

POLICY BRIEF

COVID 19: FEDERAL DISABILITY-SPECIFIC AND OTHER RELATED GUIDANCE

Currently, state and local policymakers are adopting and implementing policies in response to the COVID-19 pandemic. This policy brief summarizes guidance issued by Federal Government agencies that can assist in ensuring state and local policy aligns with our nation's civil rights laws and other disability-related policies.

These Federal Government agencies include the:

- [Equal Employment Opportunity Commission](#);
- [Centers for Disease Control and Prevention](#);
- [U.S. Department of Labor](#);
- [U.S. Department of Health and Human Services, Office for Civil Rights](#); and
- [U.S. Department of Homeland Security, Federal Emergency Management Agency \(FEMA\)](#)

Also included in this policy brief are resources developed by the [Job Accommodation Network](#) and [Employer Assistance and Resource Network on Disability Inclusion](#).

The **State Exchange on Employment & Disability (SEED)**, an initiative funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), assists states in developing effective and inclusive workforce policies that promote disability employment. Recognizing that every state is unique, SEED offers policy options and resources states can tailor to meet their needs and goals. To this end, SEED partners with leading intermediary organizations that serve as trusted sources of information to state and local policymakers.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The ADA and the Rehabilitation Act

The Equal Employment Opportunity Commission (EEOC) released, "[What You Should Know About the ADA, the Rehabilitation Act, and COVID-19](#)," which was last updated on April 23, 2020. This resource addresses topics such as the applicability of guidelines and suggestions by the Centers for Disease Control and Prevention; requesting information from an employee who calls in sick; taking body temperatures of employees; screening applicants; and other guidance for employers navigating the impact of COVID-19 in the workplace. The update includes a section on return to work with Q&A's that provide clarification that as government stay-at-home orders and other restrictions are modified or lifted in an employer's area, employers may implement employee screening that is consistent with advice from the Centers for Disease Control and Prevention and public health authorities for their workplace.

Pandemic Preparedness and the ADA

The EEOC updated its resource, "[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)," on March 21, 2020 in response to COVID-19. This guidance document provides background information on pandemics and ADA requirements and standards, and addresses topics such as disability-related inquiries and medical examinations; direct threat affirmative defense; and reasonable accommodations. The document also provides guidance for employers on requirements and restrictions before, during, and after a pandemic.

EEOC Webinar on COVID-19

On March 27, 2020, to supplement these documents, the EEOC posted a pre-recorded webinar addressing questions arising under any of the Federal Equal Employment Opportunity Laws and the COVID-19 pandemic. The video can be [seen on YouTube](#). A [transcript of the webinar](#) is also available.

Additional Information

Additional information and updates from the EEOC are available on its [Coronavirus and COVID-19 webpage](#).

CENTERS FOR DISEASE CONTROL AND PREVENTION

People with Disabilities

The Centers for Disease Control and Prevention (CDC) provides guidance to people with disabilities through a dedicated [webpage](#) that identifies those who may be at increased

risk of COVID-19, suggests precautions, and highlights several ways people with disabilities can prepare during the outbreak.

Employers and Businesses

The CDC published "[Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019](#)" to offer information on planning, preparing, and responding to the pandemic (last updated April 9, 2020). The webpage addresses and provides resources on topics such as reducing transmission among employees; identifying exposures to COVID-19 in the workplace; educating employees on the disease; and maintaining healthy business operations and a healthy work environment.

Healthcare Professionals

The CDC's "[Coronavirus Disease 2019 Information for Healthcare Professionals](#)" (updated April 13, 2020) provides an overview of what healthcare providers should know about COVID-19, as well as answers to frequently asked questions. The resource also addresses more specific topics, such as guidance for healthcare providers on COVID-19 and pregnant women and those with underlying medical conditions; for public health personnel evaluating persons under investigation; for collection and submission of postmortem specimens; for clinical and home care; and more.

Additional CDC Guidance

Additional information and guidance from CDC are available on its [Coronavirus Disease 2019 webpage](#).

