

INDIANA CIVIL RIGHTS COMMISSION & EQUAL  
EMPLOYMENT OPPORTUNITY COMMISSION HOST

**COVID-19 &  
EMPLOYMENT LIVE  
VIRTUAL PRESENTATION**

*...THE PRESENTATION WILL BEGIN  
MOMENTARILY...*





A COVID ERA WORKPLACE  
Indiana Civil Rights Commission  
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Program Director,  
Employment Section





# DISCLAIMER

- No information contained in, or discussed pursuant to this presentation, may be considered legal advice. If you require legal advice or guidance, please contact an attorney.
- The information contained in this presentation is only intended to provide general information and not to be interpreted as ICRC or EEOC's policies.





# PURPOSE

The Indiana Civil Rights Commission **enforces** the civil rights laws of the State of Indiana. We **investigate** complaints of discrimination & **educate** organizations, companies, landlords, associations, & individuals on their rights & responsibilities under Indiana Civil Rights Laws.





# PROTECTED CLASSES

In Indiana a person may not be treated differently because of their:

- 1. Race**
- 2. Color**
- 3. Gender**
- 4. Veteran's Status**
- 5. National Origin**
- 6. Ancestry**
- 7. Religion**
- 8. Disability**





# Who is Covered in Indiana?

- Any person employing six (6) or more persons within the state
- Federal coverage requires fifteen (15) or more people
- An employee does not include any individual employed:
  - By his parents, spouse or child
  - In the domestic service of any person





# DISCRIMINATORY PRACTICES IN THE AGE OF COVID

- Employment decisions based on stereotypes or assumptions
- Harassment on the basis of membership in a protected class
- Refusing Reasonable Accommodations
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices



# THE EEOC AND COVID-19

Technical Assistance for  
Pandemics

Presenter: Brien Shoemaker

US EEOC

[brien.shoemaker@eoc.gov](mailto:brien.shoemaker@eoc.gov)





## ABOUT THE EEOC

- Created by Congress with the passage of the Civil Rights Act of 1964.
- Is an independent, federal agency.
- Is a federal law enforcement agency.
- Resolves complaints of employment discrimination.
- Has 53 field offices nationwide
  - The Indianapolis District has offices in Indianapolis, Detroit, Cincinnati, and Louisville
  - Has jurisdiction over Indiana, Michigan, Kentucky, and the western half of Ohio.



Equal Pay Act of  
1963

Title VII of the Civil  
Rights Act of 1964

Age Discrimination  
in Employment Act  
of 1967

Americans with  
Disabilities Act of  
1990

Rehabilitation Act of  
1973 (federal  
sector)

Civil Rights Act of  
1991

Genetic Information  
Nondiscrimination  
Act of 2008 (GINA)

Americans with  
Disabilities  
Amendments Act of  
2008 (ADAAA)

Lily Ledbetter Fair  
Pay Act of 2009

**LAWS ENFORCED BY EEOC**

# Protected Bases

It is unlawful to discriminate in employment because of:



race



color



disability



genetic info.



religion



national origin



sex



Pregnancy



age (40+)

# OBJECTIVES

- Know where to find updated information regarding COVID-19
- Understand the current guidelines related to Title VII of the Civil Rights Act, with emphasis on National Origin discrimination
- Understand the current guidelines on the Americans with Disabilities Act and COVID-19
- Know that Reasonable Accommodations are still required under the Americans with Disabilities Act



[WWW.DOL.GOV](http://WWW.DOL.GOV)

Wage and Hour Issues

FLSA

FMLA

OSHA

Unemployment Compensation

Families First Coronavirus Response Act

[WWW.EEOC.GOV/CORONAVIRUS](http://WWW.EEOC.GOV/CORONAVIRUS)

EEOC Chair Janet  
Dhillon's statement

EEOC's What You Should  
Know about the ADA  
and COVID-19

EEOC's Pandemic  
Preparedness in the  
Workplace and the ADA

EEOC's webinar  
recording and transcript

[www.coronavirus.gov](http://www.coronavirus.gov)

[www.cdc.gov/coronavirus](http://www.cdc.gov/coronavirus)

[www.usa.gov/coronavirus](http://www.usa.gov/coronavirus)

