective on April 1, 2020. The law contains several important paid leave provisions related to the pandemic. The FFCRA requires most employers with fewer than 500 employees to provide paid sick leave and expanded family and medical leave to eligible employees for specified reasons related to COVID-19. These provisions will apply from April 1, 2020, through December 31, 2020. Covered employers must inform employees of certain available rights under the FFCRA. More information on the FFCRA for non-federal and federal workers can be found on the DOL website, <https://www.dol.gov/>

Information on the FFCRA for non-federal workers can be found [here](#). Information on the FFCRA for federal workers can be found [here](#).

Congress followed the FFCRA with a second bill, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which the President signed into law and which took immediate effect on March 27, 2020. The CARES Act includes several additional paid leave and unemployment insurance provisions. More information on the CARES Act can be found at <https://home.treasury.gov/policy-issues/cares>.

While the ADA, RA and PHRA continue to apply to entities subject to these laws, they do not interfere with or prevent employers from following the guidelines and suggestions made by the Center for Disease Control (CDC) or state and local public health authorities about steps employers should take in the COVID-19 pandemic.

Screening for COVID-19 at the Workplace

My potential employer is screening job applicants for symptoms of COVID-19 during the hiring process. Is that permitted?

Yes. Even though taking an applicant's or employee's temperature is generally considered a medical examination that would be restricted under the ADA, based on the current COVID-19 pandemic as assessed by the CDC and other public health authorities, an employer may measure an employee's body temperature as a screening method during the pandemic.

In addition to taking employees' body temperatures, the CDC asks employers to consider regular health checks (e.g., respiratory symptom screening) of staff and visitors entering buildings.

Can I refuse to have a medical examination to test for COVID-19?

As of this publication, an employer may prohibit an applicant or employee from being physically present in the workplace if applicants or employees refuse to permit the employer to take their temperature, or refuse to answer an employer's questions about whether the applicant or employee has COVID-19, has symptoms associated with COVID-19, or has been tested for COVID-19.

However, employers may not similarly screen teleworking employees or remote applicants who are not physically interacting with other employees.

I have a respiratory condition. Is it discrimination if my employer asks COVID-19 screening questions of me but not my co-workers?

Possibly. An employer must have a reasonable belief, based on objective evidence, that an employee is or might be infected by COVID-19 in order for the employer to lawfully ask only one particular employee (or a few specific employees), but not all employees, to answer COVID-19 screening questions or have their temperature taken. For example, if an employee has a persistent dry cough (which is a symptom of COVID-19), the employer may ask about the cough and whether the employee has seen a doctor, or whether the employee knows if he or she might have COVID-19.



Reasonable Accommodations

My employer is moving all business operations to online/ telework, but my disability limits my ability to do my job online. What are my rights?

You have the right to ask your employer to provide you with accommodations. You may refer to our online guide on [Reasonable Accommodations in the Workplace](#). You may also contact the [Job Accommodation Network](#) with specific questions. If this change in operation is temporary, you might consider asking for a temporary leave of absence or transfer to another position within your workplace.

My disability puts me at higher risk if I get the virus. Do I have the right to ask for a reasonable accommodation?

Yes. You must determine the type of accommodation needed. You may refer to our online guide on [Reasonable Accommodations in the Workplace](#). You may also contact the [Job Accommodation Network](#) with specific questions.

Can my employer take away my accommodations because of the COVID-19 changes?

Generally, no. If an employee with a disability is receiving a reasonable accommodation to perform the essential functions of their job, their employer must continue reasonable accommodations unless doing so would cause an undue hardship to the employer.

I am an essential worker but, due to my disability, I am unable to wear personal protective equipment like a face mask or gloves. Can I ask to be accommodated?

You may ask, but you may be denied an accommodation if your employer is unable to provide one that would enable you to do your essential job functions or cause a direct threat to your own or another's health or safety. According to the EEOC, an employer may require employees to wear personal protective equipment during a pandemic.¹ In Pennsylvania, all essential workers must wear face coverings in the workplace. However, if you have a disability or preexisting medical condition that limits your ability to wear personal protective equipment, you may ask for a related reasonable accommodation under the ADA (for example, a temporary shift to remote work duties), and your employer must try to make an accommodation unless doing so would cause an undue hardship to the employer.



Disclosure/ Confidentiality

Can an employer ask employees to disclose whether they have a medical condition that could make them especially vulnerable to COVID-19 complications if they are not experiencing any related symptoms?

No.

Can my employer ask me to take leave or work from home if I voluntarily disclosed that I have a condition that puts me at higher risk?

An employer can recommend that you take leave or work from home only if continuing at work would present a serious risk to you or others in the workplace, and that risk cannot be reduced by a reasonable accommodation.

Unlawful Termination/ Layoffs

I was asked to quarantine or self-isolate because of exposure to or symptoms of COVID-19. What are my employer's obligations to me?

It depends. Under the federal Families First Coronavirus Response Act (FFCRA), many employers with fewer than 500 employees must provide certain leave benefits to eligible employees who are unable to work or telework because of certain conditions related to COVID-19, including a quarantine or isolation directed by a healthcare provider or because the employee is experiencing symptoms and awaiting test results. The FFCRA also prohibits covered employers from retaliating against eligible employees who seek FFCRA benefits. More information on coverage and eligibility under the FFCRA is available at <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.

If your employer is not covered by or you are not eligible under the federal legislation, your employer likely has no legal obligation to you. Although Pennsylvania's Department of Labor & Industry (L&I) encourages employers to be accommodating and flexible with workers² and employers may offer alternative work arrangements such as teleworking and additional paid time off to employees, they have no legal obligation to do so.

If you are unable to work because of exposure to or symptoms of COVID-19, you may refer to the [Office of Unemployment Compensation](#) to check if you are eligible for Unemployment or Workers' Compensation benefits.

Can I get fired for having COVID-19?

The Families First Coronavirus Response Act (FFCRA) authorizes sick leave for workers diagnosed with COVID-19, and the FFCRA makes it illegal for a covered employer “to discharge, discipline, or in any other manner discriminate against any employee” who tries to access the law’s leave provisions. Additionally, the Family and Medical Leave Act (FMLA) and the ADA may protect workers who contract COVID-19 from being fired.

I believe I was discriminated at my workplace due to my disability. How can I address it?

For information on how to challenge employment discrimination, please refer to our publication [Filing Employment Discrimination Complaints Pursuant to the ADA and PHRA](#). You may also contact Disability Rights Pennsylvania if you have questions about your individual situation. Call us at 1-800-692-4773 or visit us at www.disabilityrightspa.org

Contact Information

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TTY), or email us at intake@disabilityrightspa.org.

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

IMPORTANT: This publication is for general informational purposes only. This publication is not intended, nor should be construed, to create an attorney-client relationship between Disability Rights Pennsylvania and any person. Nothing in this publication should be considered to be legal advice.

PLEASE NOTE: For information in alternative formats or a language other than English, contact Disability Rights Pennsylvania at: 800-692-7443, Ext. 400; TTY: 877-375-7139; or intake@disabilityrightspa.org.

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