U.S. DEPARTMENT OF LABOR

Federal Contractors

The U.S. Department of Labor (USDOL) issued a [news release](#) and a [National Interest Exemption memorandum](#) to facilitate response efforts for COVID-19. The memorandum grants limited exemptions from some of the requirements applicable to Federal Government contractors for a period of three months, from March 17, 2020 to June 17, 2020, subject to an extension should special circumstances in the national interest so require. The exemption and waivers granted relate to obligations under EO 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), which require that federal contracting agencies include, in all covered supply and service and construction contracts, an equal opportunity clause. It extends to all affirmative action obligations of supply and service and construction contracts, and other obligations as specified in the Federal Acquisition Regulations (FAR). The exemption and waivers do not apply to the processing of complaints of discrimination under 41 CFR 60-1.21-1.24, 41 CFR 60-300.61, and 41 CFR 60-741.61.

They also do not exempt a covered contractor from their obligation to comply with other federal, state, and local civil rights laws.

Wages, Hours, and Leave

USDOL's Wage and Hour Division (WHD) developed a webpage titled "[COVID-19 and the American Workplace](#)," which provides information on common issues employers and workers face when responding to COVID-19, including the effects on wages and hours worked under the Fair Labor Standards Act (FLSA), job-protected leave under the Family and Medical Leave Act (FMLA), and expanded family and medical leave under the Families First Coronavirus Response Act (FFCRA).

The FFCRA gives all American businesses with fewer than 500 employees funds to provide employees with paid leave, either for the employee's own health needs or to care for family members. The legislation aims to ensure that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus while at the same time reimbursing businesses.

On April 6, 2020, WHD published in the Federal Register [temporary regulations](#) to implement public health emergency leave under Title I of the Family and Medical Leave Act (FMLA), and emergency paid sick leave to assist working families facing public health emergencies arising out of Coronavirus Disease 2019 (COVID-19) global pandemic. This rule is effective from April 2, 2020, through December 31, 2020. This rule became operational on April 1, 2020.

The WHD webpage also offers several resources including:

Fact Sheets

- [Families First Coronavirus Response Act: Employee Paid Leave Rights](#)
- [Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)

Questions and Answers

- [Families First Coronavirus Response Act: Questions and Answers](#)
- [COVID-19 and the Fair Labor Standards Act: Questions and Answers](#)
- [COVID-19 and the Family and Medical Leave Act: Questions and Answers](#)

Posters

- [Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#)

- [Federal Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#)
- [Families First Coronavirus Response Act Notice – Frequently Asked Questions](#)

Field Assistance Bulletin

- [Field Assistance Bulletin 2020-1: Temporary Non-Enforcement Period Applicable to the Families First Coronavirus Response Act \(FFCRA\)](#)

Webinar

- [Webinar: The Families First Coronavirus Response Act \(FFCRA\)](#)
 - [Webinar Slides \(PDF\)](#)

Workplace Safety

USDOL's Occupational Safety and Health Administration (OSHA) has several resources to help employers and workers prepare for and respond to coronavirus in the workplace.

OSHA's "[Guidance on Preparing Workplaces for COVID-19](#)," developed in collaboration with the U.S. Department of Health and Human Services, aims to help employers respond in the event of coronavirus in the workplace.

OSHA's "[Temporary Enforcement Guidance - Healthcare Respiratory Protection Annual Fit](#)" (March 14, 2020) provides suggestions and options to help increase the availability of N95 filtering facepiece respirators for healthcare providers.

Additional guidance includes:

- [Discretion in Enforcement when Considering an Employer's Good Faith Efforts During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#) (April 16, 2020)
- [COVID-19 Guidance for the Manufacturing Industry Workforce \(Spanish\)](#) (April 16, 2020)
- [Interim Enforcement Response Plan for Coronavirus Disease 2019 \(COVID-19\)](#) (April 13, 2020)

Finally, the OSHA [COVID-19 webpage](#) (updated April 16, 2020) includes infection prevention information specifically for employers and workers.

