

COVID-19 “Long-Haulers” and Workplace Accommodations

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By Sarah M. Sawyer

Employers spent the better part of 2020 and the beginning of 2021 evaluating how to prevent employees from contracting COVID-19 and address COVID-19-positive employees. Now, as employees return to work, employers face new requests from employees who had COVID-19 weeks or months ago but have not fully recovered. These individuals, typically called "long-haulers," often suffer from lasting physical and psychological issues from their illness. With little currently known about long-haulers, the problems and ailments long-haulers face are likely to impact the workplace for the foreseeable future.

COVID-19 long-haulers deal with a host of ailments, including shortness of breath, debilitating fatigue, sluggish mental capacity and memory loss, and dizziness. As one can imagine, these symptoms may inhibit an employee's performance or attendance. As a result, employers should consider ways to address these issues and remain compliant with applicable state and federal laws.

If an employee expresses concern regarding long-haul COVID-19 symptoms impacting their work performance, employers should consider whether the employee's challenges trigger company obligations under the Americans with Disabilities Act (ADA). While there's little precedent regarding whether COVID-19 long-haulers ailments are a condition covered under the law, employees who request accommodations because of long-haul symptoms will likely qualify for accommodation.

The definition of "disability" under the ADA is intentionally broad, and the ADA does not provide a specific list of what conditions are covered. Instead, individuals meet the definition of "disability" if they have "a physical or mental impairment that substantially limits one or more major life activities." While the ADA does not likely cover an employee who contracts COVID-19 and fully recovers within the standard recovery time of two weeks, if an employee has lingering COVID-19 symptoms that limit their ability to perform their job duties, they likely qualify for coverage under the ADA.

Similarly, long-haulers who ask for leave may be entitled to it under the Family Medical Leave Act (FMLA). The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. A serious health condition also includes impairment of more than three calendar days plus two or more visits to a health care provider. An employee suffering from long-term COVID-19 ailments is likely to meet the definition of a serious health condition and may qualify for leave, intermittent or continuous, under the FMLA.

Ultimately, as employees return to work, employers should be mindful of handling requests from employees around COVID-19 related illnesses and challenges to ensure they are compliant and do not inadvertently or improperly deny employee requests.