



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. I don't know if it is safe for me to do so because of my disability. What are my options?

These are very difficult times, especially for employees with disabilities. There are no perfect answers, but here are some of your options. You should also talk about your safety concerns with your doctor.

Option 1: Return to work

It may be possible for *some* people in *some* workplaces to go back to work without asking for anything different than other employees. Maybe your worksite is large and easily allows for social distancing. Or maybe your employer is giving all employees personal protective equipment (PPE) and adding plexiglass barriers. If this is all that you would need to return safely, you might be able to return to work without asking for any accommodations.

- **Tip:** Communication is key. Ask your supervisor or Human Resources Department what safety measures have been put into place to ensure employee safety.

Option 2: Return to work with a reasonable accommodation

A reasonable accommodation is any change to your workplace or in the way you usually do your job. Think about what changes would help you return safely.

- There are many possible accommodations, but common examples during COVID-19 include:
 - Providing personal protective equipment (PPE), including modified PPE like clear masks or non-latex gloves
 - Adding barriers, like plexiglass, to keep you away from other employees and coworkers or clients
 - Working from home (or [Telework](#))
 - [Modifying your job duties](#) (removing non-essential job tasks) so that you only do tasks that can be done off-site or that can be done while social distancing
- If there is an accommodation that could help you, ask your employer for it. When you ask for an accommodation, you should use the buzz words: "I am asking for a reasonable accommodation under the ADA." You should make this request in writing. Your employer should start the "interactive process" to talk about your request and try to find an accommodation that will work for you and your employer. [Learn more about requesting reasonable accommodations.](#)

- **Tip:** It is important to be open-minded and flexible during the interactive process, especially 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: Ask for reassignment as a reasonable accommodation

If there are no accommodations that will help you return to your job, think about asking to be **reassigned** to a different, open position as a reasonable accommodation.

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

Option 4: Ask for time off of work or leave

If you cannot return to your current job with or without accommodations and reassignment is not an option, think about 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 allowed other employees to take time off?
- **Leave Under the Families First Coronavirus Response Act (FFCRA).** At the beginning of the pandemic, Congress passed the FFCRA which provided certain paid leave for employees related to COVID-19. The legal requirements ended on December 31, 2020. The American Rescue Plan Act extended the FFCRA to September 30, 2021, but now employers may voluntarily choose whether to provide this leave. It also expanded the categories of reasons an employee may take leave.
 - **Expanded Family Medical Leave.** Private employers with less than 500 employees and certain public employers can choose to give you up to 12 weeks of paid job-protected leave.
 - **Emergency Paid Sick Leave.** Private employers with less than 500 employees or certain public employers can choose to give you up to 2 weeks of paid sick leave.
 - **Qualifying reasons:** You can now ask for expanded Family Medical Leave or emergency paid 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
 - (6) are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services
 - (7) are getting a COVID-19 vaccination
 - (8) are recovering from an injury, disability, illness, or condition related to a COVID-19 vaccination
 - (9) are seeking or waiting for the results of a COVID-19 test or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis
 - Learn more from the [Department of Labor](#) (Note: DOL has not updated its guidance since the law was extended)
- **Family and Medical Leave Act (FMLA):** The FMLA gives [qualifying employees who work for covered employers](#) with up to 12 weeks of job-protected leave if they are unable to work due to a serious health condition.
 - According to the Department of Labor, this can include COVID-19.
 - **Tip:** The FMLA does not require employers to give FMLA leave to employees to avoid 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 (ADA):** Under the ADA, you may be able to ask for a short amount of time off as a reasonable accommodation.
 - **Tip:** Under the ADA, leave is unpaid. In Illinois, leave is likely limited to about two weeks. Learn more about [using the ADA to ask for time off for your disability](#).

Option 5: Unemployment Insurance

If Options 1 – 4 will not work for you, and you cannot return to work due to a medical condition, you may be able to get unemployment insurance. Ask for legal advice about unemployment insurance before you decide 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. My employer says no I need to come back to the physical worksite. Do I have the right to keep working from home?

It depends. When you worked from home during the pandemic, could you do all 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. Your employer does not have to remove “essential” parts of your job as an accommodation, even if it did for a short time during COVID-19.

- 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.

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 make me give medical information before I return to work?

It depends.

- Employers usually are not allowed to ask for medical information unless it is “job-related and consistent with business necessity.” This means your employer usually 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.
- **Given the serious nature of the pandemic**, the EEOC has said that employers may:
 - Ask if you are experiencing symptoms of COVID-19, such as fever, chills, cough, shortness of breath or sore throat
 - Take your temperature or give you a COVID-19 test
 - Tell you to stay home and give a doctor’s note saying you are not contagious before returning to work if you have COVID-19 symptoms
- **Note:** Your employer has an obligation under the ADA to keep medical information related to COVID-19 confidential. The only exception is that your employer may be able to share this information with the CDC or other public health officials.

My employer said all employees must wear masks. I cannot 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 that is 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. Your employer should then engage in the interactive process 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

Think if 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 say that you have COVID-19 → yes
- If you have symptoms of COVID-19 → yes
- If you have a disability that puts you at higher risk of severe illness if you get 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](#)
- Learn more from the **ADA National Network**
 - [Disability & 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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