Unemployment Insurance Flexibilities

NOTE: [Check with your state's unemployment insurance program](#) regarding the rules in your state.

USDOL's Employment and Training Administration (ETA) issued [new guidance](#) (March 12, 2020) on state flexibilities in administering their unemployment insurance programs to assist Americans affected by the COVID-19 outbreak. Under the guidance, federal law permits significant flexibility for states to amend their laws to provide unemployment insurance benefits in multiple scenarios related to COVID-19. For example, federal law allows states to pay benefits where:

- An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
- An individual is quarantined with the expectation of returning to work after the quarantine is over; and
- An individual leaves employment due to a risk of exposure or infection or to care for a family member.

In addition, federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19.

On April 5, 2020, the USDOL issued a [press release](#) announcing the publication of [Unemployment Insurance Program Letter \(UIPL\) 16-20](#) providing guidance to states for implementation of the Pandemic Unemployment Assistance (PUA) program. Under PUA, individuals who do not qualify for regular unemployment compensation and are unable to continue working as a result of COVID-19, such as self-employed workers, independent contractors, and gig workers, are eligible for PUA benefits. This provision is contained in Section 2102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act enacted on March 27, 2020.

PUA provides up to 39 weeks of benefits to qualifying individuals who are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work due to COVID-19 related reasons, as defined in the CARES Act. Benefit payments under PUA are retroactive, for weeks of unemployment, partial employment, or inability to work due to COVID-19 reasons starting on or after January 27, 2020. The CARES Act specifies that PUA benefits cannot be paid for weeks of unemployment ending after December 31, 2020.

Eligibility for PUA includes those individuals not eligible for regular unemployment compensation or extended benefits under state or federal law or pandemic emergency

unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. Covered individuals also include self-employed individuals, those seeking part-time employment, and individuals lacking sufficient work history. Depending on state law, covered individuals may also include clergy and those working for religious organizations who are not covered by regular unemployment compensation.

Additional [guidance](#) regarding unemployment insurance includes:

- [UIPL 17-20](#): Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020- Pandemic Emergency Unemployment Compensation (PEUC) Program Operating, Financial, and Reporting Instructions
- [UIPL 16-20](#): Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions
- [UIPL 15-20](#): Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions
- [UIPL 14-20](#): Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility
- [UIPL 13-20](#): Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020
- [UIPL 10-20](#): Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)

Support for Dislocated Workers and States

On March 18, 2020, USDOL's ETA announced the availability of up to \$100 million in [National Health Emergency Dislocated Worker Grants](#) to help states, territories, and tribal governments respond to the workforce-related impacts of COVID-19.

USDOL News Releases

USDOL has issued numerous news releases related to COVID-19 and the workplace, including:

- [U.S. Department of Labor Ends Temporary Non-Enforcement of Paid Leave Protections to Help American Workers During Coronavirus Pandemic](#) (April 20, 2020)
- [ICYMI: U.S. Department of Labor Acts to Help American Workers and Employers During the Coronavirus Pandemic](#) (April 19, 2020)

