



**The Ability
Center**



Legal Protections in the Workplace for People with Disabilities and Caretakers During the COVID-19 Pandemic

Workers with disabilities and family caretakers in the United States are facing an unprecedented time where it may be risky or impossible to return to work due to the current COVID-19 worldwide Pandemic. However, using the legal protections available to them during this time can help many maintain employment, mitigate risk of infection from COVID-19, care for family members without losing employment, or in dire situations, maintain unemployment compensation until the public health emergency has passed. This resource is meant as a tool to set out the legal protections available to workers during this time.

What laws protect employees during the COVID-19 pandemic?

Several laws protect workers and families at-risk of serious complications from COVID-19 or caretaking for a person at-risk of serious complications from COVID-19:

- Americans with Disabilities Act (ADA), 42 U.S.C. 12101;
- CARES Act/Families First Coronavirus Response Act, 29 U.S.C. 2620;
- Family and Medical Leave Act, 29 U.S.C. 2601;
- Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 701.

Are there actions I can take if my disability makes it unsafe for me to return to work during the COVID-19 pandemic?

Due to the COVID-19 pandemic, people with significant health conditions or those over the age of 65 may not feel safe returning to work because of the risk of exposure to COVID-19. This would be especially true if a person has a condition listed by the Centers for Disease Control and Prevention as placing them at risk for serious complications of COVID-19.¹ However, highly effective vaccines are available to all adults and to children ages 12 and above. The best way to protect yourself is to get vaccinated.

- **What public health orders remain in place?**

The governor has rescinded the public mask order for people who are fully vaccinated against COVID-19. People who are unvaccinated are still supposed to wear masks in indoor spaces and where social distancing is not possible. All businesses and organized gatherings, where possible, shall post clearly visible signage at all entrances to each of their grounds or premises requiring all persons not fully vaccinated entering to wear a facial covering. The text shall state that, unless the individual is fully vaccinated, all persons are required to wear a facial covering and engage in social distancing at all times in or on the grounds or premises.

Your employer has an obligation to follow all public health orders issued by the Ohio Department of Health and the Centers for Disease Control. If your workplace is not following Department of Health guidelines, you can report your workplace to the Health Department. Your county health department has the authority to investigate and order employers to comply with public health orders and advisories. You can find contact information for your county health department online at <https://odh.ohio.gov/wps/portal/gov/odh/find-local-health-districts> or call 1-833-427-5634.

- **You may be able to request a reasonable accommodation under the Americans with Disabilities Act (ADA).**

¹ A list of conditions that could place people at risk for serious complications of COVID-19 is available on the CDC's website: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html.

If you have a disability, you may need your employer to make a change to a work policy or to your job for you to be able to work or continue working. During the COVID-19 pandemic, you may need an employer to allow you to take extra precautions to ensure that you are not at risk for a COVID-19 infection even if that is not something they would do during ordinary times.

The Americans with Disabilities Act covers all employers who have fifteen (15) or more employees; state and government employers, labor unions, and employment agencies. It protects people with disabilities from being denied a job or having their job terminated if they can perform the essential functions of their job with or without reasonable accommodations due to a disability. The ADA requires employers to grant reasonable accommodations to people with disabilities where it is necessary because of their disability if it is not an undue cost or administrative burden.

Several conditions listed by the U.S. Centers for Disease Control as being at greater risk for serious complications of COVID-19 may constitute a qualifying disability under the Americans with Disabilities Act. While a person does not qualify for ADA protections based on age, many people over the age of 65 also have disabilities that would qualify them for ADA protections. A disability means any physical or mental impairment that substantially limits one or more major life activities. While not exhaustive, there is a list of qualifying disabilities both in the Americans with Disabilities Act itself and on the EEOC website.

A person who has a qualifying disability under the ADA is entitled to a reasonable accommodation when it is reasonable and necessary due to a disability in order to perform the essential functions of their job. Accommodations are considered “reasonable” if they do not create an undue hardship and are not a direct threat to anyone.

Whether an accommodation is reasonable takes into consideration the costs to your employer; whether what you are asking for have the potential to harm anyone else; and whether you can meet the essential functions of your job with the accommodation. More information on requesting a reasonable accommodation is included later in this document.

- **You may be able to take unpaid leave under the Family and Medical Leave Act.**

If you get sick from COVID-19, and you are unable to exercise the options above, the FMLA entitles eligible employees of covered employers to take unpaid leave for specified family and medical reasons with continuation of group health insurance coverage and with assurances that their job will be available when they return. Because, “to care for the employee’s spouse, child, or parent who has a serious health condition,” and, “a serious health condition that makes the employee unable to perform the essential functions of his or her job,” are qualifying reasons under the FMLA, a person who cannot work because he or she has contracted COVID-19 or must care for a family member who has contracted COVID-19, would qualify for protection under the FMLA during the course of the disease.²

Qualifying employees can take up to 12 weeks of unpaid leave within a 12-month period for a serious health condition, such as COVID-19, or to take care of your spouse, child, or parent who has a serious health condition. You will need to provide documentation to support your need for medical leave. If you need to take FMLA leave, you will need to contact your manager or human resources department. Some employers offer paid sick leave, and you may be able to be paid for some or all of your FMLA leave.

- **If you are a federal employee, you also have employment protections.**

While the ADA does not apply directly to federal employees, Section 501 of The Rehabilitation Act of 1973 protects federal employees from employment discrimination and applies ADA protections to federal employees. The FFCRA and FMLA also apply to federal employees.

How do I request a reasonable accommodation?

If your disability places you at risk for serious complications of COVID-19, you should make your request in writing to your manager or human resources department. You should get a letter

² 29 U.S.C. 2612(a).

from a medical professional stating your disability-related need for an accommodation and provide a copy to your manager and human resources department along with your request and keep a copy for yourself.

