



Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

FACT SHEET: Returning to Work during COVID-19

My employer asked me to return to work, but I am not sure it is safe for me to do so because of my disability. What are my options?

These are very challenging times, especially for employees with disabilities. There are no perfect answers, but here is a roadmap to help guide your decision-making. You should also discuss your safety concerns with your doctor.

Option 1: Return to work

Option 2: Return to work with a reasonable accommodation

A reasonable accommodation is any change in the work environment or in the way things are customarily done that enables you, as a person with a disability, to enjoy equal employment opportunities. Consider whether your employer can make changes to your job that will enable you to return safely.

- Examples of accommodations:
 - Provision of personal protective equipment
 - Creation of barriers between other employees and coworkers or clients
 - Working from home (or [Telework](#))
 - [Modifying your job duties](#) (removing non-essential job tasks) so that you only need to perform tasks that are possible to be performed off-site or that can be performed while social distancing
- After you identify a solution, request it as a reasonable accommodation and engage in the interactive process. [Learn more about requesting reasonable accommodations](#).
 - **Caution:** It is important to be open-minded and as flexible as reasonably possible when exploring options. While this is true generally, it is especially true during the COVID-19 pandemic as your employer is most likely getting requests from other employees as well.
 - **Note:** Employers only need to provide accommodations if there is a link between your disability and your need for an accommodation.

Option 3: Request reassignment as a reasonable accommodation

If there are no accommodations that will enable you to return to your job, consider asking for **reassignment** to a different, vacant position as a reasonable accommodation.

- Reassignment may be a good option if: your employer has a vacant position; you are qualified for the vacant position; it would be safe for you to work in the vacant position; the position is not subject to a bona fide seniority system.
- Reassignment is considered the accommodation of last resort, as it is only required in certain situations.
- [Learn more about reassignment](#), including how to request reassignment as a reasonable accommodation.

Option 4: Request leave

If you cannot return to your current job with or without accommodations and reassignment is not an option, consider whether to ask for a leave. You may have leave rights under the following policies and laws:

- **Employer policies.** Does your employer offer a medical or personal leave? Has your employer granted extended leaves to other employees?
- **Expanded Family Medical Leave Act (FMLA) from the Families First Coronavirus Response Act (FFCRA).** If you work for a private employer that has between 50 and 500 employees or certain public employers, you may be entitled to up to 12 weeks of job-protected leave to care for a child (or adult child with a disability) whose school is closed or whose childcare provider is unavailable for reasons related to COVID-19.
 - Learn more from the [Department of Labor](#)
- **Emergency Paid Sick Leave from the Families First Coronavirus Response Act.** If you work for a private employer that has between 50 and 500 employees or certain public employers, you may be entitled to up to 2 weeks of paid sick leave if you are unable to work or telework and need leave because you (1) are **subject to a government quarantine or isolation**; (2) have been **advised by a health care provider to self-quarantine**; (3) are **experiencing COVID-19 symptoms** and are seeking a medical diagnosis; (4) are **caring for an individual** subject to quarantine/isolation; (5) are **caring for a child** whose school or place of care is closed; or (6) are experiencing any other **substantially-similar condition** specified by the Secretary of Health and Human Services:
 - Learn more from the [Department of Labor](#)
- **Family and Medical Leave Act (FMLA):** This law provides [qualifying employees who work for covered employers](#) with up to 12 weeks of job-protected leave if they are incapacitated by a serious health condition.
 - According to the Department of Labor, this can include COVID-19.
 - **Caution:** The FMLA does not require employers to provide FMLA for the purpose of avoiding exposure to COVID-19.
 - Learn more from the Department of Labor:
 - [COVID-19 and the Family and Medical Leave Act Questions and Answers](#)
- **Americans with Disabilities Act:** Under the ADA, you may be eligible for leave as a reasonable accommodation. However, this leave is not considered job protected, and

courts have found that more than a month of leave under the ADA is not a reasonable accommodation. ADA leave is also unpaid leave.

Option 5: Consider Unemployment Insurance

You may be eligible for unemployment insurance if you cannot return to work due to a medical condition. Seek legal advice about your rights to unemployment before making a decision not to return to work.