- [U.S. Department of Labor Considers Employer's Good Faith Efforts When Enforcing Compliance During Coronavirus Pandemic](#) (April 16, 2020)
- [U.S. Department of Labor Issues Alert to Help Keep Manufacturing Workers Safe During Coronavirus Pandemic](#) (April 16, 2020)
- [U.S. Department of Labor Issues Alert to Help Keep Manufacturing Workers Safe During Coronavirus Pandemic](#) (April 16, 2020)
- [U.S. Department of Labor Awards More than \\$131 Million in Dislocated Worker Grants in Response to Coronavirus Public Health Emergency](#) (April 15, 2020)
- [U.S. Department of Labor Announces OSHA Interim Enforcement Response Plan to Protect Workers During The Coronavirus Pandemic](#) (April 13, 2020)
- [U.S. Department of Labor Takes Action to Help American Workers During the Coronavirus Pandemic](#) (April 13, 2020)
- [U.S. Department of Labor Issues Alert to Keep Package Delivery Workers Safe During COVID-19 Pandemic](#) (April 13, 2020)
- [U.S. Department of Labor Publishes Latest Guidance Regarding Pandemic Emergency Unemployment Compensation Program](#) (April 10, 2020)
- [U.S. Department of Labor Issues Enforcement Guidance For Recording Cases of COVID-19](#) (April 10, 2020)
- [U.S. Department of Labor Expands Temporary Guidance for Respirator Fit-Testing to All Industries during COVID-19 Pandemic](#) (April 8, 2020)
- [U.S. Department of Labor Issues Alert to Keep Retail Workers Safe During Coronavirus Pandemic](#) (April 8, 2020)
- [U.S. Department of Labor Reminds Employers That They Cannot Retaliate Against Workers Reporting Unsafe Conditions During Coronavirus Pandemic](#) (April 8, 2020)
- [U.S. Department of Labor Publishes New OSHA Poster Aimed At Reducing Workplace Exposure to the Coronavirus](#) (April 6, 2020)
- [U.S. Department of Labor Publishes Guidance on Pandemic Unemployment Assistance](#) (April 5, 2020)
- [U.S. Department of Labor Publishes Guidance on Federal Pandemic Unemployment Compensation](#) (April 4, 2020)
- [U.S. Department of Labor Issues Guidance for Respirators Certified under Other Countries' Standards During COVID-19 Pandemic](#) (April 3, 2020)

- [U.S. Department of Labor Announces New CARES Act Guidance on Unemployment Insurance for States in Response to COVID-19 Crisis](#) (April 2, 2020)
- [U.S. Department of Labor Announces New Paid Sick Leave and Expanded Family and Medical Leave Implementation](#) (April 1, 2020)
- [U.S. Department of Labor Adds to Guidance for Workers and Employers Explaining Paid Sick Leave and Expanded Family and Medical Leave Benefits Under the Families First Coronavirus Response Act](#) (March 28, 2020)
- [U.S. Department of Labor Publishes More Guidance for Workers and Employers Explaining Paid Sick Leave, Expanded Family and Medical Leave Benefits](#) (March 27, 2020)
- [U.S. Department of Labor Announces Additional Guidance Explaining Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act](#) (March 26, 2020)
- [U.S. Department of Labor Invites Stakeholders to a National Online Dialogue on Paid Family and Medical Leave and Paid Sick Leave Under the Families First Coronavirus Response Act](#) (March 25, 2020)
- [U.S. Department of Labor Publishes Guidance Explaining Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act](#) (March 24, 2020)
- [U.S. Department of the Treasury, IRS and the U.S. Department of Labor Announce Plan to Implement Coronavirus-Related Paid Leave for Workers and Tax Credits for Small and Midsize Businesses to Swiftly Recover the Cost of Providing Coronavirus-Related Leave](#) (March 20, 2020)
- [USDA and DOL Announce Information Sharing to Assist H-2A Employers](#) (March 19, 2020)
- [U.S. Department of Labor Announces Availability of Up to \\$100 Million in National Health Emergency Dislocated Worker Grants in Response to COVID-19 Outbreak](#) (March 18, 2020)
- [U.S. Department of Labor Takes Actions to Facilitate Response Efforts For COVID-19 Outbreak](#) (March 17, 2020)
- [U.S. Department of Labor Announces Temporary Pause in Job Corps Center Operations](#) (March 17, 2020)
- [U.S. Department of Labor Issues Temporary Enforcement Guidance for Respirator Fit-Testing in Healthcare during COVID-19 Outbreak](#) (March 14, 2020)

- [U.S. Department of Labor Announces New Guidance on Unemployment Insurance Flexibilities During COVID-19 Outbreak](#) (March 12, 2020)
- [U.S. Department of Labor Offers Guidance for Preparing Workplaces for Coronavirus](#) (March 9, 2020)

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE FOR CIVIL RIGHTS

Civil Rights and HIPAA

The Office for Civil Rights at the U.S. Department of Health and Human Services (HHS) published a bulletin titled "[Civil Rights, HIPAA, and the Coronavirus Disease 2019](#)" on March 28, 2020 to help ensure that entities covered by civil rights authorities keep in mind their obligations under laws and regulations that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and exercise of conscience and religion in HHS-funded programs. The bulletin explains that persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative "worth" based on the presence or absence of disabilities. Decisions by covered entities concerning whether an individual is a candidate for treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence.