Make sure to ask for a response in writing. Keep a copy of your request and of any response. If your employer responds to you in person or by phone, keep detailed notes of the conversation and request the same response in writing or follow up with an e-mail.

Here are some examples of disabilities identified by the CDC that may require a reasonable accommodation due to COVID-19 (this list is not exhaustive):

- Asthma, COPD, or other illnesses that affect the lungs;
- Heart conditions;
- Diabetes;
- Anxiety, panic attacks, or anxiety-related disorders;
- Pregnancy;
- HIV/AIDS, autoimmune diseases, or other conditions that cause a weakened immune system;
- Obesity; or
- Chronic kidney disease.

What accommodations can I request?

Reasonable accommodations under the ADA are individualized based on your workplace and position. Employers are not required to allow exceptions to workplace policies or job duties that would prevent you from performing the essential functions of your job. However, if you have a disability-related reason that your workplace is unsafe for you due to potential complications from a COVID-19 infection, an employer is required to engage in an interactive process with you to help minimize your risk.

Here are some examples of possible accommodations related to COVID-19 (this list is not exhaustive):

- Allowing you to telework or work from home;
- Modifying your work schedule to decrease contact with others;
- Moving your workstation from an open-office environment or a cubicle to an enclosed office or room;
- Enforcing mask wearing and social distancing policies at work;
- Installing barriers or shields between you and the public;
- Allowing a face shield instead of a mask or face covering; or
- Changing from one type of position with public contact (like a waiter or host) to a position with less public contact (like a dishwasher).

What are my options if my request for a reasonable accommodation is denied?

If your employer denies your request, you can call the Ability Center of Greater Toledo at 419-885-5733 or the Equal Opportunity Employment Commission at 1-800-669-4000 for further information.

You can also choose to file a complaint with the Department of Justice or Equal Opportunity Employment Commission. For more information visit:

https://www.ada.gov/filing_complaint.htm or <https://crc.ohio.gov/>.

Finally, the ADA contains a private right of action, and you could seek help from an employment attorney. You can contact the Toledo Bar Association for a referral at www.toledobar.org or 419-242-2000.

Can I continue to receive unemployment compensation if I choose not to go back to work if it is unsafe because of my disability?

It is unlikely that you will be able to continue to receive unemployment benefits if you do not go back to work. Additionally, work search requirements have been reinstated for all beneficiaries.

- **To continue to qualify, you will need to be able to prove that you had “good cause” for not returning to work, being fired, or quitting.**

The bureau of unemployment compensation will reach out to your former employer to ask if she offered you a position, and it is possible that your claim will get denied. If that happens, you will need to appeal and argue before a hearing officer why you had good cause to not return to work. If your employer allows you the option to telework or work from home, or another appropriate reasonable accommodation, you must do so and will not be eligible for unemployment compensation.

Governor DeWine issued an executive order (Executive Order 2020-24D) that laid out several “good cause” exemptions for not returning to work during the COVID-19 pandemic, but this order will expire with the ending of the health emergency on June 2, 2021.: The “good cause” exemptions were as follows:

- If you are over the age of 65;
- If you are considered high risk for contracting COVID-19 due to a health condition and based on the CDC’s guidelines (note: you must have a note from a medical professional);
- If you have evidence that your employer is violating health and safety guidelines such as not enforcing social distancing, mask wearing for employees, handwashing, or sanitizing (note: you will need proof such as a documented complaint to a manager or human resources, photo or video evidence, or a documented complaint to the county health department);
- If you have been advised to quarantine by a medical professional or county health department due to exposure to COVID-19 (note: you must have a letter from your medical professional or county health department); or
- If you must stay home to care for a relative who has been diagnosed with COVID-19 (note: you will need a note from the relative’s medical provider confirming diagnosis and the need for someone to care for the relative).

Given that the health order will be ending on June 1, 2021 and vaccines are now widely available, it is unlikely that a person will succeed in arguing a good cause exemption, even using the above list, unless they can provide documentation from a medical professional about why they cannot get a COVID-19 vaccine.

What do I do if my unemployment compensation is terminated or my claim is denied?

You can appeal an employment compensation denial or termination to a hearing officer. The appeals process is laid out in the Workers' Guide to Unemployment Compensation, which is available on the Ohio.gov website: <https://ohio.gov/wps/portal/gov/site/jobs/resources/workers-guide-to-unemployment-application>

You can also contact Advocates for Basic Legal Equality, Inc. at 1-888-534-1432 or online at www.legalaidline.org.

Can I continue to receive unemployment compensation if I choose not to go back to work because of a lack of childcare?

Maybe. Governor DeWine's Executive Order did not mention the need to stay home with a child due to school closures, online classes, daycare closures, or lack of available childcare. However, you could make an argument that you have "good cause" to stay home with your child for one of those reasons. Because this is an untested argument, you should be aware that unemployment compensation payments made to you after your offer of employment may need to be paid back as an overpayment if you are not successful in proving good cause for not returning to work.

You will need to provide support for your argument. Ways that you can gather proof include:

- If your child's school district remains closed or adopts a hybrid model where your child is in school some days and at home other days, you should be able to get a copy of its policies either online or by contacting the school board's office.
- If you choose to enroll your child in an online-only program or home school program because you feel your child or someone in your home has a weakened immune system or is high risk for catching COVID-19, you should get a note from a medical professional to support your argument.
- If your daycare has remained closed or has no available spots for your child, ask for a letter or email confirming there are no spots.
- If you have been unable to find suitable or affordable childcare options, keep a log of every daycare and individual you've called and what you were told.