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# Guidance on "Long COVID" and Disability Rights Released



On the anniversary of the Americans with Disabilities Act, the Department of Health and Human Services (HHS) and the Department of Justice (DOJ) jointly issued guidance on how "long COVID" can be a disability under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Section 1557 of the Patient Protection and Affordable Care Act.

## What is "long COVID"?

According to the Centers for Disease Control and Prevention, some people affected with COVID-19 continue to experience symptoms for months after becoming infected or may have new or recurring symptoms at a later time. People with this condition are sometimes called "long haulers," and the condition is known as "long COVID."

People with long COVID have a range of new or ongoing symptoms that can worsen with physical or mental activity. Examples of common long COVID symptoms include:

- Tiredness or fatigue
- Difficulty thinking or concentrating (“brain fog”)
- Shortness of breath or difficulty breathing
- Headaches
- Dizziness upon standing
- Heart palpitations
- Chest pain
- Cough
- Joint or muscle pain
- Depression or anxiety
- Loss of taste or smell
- Fever

Some people also experience damage to multiple organs, including the heart, lung, kidneys and brain.

## Is long COVID a disability?

Under the ADA, Section 504 and Section 1557, a person with long COVID has a disability if the person’s condition or any of its symptoms is a “physical or mental” impairment that “substantially limits” one or more major life activities.

The ADA defines a person with a disability as an individual:

- With a physical or mental impairment that substantially limits one or more of their major life activities
- With a record of such an impairment
- Who is regarded as having such an impairment

The DOJ and HHS emphasize that the guidance only addresses the “actual disability” part of the disability definition. The agencies did not address whether an individual “regarded as” or with a “record of” long COVID could be covered.

The guidance provides that long COVID is a physiological condition affecting one or more body systems. It notes that some people with long COVID experience lung, heart or kidney damage, as well as lingering emotional illness or other mental health conditions.

Also specified in the guidance are numerous examples of how long COVID can substantially limit major life activities:

- A person with long COVID who has lung damage that causes shortness of breath, fatigue and related side effects is substantially limited in respiratory function.
- A person with long COVID who has symptoms of intestinal pain, vomiting and nausea that have lingered for months is substantially limited in gastrointestinal function.

- A person with long COVID who experiences memory lapses and brain fog is substantially limited in brain function, concentration and thinking.

However, the DOJ and HHS emphasize that long COVID is not always a disability. A case-by-case assessment must be made to determine whether a person's long COVID condition or any of its symptoms substantially limits a major life activity.

## Rights for those disabled with long COVID

The DOJ and HHS note people whose long COVID qualifies as a disability are entitled to the same protections from discrimination as any other person with a disability under the ADA, Section 504, and Section 1557. The guidance provides that business, or state or local governments may need to change the way they operate to accommodate a person's long COVID-related limitations. For example, a reasonable accommodation may be changing a policy to allow a person who experiences dizziness when standing to be accompanied by their trained service animal.

Though the joint DOJ and HHS release is just guidance, employers should review their current accommodation policies to ensure compliance.

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