Additionally, government officials, health care providers, and covered entities should ensure all segments of the community are served by:

- Providing effective communication with individuals who are deaf, hard of hearing, blind, and visually impaired through the use of qualified interpreters, picture boards, and other means;
- Providing meaningful access to programs and information to individuals with limited English proficiency through the use of qualified interpreters and through other means;
- Making emergency messaging available in plain language and in languages prevalent in the affected area(s) and in multiple formats, such as audio, large print, and captioning, and ensuring that websites providing emergency-related information are accessible;
- Addressing the needs of individuals with disabilities, including individuals with mobility impairments, individuals who use assistive devices or durable medical equipment, and individuals with immunosuppressed conditions including HIV/AIDS in emergency planning; and
- Respecting requests for religious accommodations in treatment and access to clergy or faith practices as practicable.

The Office for Civil Right, Department of Health and Human Services (HHS/OCR) has resolved two complaints involving COVID-19 rationing and the ADA (OCR press releases for resolutions to OCR complaints in [AL](#) and [PA](#)).

In addition, HHS has issued a document titled "[Crisis Standard of Care and Civil Rights Laws](#)." This document highlights language from the National Academies of Science, Engineering and Medicine (NASEM), the Department of Health and Human Services Office of Civil Rights (DHS OCR), the Federal Emergency Management Agency (FEMA), and relevant laws that support the adherence to civil rights laws and disability rights laws in the application of Crisis Standards of Care during resource-constrained emergencies, such as the COVID-19 pandemic.

U.S. DEPARTMENT OF HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

On April 9, 2020 FEMA issued a [Bulletin](#) on Civil Rights titled, "[Ensuring Civil Rights During the COVID-19 Response](#)." The Bulletin addresses topics such as:

- Effective communication access;
- Inclusive planning, response, and recovery;
- Language and physical accessibility;
- Civil rights complaints; and
- Additional resources.

JOB ACCOMMODATION NETWORK

The ADA and Reasonable Accommodations

The Job Accommodation Network (JAN) published a blog post, "[The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19](#)" that addresses topics such as employer requirements around providing reasonable accommodations under the ADA in response to the pandemic coronavirus situation; who can receive reasonable accommodations under the ADA; and disability-related documentation for accommodation requests related to reducing risk of exposure to the coronavirus.

Stress and Mental Health Conditions

Another JAN blog post, "[Coronavirus \(COVID-19\), Stress, and Mental Health Conditions](#)," recognizes that temporary accommodations may help all employees who are feeling

increased stress and facing personal difficulties at this time, and provides information on the ADA and the coronavirus, and accommodation compliance.

Recent articles by JAN concerning COVID-19 and reasonable accommodations include:

- [Engaging in the Interactive Process During the COVID-19 Pandemic](#)
- [Masks as an Accommodation Tool](#)
- [Teleconference Accessibility and Hearing-Keeping Deaf and Hard of Hearing Employees in the Loop](#)

EMPLOYER ASSISTANCE AND RESOURCE NETWORK ON DISABILITY INCLUSION

On April 1, 2020, the Employer Assistance and Resource Network on Disability Inclusion (EARN) hosted a webinar on, "[The ADA at Work: Considerations for COVID-19](#)" to discuss balancing guidance on COVID-19 containment from CDC with EEOC guidance on the Americans with Disabilities Act (ADA). Guest experts from two regional ADA Centers presented on the implications of the pandemic on disability-related inquiries, medical examinations, and interpreting direct threat. Reasonable accommodations for telework, requests for which have spiked due to the required social distancing period, was also discussed.