- Learn more from **Legal Aid Chicago**
 - Unemployment Helpline: (800) 445-9025
 - [Website with resources](#)
 - [Fact Sheet about Unemployment Insurance](#)

I worked from home during the pandemic, but now my employer asked me to return to the physical worksite. Do I have the right to keep working from home?

It depends. When you worked from home during the pandemic, were you able to do all of the essential parts of your job? If yes, it may be reasonable for your employer to allow you to do so. If no, it is most likely not reasonable. Even if your employer excused you from certain job tasks during the pandemic, your employer is not required to continue to excuse essential parts of your job.

- Learn more about [telework as a reasonable accommodation](#).
- **Note:** Courts have been skeptical about telework as a reasonable accommodation. Given the number of people who worked from home successfully during the COVID-19 pandemic, we expect more courts and employers to be willing to consider telework as a reasonable accommodation for employees with disabilities.

I had accommodations before the pandemic. Can I keep them when I return to work?

Yes. Your employer needs to keep giving you the accommodations you need for your disability, including ones unrelated to the pandemic, as long as the accommodation does not create a direct threat to safety or other undue hardship.

If your employer changed your job or work environment and your accommodation needs have changed, tell your employer so you can discuss a solution.

Can my employer require me to provide medical information before I return to work?

It depends.

- Typically, employers are not allowed to ask for medical information unless it is “job-related and consistent with business necessity.” This means to ask disability-related questions or perform a medical exam, your employer must have a reasonable basis to believe that you are unqualified for your job, need a reasonable accommodation or pose a direct threat to the health and safety of yourself and others.
- **During the pandemic,** employers may:
 - Ask if you are experiencing any of the symptoms of COVID-19, such as fever, chills, cough, shortness of breath or sore throat

- Take your temperature daily or administer a COVID-19 test, even though this is typically considered a medical examination
- Require you to stay home and provide a doctor’s note confirming you are not contagious before you are allowed to return to work if you are experiencing symptoms of COVID-19
- **Note:** With the exception of providing information to the CDC about employees who have tested positive for COVID-19, your employer has an obligation under the ADA to keep that information confidential.

My employer said all employees must wear masks, but I can’t wear one because of my disability. Is this legal?

Most likely. During the COVID-19 pandemic, employers are most likely allowed to require employees who interact with customers or other employees to wear a mask to help prevent the spread of the disease. The ADA most likely does not require employers to make exceptions to a reasonable mask-policy if necessary to protect the health and safety of its workforce.

However, if you cannot wear a mask because of a disability, you can ask for a reasonable accommodation and engage in the interactive process with your employer to see if there are any possible solutions.

Examples of accommodations:

- Transferring to a more isolated work site that makes social distancing possible
- Working the night shift, if it has fewer employees, to make social distancing possible
- Telework

You might also consider whether there are *any* masks that you could wear. Not all masks are equal, and certain people find certain masks more breathable, less constricting and more comfortable.

Can my employer force me on leave after I return to work?

It depends on the reason.

- If you disclose that you have COVID-19 → yes
- If you display symptoms of COVID-19 → yes
- If you have a disability that puts you at higher risk of severe illness if you contract COVID-19 → probably not
 - Before removing you from the workplace, your employer would have to show that you pose a “direct threat” that cannot be reduced with a reasonable accommodation. This is a very high standard.

Where can I learn more?

- Learn more from the **Job Accommodation Network (JAN):**
 - [Accommodation and Compliance: COVID-19](#)
- Learn more from the **Equal Employment Opportunity Commission (EEOC):**

- [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)
- [Pandemic Preparedness in the Workplace and the ADA](#) (updated in response to COVID-19 Pandemic)
- [COVID-19: Ask the EEOC Webinar](#)
- [Coronavirus and COVID-19](#)



DO YOU HAVE A QUESTION?

CONTACT THE HELPLINE FOR FREE LEGAL ADVICE

Contact Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (1-844-744-4879) (toll free - voice)

800-610-2779 (tty)

employment@equipforequality.org

www.equipforequality.org/employment

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

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