Workers with Long COVID-19 and the ADA

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Session Agenda/Goals

• Define and clarify “Long COVID”
• Discuss potential ADA implications related to Long COVID
• Identify strategies for accommodating workers with Long COVID
• Provide up-to-date resources & answer your questions

What is Long COVID?

A BRIEF DEFINITION AND
A LIST OF COMMON SYMPTOMS
Long COVID Defined

• AKA long-haul COVID, post-acute COVID-19, chronic COVID, post-COVID conditions
• Wide range of new, returning, or ongoing health problems occurring 4 or more weeks after initial COVID-19 infection
• Different types and combinations of health problems for varying lengths of time
• Can happen to anyone who had COVID, even if mild or no initial symptoms
• Source: Centers for Disease Control & Prevention

Common Symptoms

• Breathing difficult/shortness of breath
• Fatigue
• Brain fog
• Persistent cough
• Chest or stomach pain
• Rash/skin issues
• Mood/behavioral changes
• Post-exertional malaise
• Headache
• Heart palpitations
• Joint/muscle pain
• Digestive issues
• Sleep issues
• Fever
• Lightheadedness
• Change in smell/taste
• Changes in menstruation
Other Potential Impacts

• For those with severe illness with COVID-19:
  ◦ Multiorgan effects
  ◦ Autoimmune conditions
  ◦ Multisystem inflammatory syndrome (MIS) – rare, mostly children

• Potential effects of illness or hospitalization
  ◦ Severe weakness or exhaustion
  ◦ Post-intensive care syndrome
  ◦ Post-traumatic stress disorder and other ongoing mental health/psychiatric issues

Is Long COVID an ADA-Protected Disability?
Federal Agency Interpretation

• **White House** – Long COVID can be a disability under various Federal civil rights laws (7/26/21)

• **US DHHS & US DOJ** – Long COVID can be a disability under ADA Titles II & III, Section 504 of the Rehab Act, and Section 1557 of the PPACA (7/26/21)

• **US EEOC** – Long COVID may be a disability under the ADA and Section 501 of the Rehab Act in “certain circumstances” (9/9/21)

Students with Disabilities

• **US DOE – Office of Civil Rights** (7/26/21)
  ◦ Children or students experiencing Long COVID may be eligible for special education and related services under IDEA and/or protections and services under Section 504
  ◦ Post-secondary students with Long COVID may require academic adjustments and/or reasonable modifications under Section 504
Are Long-Haulers Covered or Not?

• Long COVID **may be** a disability under the ADA and other Federal disability laws if it **substantially limits one or more major life activity**

• ADA Definition of Disability:
  ◦ Physical or mental impairment that substantially limits one or more major life activity
  ◦ Record of impairment which substantially limits...
  ◦ Regarded by others as having...

• Recent guidance focuses on first prong

Long COVID as an ADA Disability

• Physical or mental impairment?
  ◦ Physiological condition affecting one or more body systems

• Major life activities?
  ◦ Wide range of activities – e.g., caring for oneself, working, breathing, concentrating/thinking, mobility, interacting with others, communicating
  ◦ Operation of a major bodily function
Substantial Limitation

- A few reminders from the ADA Amendments Act (2008):
  - Should be construed broadly
  - Extensive analysis not required
  - Impairment doesn’t need to prevent or significant restrict performance of the major life activity
  - Limitations do not need to be severe, permanent, or long-term
  - Determined without the benefit of medication, treatment, or other methods for symptom management
  - Even if intermittent, considering a disability if substantially limiting when the impairment is active

Is Long COVID always a disability?

- NO

- Individualized assessment to determine if Long COVID condition or any of its symptoms substantially limit a major life activity

- EEOC will be publishing further guidance on Long COVID, the ADA, and employment in coming weeks
Long COVID & ADA Protections

ADA & Employment – Five Basic Requirements

• Equal opportunity to apply for jobs and work in jobs for which they are qualified
• Equal opportunity to be promoted
• Equal access to benefits and privileges of employment
• No harassment or hostile work environment
• Reasonable accommodations to enjoy equal employment opportunity
Two Areas of ADA Coverage

- Maintaining workers’ confidentiality and privacy
- Reasonable accommodations for workers with Long COVID

Privacy re: Long COVID

- Post-COVID conditions – different and separate from COVID-19 infection
  - Disclosure to public health organizations – contact tracing
  - Share medical information only on an as-needed basis
Confidentiality

