

## EARN POLICY BRIEF

# Disability-Inclusive COVID-19 Workplace Health and Safety Plans



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On January 21, 2021, the White House issued a “[National Strategy for the COVID-19 Response and Pandemic Preparedness](#).” The National Strategy specifies seven goals, including safely reopening businesses, protecting those most at risk and advancing equity. In furtherance of the National Strategy, the White House issued several Executive Orders, including:

- [Executive Order 13991 Protecting the Federal Workforce and Requiring Mask-wearing](#) (January 20, 2021)
- [Executive Order 13999 Protecting Worker Health and Safety](#) (January 21, 2021)

The Centers for Disease Control and Prevention (CDC), the U.S. Department of Labor’s (USDOL) Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC) have issued sub-regulatory guidance recognizing employers’ responsibilities to ensure the safety and health of all employees, including employees with disabilities. The EARN website [COVID-19 Resources and Tools webpage](#) includes references to these and other resources.

The purpose of this policy brief is to highlight components of disability-inclusive COVID-19 health and safety plans for reopening workplaces. A “disability-inclusive” plan aligns with our nation’s disability and civil rights laws and regulations, including the Americans with Disabilities Act (ADA) and is consistent with policies and protocols adopted by federal and state public health and occupational safety and health officials. The policy brief responds to requests for assistance frequently brought to EARN by employers.

## COMPONENTS OF A DISABILITY-INCLUSIVE COVID-19 HEALTH AND SAFETY PLAN

A typical COVID-19 health and safety plan addresses:

- **Management strategies** (e.g., preparing a response plan, assigning a coordinator, training managers, establishing a communication system and keeping records); and
- **Strategies to prevent or reduce the transmission of the virus** (e.g., screening, testing, contact tracing, quarantining, isolating, physical distancing, vaccinating, installing barriers, using face coverings, using personal protective equipment, cleaning and disinfecting and adopting return-to-the workplace criteria).

A disability-inclusive COVID-19 health and safety plan also includes **worker protection strategies**, such as:

- Protecting against discrimination on the basis of disability under the ADA, including ensuring that employees are provided reasonable accommodations;
- Protecting workers at higher risk for severe illness due to pre-existing health-related conditions;
- Ensuring confidentiality of information; and
- Protecting against retaliation.

## PROTECTING AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY

[Title I of the Americans with Disabilities Act](#) (ADA) and implementing [regulations](#) prohibit employers from discriminating against qualified individuals on the basis of disability. Discrimination includes the failure to provide reasonable accommodation. Guidance issued by [EEOC](#) explains what an employer should know about COVID-19 and the ADA. The Guidance makes it clear that the ADA does not interfere with employers following advice from [CDC](#), [OSHA](#) and state and local public health authorities on appropriate steps to ensure the safety and health of the workforce.

In order to make a COVID-19 health and safety plan disability-inclusive by protecting against discrimination on the basis of disability, employers may want to consider including:

- Reference to the ADA, including the reasonable accommodation provision;
- Reference to the [EEOC guidance](#) applying the ADA to COVID-19 health and safety; and
- Recognition that the ADA provisions are construed to be consistent with guidance provided by [CDC](#), [OSHA](#) and state and local public health officials.

In addition, employers may want to consider including specific examples of how the ADA (and the reasonable accommodation provision) applies to particular situations, for example:

- Telework: Recognize that absent undue hardship to the employer, telework may be required as a reasonable accommodation for a particular employee, even if the company has a general telework policy providing sole discretion with managers to determine who is offered the opportunity to telework.
- Use personal protective equipment (PPE) when necessary. There are times when PPE is not required under OSHA standards or other industry-specific guidance, but some workers may have a legal right to PPE as a reasonable accommodation under the ADA.
- How the interactive process works during the pandemic. Consistent with [EEOC guidance](#), explain how the interactive process (discussion between an employer and employee to determine an effective accommodation that enables the employee to perform the essential functions of the job) may be modified during the pandemic. Examples of modifications include shortening the interactive process or providing a requested accommodation on an interim or trial basis, with an end date, while awaiting receipt of medical documentation. Also, employers may inform the workforce that employees with disabilities may request in advance accommodations that they may need when the workplace re-opens.
- In certain situations, reasonable accommodation may reduce or eliminate a direct threat to health and safety. Consistent with [EEOC guidance](#), explain how the provision of reasonable accommodation (absent undue hardship) may reduce or eliminate a direct threat to health and safety.
- Educate and train workers on COVID-19 policies and procedures. Consistent with [OSHA guidance](#) and [EEOC guidance](#) explain that effective and meaningful communication includes using accessible formats and American Sign Language or other accessible communication methods, if applicable and in a manner accessible to individuals with disabilities.
- Suppressing the Spread of the Hazard using face coverings. Consistent with [EEOC guidance](#) and [OSHA guidance](#), discuss the possibility of reasonable accommodations under the ADA (absent undue hardship) for any workers who are unable to wear or have difficulty wearing certain types of face coverings due to a disability (in workplaces with employees who are deaf or have hearing impairments, consider acquiring masks with clear coverings over the mouth for all workers to facilitate lip-reading).
- Vaccinations. Consistent with [EEOC guidance](#), describe the legal framework by which an employer that chooses to mandate COVID-19 vaccinations must be prepared to evaluate, based on an individualized assessment, whether a specific individual qualifies for a medical/disability or religious exemption and is entitled to a reasonable accommodation (absent undue hardship).

## PROTECTING WORKERS AT HIGHER RISK FOR SEVERE ILLNESS

The CDC recognizes that some employees are in vulnerable populations or are at higher risk for severe illness. [CDC guidance](#) explains that these populations may need to take extra precautions. Those at higher risk for severe illness, include older adults and people of all ages with underlying medical conditions, particularly if not well controlled,



including those with chronic lung disease, moderate to severe asthma, serious heart conditions, immune disorders, obesity, diabetes or chronic kidney or liver disease.

In order to make a COVID-19 health and safety plan disability-inclusive by protecting workers at higher risk for severe illness, employers may want to consider:

- Including reference to [CDC guidance](#) for protecting workers at higher risk for severe illness; and
- Encouraging workers who have self-identified as higher risk to consult with supervisors or human resources personnel about reasonable accommodations (absent undue hardship) such as working at home (part or full time) or using additional personal protective equipment.

## ENSURING CONFIDENTIALITY OF INFORMATION

Consistent with [EEOC guidance](#), under the ADA, employers must maintain all information about an employee's illness related to COVID-19 as a confidential medical record. The fact that information related to COVID-19 is considered medical information does not prevent the employer from reporting to appropriate officials so that they can take action, consistent with guidance from CDC and other public health officials.

In order to make their COVID-19 health and safety plan disability-inclusive by ensuring confidentiality of information, employers may want to consider:

- Including reference to the [EEOC guidance](#) requiring employers to maintain COVID-19 related illness of an employee as a confidential medical record; and
- Explaining that the ADA requires that an employer keep all medical information about employees confidential, even if that information is not about a disability, including information that an employee has symptoms of or a diagnosis of COVID-19. The fact that this is medical information does not prevent the employer from reporting to appropriate officials so that they can take actions consistent with guidance from CDC and other public health authorities.

## PROTECTING AGAINST RETALIATION

The ADA makes it unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by the ADA or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing to enforce the ADA. The ADA also makes it unlawful to coerce, intimidate, threaten, harass or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected under the ADA. [[29 CFR 1630.12](#)].

In order to make a COVID-19 health and safety plan disability-inclusive by protecting against retaliation, employers may want to consider including reference to and explain the prohibition against taking retaliatory action for exercising rights under the ADA.