



## **GUIDANCE TO EMPLOYERS AND PLACES OF PUBLIC ACCOMMODATION REGARDING EQUAL OPPORTUNITY EMPLOYMENT AND REASONABLE ACCOMMODATIONS DUE TO THE PRESENCE OF COVID-19**

My administration, along with other State, local, and federal authorities, has undertaken a wide array of actions to mitigate the effects of coronavirus disease 2019 (COVID-19), prevent further spread, and preserve our healthcare resources. During this pandemic, it is vital that all Coloradans are afforded civil rights protections. I am providing the following guidance to employers and places of public accommodation to ensure equal opportunity employment and to provide reasonable accommodations for individuals, including those with COVID-19, exposure to COVID-19, and symptoms of COVID-19, as long as the accommodations do not create an undue burden on the employer.

### **FINDINGS**

1. On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb and there is widespread community spread throughout the State.
2. The Centers for Disease Control and Prevention (CDC), within the United States Department of Health and Human Services, recommends community mitigation strategies, including social distancing measures to limit the spread of the virus. People gathering in large numbers is an area of concern for possible transmission of the disease.
3. CDPHE has taken action through the Safer at Home Public Health Order and many county and local governments across Colorado have also taken their own steps to protect Coloradans and our communities from COVID-19. Together, the goal is to protect public health and safety while ensuring that Coloradans are all afforded their civil rights.
4. The U.S. Equal Employment Opportunity Commission (EEOC) enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include requirements for reasonable accommodation and non-discrimination based on disability and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act.
5. The ADA requires employers to provide reasonable accommodations for known limitations of applicants for employment and employees with disabilities.

## GUIDANCE

I am providing the following guidance to employers and places of public accommodation within the State concerning how to ensure equal opportunity employment and reasonable accommodations or efforts.

### **Guidance to Employers**

1. Employers should make reasonable accommodations for individuals with disabilities (absent undue hardship) during a pandemic (such as COVID-19) that would allow such individuals to continue to have employment.
2. Employers should follow the evolving guidance from state and local public health authorities that will change as the COVID-19 pandemic evolves and employers should follow the most current information on maintaining workplace safety.
3. Employers with employees covered by the ADA may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must consider or maintain all information about employee illness as a confidential medical record in compliance with the ADA.
4. Employers may require a doctor's note certifying fitness for duty. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have COVID-19.
5. Employers may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.
6. Employers may withdraw a job offer if the employer needs the applicant to start immediately but the individual has COVID-19 or symptoms of COVID-19.
7. Employers may not postpone or withdraw a job offer because the individual is at higher risk of contracting COVID-19, such as being 65 years old or pregnant. Being a vulnerable individual does not justify unilaterally postponing the start date or withdrawing a job offer. However, an employer should consider allowing telework or to discuss with these individuals if they would like to postpone the start date.
8. Employers should make reasonable accommodations to offer protection to an individual whose disability puts that individual at a greater risk of contracting COVID-19 and who therefore requests accommodations actions to eliminate possible exposure. Even with the constraints imposed by the COVID-19 pandemic, some accommodations may meet an

employee's needs on a temporary basis without causing undue hardship on the employer and such accommodation should be made.

9. Employers are encouraged to consider accommodations for those who request reduced contact with others due to a disability, which may include changes to the work environment such as designating one-way aisles, using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers or other accommodations that reduce chances of the individual's exposure to COVID-19.
10. Employers are encouraged to implement temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment to allow an individual with a disability to perform the essential functions of the job safely while also reducing exposure to others in the workplace or while commuting.
11. Employers may consider whether current circumstances create "significant difficulty" in acquiring or providing certain accommodations, considering the duties of the particular job and workplace environment. For example, it may be significantly more difficult in this COVID-19 pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. Or, it may be significantly more difficult to provide employees with temporary assignments, remove marginal functions, or readily hire temporary workers for specialized positions. If a particular accommodation poses an undue hardship, employers and employees should work together to determine if there may be an alternative that could be provided that does not pose such problems.
12. Employers are encouraged to provide reasonable accommodations so long as they do not pose an "undue hardship" which means "significant difficulty or expense." In some instances, an accommodation that would not have posed an undue hardship prior to the COVID-19 pandemic may pose one now.
13. Employers may require employees to wear protective gear (for example, facial coverings and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols). However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified facial coverings for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the necessary modification or an alternative if feasible and if it does not cause an undue hardship on the operation of the employer's business under the ADA or Title VII.
14. Employees – or a third party, such as an employee's doctor – must let the employer know that they need an accommodation for a reason related to a medical condition (here, the underlying condition). Individuals may request accommodation in conversation or in

writing. While the employee (or third party) does not need to use the term “reasonable accommodation” or reference the ADA, they may do so.

### **Guidance to Places of Public Accommodation:**

1. A place of public accommodation means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public. This includes any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barbershop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance or physical condition of an individual; a campsite or trailer camp; a dispensary; a mortuary, undertaking parlor, or cemetery; an educational institution; or any building, park, arena, theater, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor.
2. No individual should post or permit to be posted in any place of public accommodation any sign that states or implies the following: “We reserve the right to refuse service to anyone.” Such signage implies that management may rely on unlawful discriminatory factors in determining access to a place of public accommodation and thus is prohibited, per Colorado Civil Rights Commission (CCRC) Rule 20.4.
3. Places of public accommodation are not prohibited from asking an individual without a mask (and therefore not complying with public health orders) to leave their establishment, unless such request invokes another form of discrimination, i.e. only asking patrons of a particular protected class (disability, race, creed, color, sex, sexual orientation (including transgender status), marital status, national origin, or ancestry) to leave for this purpose. Please see paragraph 5, below, concerning those individuals who cannot wear masks due to a disability.
4. Places of public accommodation may exclude an individual with a disability from entering an establishment or participating in an activity or service offered, if that individual’s presence or participation would result in a direct threat to the health or safety of others. The determination that an individual poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability; it must be based on an individual assessment that considers the environment, activity or service offered by the particular establishment and the actual abilities and disabilities of the individual. This guidance is not applicable to healthcare-related places of public accommodation.
5. Places of public accommodation should make reasonable efforts that allow individuals with a disability (i.e. breathing issues, facial disfigurement, etc.) that prevent them from wearing a mask to enter or use a place of public accommodation, unless the place of public accommodation can demonstrate that it would cause an undue burden or that it would require any additional expense that would not otherwise be incurred.

6. Places of public accommodation should make reasonable efforts to grant access and services to all customers. Reasonable efforts may require structural change, such as constructing a ramp or providing accessible parking spaces, or it may require a change in policy to allow the individual with a disability to fully use and enjoy the premises. Businesses are encouraged to consider offering curbside delivery or pickup, when practicable, as an accommodation for patrons who are vulnerable individuals or who are unable to wear a mask because of a disability.

Employees or applicants can complete an intake form to intimate a complaint of discrimination [here](#). For more information or guidance, employers, employees, and places of accommodation are encouraged to visit the Colorado Civil Rights Division at <https://www.colorado.gov/pacific/dora/civil-rights>. As Coloradans, we are all in this together and I appreciate your efforts to make Colorado a safer and more inclusive state.

GIVEN under my hand this twenty-first day of May, 2020.

A handwritten signature in blue ink that reads "Jared Polis". The signature is stylized and cursive.

Jared Polis  
Governor