EEOC PROVIDES NEW COVID-19 TECHNICAL ASSISTANCE – Q&A Regarding Disabilities

Available in the link below, the EEOC offers new Q&A related to disabilities issues, including: (1) five regarding disability-related inquiries and medical exams; (2) four regarding confidentiality of medical information; (3) five regarding hiring and onboarding; (4) four regarding reasonable accommodation; and (5) one regarding furloughs and Layoffs. The EEOC also states that unlawful harassment for all protected classes can be reduced by “explicitly communicating to the workforce that fear of the COVID-19 pandemic should not be misdirected against individuals because of a protected characteristic.”

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitation_act_coronavirus.cfm

Regarding accommodations, the EEOC states that “employers and employees may find it helpful to consult the Job Accommodation Network (JAN) website for types of accommodations.” The EEOC provides the link below:

https://askjan.org/topics/COVID-19.cfm

Regarding furloughs and layoffs, the EEOC reminds that special rules apply when an employer is offering employees severance packages in exchange for a general release of all discrimination claims against the employer. The EEOC provides the link below, which includes general guidance about releases, including special rules that apply when employers decide to reduce their workforce by laying off or terminating a group of employees (e.g., pursuant to "exit incentive programs" and "other employment termination programs").

https://www.eeoc.gov/policy/docs/qanda_severance-agreements.html
While there are several interesting questions and answers, I found this one particularly interesting:

**Question:** May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19?

**Answer:** The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer. However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

Relatedly, those in Delaware should note that Governor Carney issued a “Fourth Modification of Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat,” which is available in the link below. In it, “essential businesses” are permitted to operate. However, a specific “responsibility” of such businesses is to “exclude individuals . . . at highest risk of poor outcomes such as those over age 60 . . . from on-premises work (with the exception of healthcare workers).”


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