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THE REGISTER CITIZEN

Opinion: Long COVID's implications under the ADA

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COVID-19 testing at Patrick R Waldron Veterans Hall in Rogers Park, Danbury, last month.

H John Voorhees III / Hearst Connecticut Media

As we prepare to enter the third summer of the COVID-19 pandemic, approximately 60 percent of Americans have now been infected, despite significant advances in vaccines and boosters. While mild or moderate COVID-19 symptoms may last anywhere from a few days to two weeks, others may experience lingering health problems months after the infection period, a condition now recognized as long COVID.

Even if an individual only experienced a mild case, persistent symptoms, for some, have significant implications for the day-to-day lives of Americans, including their ability to work.

Individuals who experience long COVID symptoms are often referred to as “long-haulers.” Studies indicate that about 10 percent of people infected with COVID-19 will experience long-haul symptoms. As such, employers should be aware of

their obligations to accommodate employees with COVID-19 or long COVID. Employees, too, should understand their rights.

Last year, the federal government announced protection under the Americans with Disabilities Act for individuals suffering from long COVID. The guidance issued from these departments specifically state that long COVID can be an “actual disability” under the ADA.

According to the Centers for Disease Control and Prevention, people with long COVID have a range of symptoms that can last weeks or months and can worsen with physical or mental activity. Examples include: tiredness or fatigue; difficulty thinking or concentrating (sometimes called “brain fog”); shortness of breath; dizziness on standing; heart palpitations; chest pain or headache; cough; joint or muscle pain; depression or anxiety; fever; and loss of taste or smell.

This list is not exhaustive. Some also experience damage to multiple organs including the heart, lungs, kidneys, skin and brain.

The ADA is a civil rights law that guarantees equal employment opportunities for individuals with disabilities. Private employers with 15 or more employees may not discriminate on the basis of a disability and must provide reasonable accommodations to qualified applicants or employees.

Long COVID can qualify as a disability under the ADA if it substantially limits one or more major life activities, including the ability to work. However, each case requires an individual assessment and does not always rise to the level of a disability. Once an employer is aware that an employee is experiencing long COVID symptoms, the obligation is on the employer to engage in an interactive process with applicants and employees to determine whether the person’s symptoms substantially limit major life activities.

While not every case will trigger obligations under the ADA, employers should treat requests for accommodations due to long COVID as they would any other disability.

There are many reasons why employees request work-related modifications around COVID-19, but the ADA will only apply when a worker has a documented

medical reason for requesting accommodations. If a reasonable accommodation is needed and requested by an individual with a disability to apply for a job, perform a job, or enjoy benefits and privileges of employment, the employer must provide it unless it would pose an undue hardship, meaning significant difficulty or expense. However, the employer has the discretion to choose among effective accommodations, meaning that the employee may not receive the exact accommodation requested if not practicable for the employer.

When faced with a request for an accommodation, employers are permitted to ask questions to determine whether the condition is a disability and may request medical documentation.

Reasonable accommodations might include:

providing a quiet workspace for an employee with “brain fog”;

reducing physical exertion of an employee with shortness of breath;

modifying procedures so an employee who finds it too tiring to stand at a register can sit;

providing an ergonomic workstation for an employee with joint pain or body aches;

allowing rest breaks or a flexible schedule for an employee with extreme fatigue;

developing a plan with the employee to address sudden exacerbations of symptoms;

permitting employees time off or scheduling flexibility for doctors’ appointments or treatment of symptoms.

Accommodations are not one-size-fits-all. Flexibility by both the employer and employee is crucial to determine appropriate accommodations. Given the unpredictable nature of COVID-19 and its related conditions, employers should remain up to date on the latest guidance and consult with an employment

attorney before taking any adverse action against an employee who complains of COVID-19 or long COVID symptoms. Similarly, employees should be aware of the protections afforded them by state and federal laws, enforced by agencies such as the Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission.

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