




COVID-19

UPDATE:
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**Coronavirus / COVID-19
Response Team**


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1

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**Does My Employee Get
Leave If They Are In
Regular Contact With A
Vulnerable Person?**

» Sandy Andre

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3

Today's Topics

- Brief review of the federal and state protections/benefits related to the health status of another person
- ADA's Association provision
- Scenarios

4

Federal Protections/Benefits:

- FMLA:
 - **Leave** related to **care** for a covered family member with a “serious health condition”
 - COVID-19 related or non-COVID-19 related
- FFCRA: Emergency Paid Sick Leave Act
 - **Leave** related to **care** for a covered family member who: (1) is subject to a federal/state/local quarantine order OR (2) has been advised by a health care provider to self-quarantine related to COVID-19

State Protections/Benefits:

- Michigan Paid Medical Leave
 - Employees may take paid medical **leave** for reasons related to a covered family member’s illness, injury, health condition, preventative care, or victimization by domestic violence or sexual assault
- Executive Order 2020-36
 - Employee may take **leave** until either 14 days have passed since last close contact with an individual who tests positive for COVID-19 or with an individual who displays one or more principal symptoms of COVID-19, or the symptomatic individual receives a negative COVID-19 test

State Protections/Benefits: (cont.)

- Executive Order 2020-76: Unemployment
 - An individual is considered to have left work involuntarily for medical reasons if that individual ***leaves work*** because the individual is required to ***care*** for ***someone*** with a confirmed diagnosis of COVID-19

ADA: Accommodation and Association

ADA: Accommodation

- **Remember:** ADA reasonable accommodation is required only for an ***employee's own*** medical condition to the extent that
 - The medical condition meets the definition of a disability, and
 - The accommodation would allow the employee to perform his/her EJP
- Remote work and Leave can be examples of reasonable accommodations

ADA: Association Provision

- Prohibits ***employment discrimination*** against a person, whether or not he or she has a disability, because of his or her known relationship or association with a person with a known disability.
- This means that an employer is prohibited from making adverse ***employment decisions*** based on unfounded concerns about the known disability of anyone whom the employee has a relationship or association

ADA: Association Provision (cont.)

- What types of employer conduct does the association provision prohibit?
 - An employer may not deny an employee any other benefits or privileges of employment that are available to others *because of* the disability of someone with whom the employee has a relationship or association
 - An employer may not subject someone to harassment (and, shall ensure that other employees do not harass the individual) *based on* that person's association with a person with a disability.

ADA Association and COVID-19

Requests for Workplace Accommodations

- **NOT** required to engage in the ADA reasonable accommodation process outside of requests related to the employee's own disability
- However:
 - **IF** you grant accommodation requests from employees for reasons other than the employee's own disability, must ensure you are doing so on a non-discriminatory basis

Non-Discriminatory Basis for Granting Accommodations:

- **CANNOT** be based on:
 - Protected characteristics under Title VII
 - Because his/her known relationship/association with a person with a disability
- **CAN** be based on:
 - Only legally required mandates
 - Employers can take the position that the company will only provide legally required accommodations and/or leaves.
 - Legitimate business reasons

Scenarios

Scenario #1:

- Company I is located in Northern Michigan, and was able to adjust to remote work for all employees during the first stages of COVID-19.
- Now that Company is in Stage 5 of the MI Safe Start Plan, Company is bringing certain positions/employees back for on-site work.
- Edna Employee lives with her elderly parents, and is frightened that if she comes back to work, she could expose herself- and her parents- to COVID-19

Scenario #1: (cont.)

- Edna Employee requests to continue her remote-work assignment because of her close contact/association with her elderly parents.
- Is Company required to grant Edna's request?
- If not, what should Company consider when evaluating Edna's request?
 - **NOT** an ADA Association issue (elderly ≠ disabled)

Scenario #2

- Company I is located in Northern Michigan, and was able to adjust to remote work for all employees during the first stages of COVID-19.
- Now that Company is in Stage 5 of the MI Safe Start Plan, Company is bringing certain positions/employees back for on-site work.
- Edna Employee's spouse has a chronic breathing condition, and is frightened that if she comes back to work, she could expose herself- and her spouse to COVID-19

Scenario #2 (cont.):

- Edna Employee requests to continue her remote-work assignment because of her close contact/association with her spouse.
- Is Company required to grant Edna's request?
- If not, what should Company consider when evaluating Edna's request?

Scenario #3:

- Edgar Employee has an approved one-week paid vacation coming up at the end of July.
 - His mother is coming into town for a visit
 - His mother has a chronic breathing condition
- Edgar requests a two-week remote work assignment and/or unpaid leave because he wants to self-quarantine before her visit to limit any potential COVID-19 exposure

Scenario #3:

- Company recently granted Collin Co-Worker's request for an unpaid leave to attend a parent-child camp with his child in June, so that Collin could save his PTO for a planned vacation in December.
- Is Company required to grant Edgar's request?
- If not, what should Company consider when evaluating Edgar's request?

Accommodation Requests and COVID-19

- Analysis Steps:
 - Must I consider this request?
 - What should I do to evaluate the request properly?
 - May I consider this request?
 - How should I evaluate requests?



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Back to Work Resource Center

<https://resources.millerjohnson.com/>

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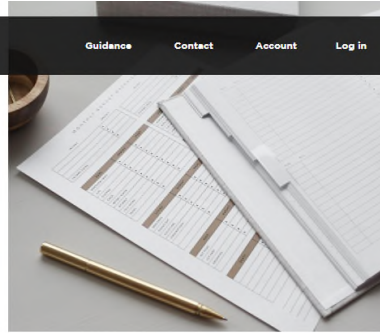
Guidance Contact Account Log in

Our **Back to Work Resource Center** provides a single source option for employers who are wrestling with the legal and practical consequences of a changed world.

For less than the cost of a typical handbook update, you gain access to an extensive collection of resources and Miller Johnson work product that we are confident will provide meaningful support to your efforts to navigate waters that are not only choppy but continuously changing direction.

Here is a sampling of what subscribers will find:

- Forms, Plans and Policies - we have drafted templates for you to put into service immediately
- Practical Guidance - tools to effectively, safely and confidently return to work incorporating best practices from outside organizations, including community partners such as Spectrum Health
- Industry Specific Guidance - pages devoted to industries singled



23

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PPP Compliance Readiness Program

Miller Johnson's interdisciplinary team of corporate and litigation attorneys will work with you to identify and gather relevant documents and performance data to ensure your business is best positioned to comply with the ever-changing rules governing the Paycheck Protection Program (PPP) and any resulting inquiry or investigation related to your business's application for, and receipt of, PPP funds.

Services

- Assist with identifying and compiling records and performance data to support the good faith "need certification" made at the time the PPP loan application was made.
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- Compliance assessment based on review of information received.
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- Development of audit preparedness plan.
- Advise on enforcement defenses and evidentiary support for the same.

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Learn More

For more program information and enrollment, please contact Max Barnes or Jeff Muth.

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24