• Strict ADA limitations on use of medical information
• All medical information, including RA documentation, kept in file separate from personnel records
• Includes sharing information with coworkers (need-to-know)

Reasonable Accommodations

• Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities
RA Basics

- Employee should be prepared to disclose Long COVID limitations causing barriers in the workplace if requesting RA
- Employer must be an effective accommodation
- Employer can still request documentation to verify the need for accommodation
- Employees can disclose limitations and/or request RA throughout the employment relationship
- RA can be long-term for ongoing limitations or short-term for temporary or episodic limitations
- Both parties should participate in an interactive process to determine effective accommodation solutions

RA Lessons Learned

- Recognizing when the ADA is triggered is central to ADA compliance regarding reasonable accommodations
- May need to adapt the interactive process
- Job restructuring – change whether or how EJFs are performed, but employer can restore
- Return to work accommodations are case-by-case
- Keep state requirements in mind

*Thanks to JAN’s ADA & Accommodation Lessons Learned: COVID-19 Edition*
Common Long COVID Accommodations

- Part-time or modified work schedules
- Acquiring new equipment or modifying existing equipment
- Making changes or adjustments to the workplace to increase access and usability
- Adjusting or modifying training materials, methods, policies
- Job restructuring or job sharing
- Flexible scheduling
- Providing readers or interpreters
- Remote work
- Adjusting or modifying supervision methods
- Reassignment
- Intermittent, short-term, or long-term leave

Unreasonable Requests

- Eliminating essential job functions
- Lowering production standards applied to all employees
- Providing personal use items/services
- Changing an employee’s supervisor
- Excusing violation of uniformly applied conduct rules
Undue Hardship

• Action that requires significant difficulty or expense - unduly costly, extensive, substantial, disruptive, fundamentally alters nature or operation of business
• In relation to size of the employer, resources available, nature of the operation
• Must be determined on a case-by-case basis
• IMPORTANT: Consider alternate accommodations that do not create undue hardship

Moving Forward

• For employers:
  ◦ Support your employees with post-COVID conditions
  ◦ Review your accommodation and leave policies
  ◦ Review your job descriptions and essential job functions
  ◦ Train your managers, supervisors, and talent acquisition and HR professionals
  ◦ Stay up-to-date on agency guidance
  ◦ Documentation and record-keeping strategies
Moving Forward (Continued)

• For service providers:
  ◦ Keep in mind ADA Title II and III requirements
  ◦ Coach for disclosure, RA requests, job search
  ◦ Keep training
  ◦ Stay up-to-date on agency guidance

• For self-advocates:
  ◦ If you’re new to the ADA & disability rights, keep learning
  ◦ Reach out for help
  ◦ Learn about your resources including Long COVID support groups

ADA & Long COVID Resources
A Few Publications...

• HHS & DOJ’s Guidance on ‘Long COVID’ as a Disability under the ADA, Section 504, and Section 1557
• EEOC’s What You Should Know about COVID-19 and the ADA, the Rehab Act, and Other EEO Laws
• DOE OCR’s Long COVID Under Section 504 & IDEA
• CDC’s Caring for People with Post-COVID Conditions
• ACL’s How ACL’s Disability & Aging Networks Can Help People with Long COVID

A Few Organizations

• Office of Disability Employment Policy – Long COVID resource page
  ◦ Job Accommodation Network 800/526-7234 (V, TTY)
    https://askjan.org/topics/COVID-19.cfm
  ◦ Employer Assistance & Resource Network
    https://askearn.org/page/100
COVID & Mental Health

- Supporting & Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19
  [https://www.ada.gov/students_self-harm_fact_sheet.pdf](https://www.ada.gov/students_self-harm_fact_sheet.pdf)
- COVID-19 Resource & Information Guide (NAMI)
- Mental Health & COVID-19 Information & Resources (Mental Health America) [https://mhanational.org/covid19](https://mhanational.org/covid19)
- Worker Support (CDC)

National Network of ADA Centers

- Funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), the network consists of ten Regional ADA Centers located throughout the United States and an ADA Knowledge Translation Center (ADAKTC).
- The ADA National Network provides information, guidance and training on how to implement the ADA
- Contact information
  ◦ Toll free hot line - 800-949-4232 (voice/TTY)
  ◦ Web site - [wwwadata.org](http://wwwadata.org)
Questions?

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