# NATIONAL ORIGIN DISCRIMINATION

Includes Asian Americans and  
other people of Asian descent



## PREVENT HARASSMENT

### Miscommunication

- Use video conference or the preferred communication method of the employee
- Address issues right away



## PREVENT HARASSMENT

### Lack of Personal Connection

- Team Activities
- Buddy System
- Informal Chat Software

COVID-19 AND  
THE ADA

Reasonable  
Accommodations

Direct Threat

Disability Related Inquires  
and Medical Examinations

# REASONABLE ACCOMMODATION

A change in work environment or an exception to a work policy that would allow a person with a disability to have equal opportunity in the workplace.

Employers must still accommodate applicants and employees with a disability during a pandemic.



## DIRECT THREAT

If an individual with a disability poses a direct threat despite reasonable accommodations, they are not protected by the nondiscrimination provisions of the ADA.

Based on current guidance (March 2020) from the CDC, the COVID-19 pandemic meets the direct threat standard.

This can and will change as the threat from COVID-19 decreases. Use current guidelines from the CDC or local public health officials.

# DISABILITY RELATED QUESTIONS AND MEDICAL EXAMINATIONS

Pre Offer – Employer should not ask questions or require examinations

Post Offer – Employer may ask questions and may conduct examinations

Current Employees – If job related and consistent with business necessity

HOW MUCH  
INFORMATION  
MAY AN  
EMPLOYER  
REQUEST  
FROM AN  
EMPLOYEE  
WHO CALLS IN  
SICK?

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.

THE CDC IDENTIFIES A NUMBER OF MEDICAL CONDITIONS THAT MIGHT PLACE INDIVIDUALS AT “HIGHER RISK FOR SEVERE ILLNESS” IF THEY GET COVID-19. AN EMPLOYER KNOWS THAT AN EMPLOYEE HAS ONE OF THESE CONDITIONS AND IS CONCERNED THAT HIS HEALTH WILL BE JEOPARDIZED UPON RETURNING TO THE WORKPLACE, BUT THE EMPLOYEE HAS NOT REQUESTED ACCOMMODATION. HOW DOES THE ADA APPLY TO THIS SITUATION?

- First, if the employee does not request a reasonable accommodation, the ADA does not mandate that the employer take action.
- If the employer is concerned about the employee’s health being jeopardized upon returning to the workplace, the ADA does not allow the employer to exclude the employee – or take any other adverse action – *solely* because the employee has a disability that the CDC identifies as potentially placing him at “higher risk for severe illness” if he gets COVID-19. Under the ADA, such action is not allowed unless the employee’s disability poses a “direct threat” to his health that cannot be eliminated or reduced by reasonable accommodation.



REQUIREMENT OF  
WEARING  
PROTECTIVE  
EQUIPMENT

An employer may require employees to wear personal protective equipment

Reasonable  
Accommodations still apply

QUESTIONS EMPLOYERS SHOULD ASK  
THEMSELVES

What is the  
CDC guidance

Are they a  
Direct Threat?

Is there an  
accommodation?

# WWW.EEOC.GOV/CORONAVIRUS

EEOC Chair Janet Dhillon's statement

EEOC's What You Should Know about the ADA and COVID-19

EEOC's Pandemic Preparedness in the Workplace and the ADA

EEOC's webinar recording and transcript

[www.coronavirus.gov](http://www.coronavirus.gov)

[www.cdc.gov/coronavirus](http://www.cdc.gov/coronavirus)

[www.usa.gov/coronavirus](http://www.usa.gov/coronavirus)

# CONTACT INFORMATION

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# FILE A COMPLAINT

- Report incidents to us immediately!
  - Complaints of discrimination in Employment must be reported within 180 days of the date of alleged discriminatory action.
- ICRC staff will assist you in filing a complaint of discrimination
- Complaints against employers of 15+ are considered dual-filed with EEOC
- Any resident or employee within the State of Indiana can file a complaint (permanent residency is not required)





# CONTACT INFORMATION

## Indiana Civil Rights Commission

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(800) 628-2909

[www.in.gov/icrc](http://www.in.gov/icrc)



# Q & A SESSION

