On June 11, 2020, the Equal Employment Opportunity Commission (EEOC) issued updates to its technical assistance guidance to address employers’ questions as they plan for the safety of employees returning to the workplace. The guidance, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws,” appears in question-and-answer format with updates to address return to work issues, including requests for accommodation; workplace screening issues; pandemic-related harassment; and age, caregiver and pregnancy discrimination.

- **No Accommodation for COVID-19-Related Associational Disability.** Employers are not required to provide an accommodation to an employee to avoid exposing a family member of the employee who is at higher risk of severe illness from COVID-19 due to an underlying medical condition. For example, an employer is not required to provide telework as an accommodation to an employee without a disability in order to protect the employee’s family member with a disability from potential COVID-19 exposure.

- **Return to Work Screening.** If an employee requests an alternative method of return to workplace screening due to a medical condition, employers may choose to make the requested change available to all employees without going through an interactive process. Alternatively, employers may proceed as they would for any other request for an accommodation under the Americans with Disabilities Act (ADA). If the employee requests the alternative method as a
religious accommodation, employers should determine if accommodation is available under Title VII.

**Notice in Advance of Return to Work.** Employers may provide advance notice to all employees advising them of who to contact to request an accommodation they may need for a disability upon a return to work even if a return date has not been set. The notice may identify the medical conditions listed by the U.S. Centers for Disease Control and Prevention (CDC) that may place people at higher risk of serious illness if they contract COVID-19. The notice should explain that the employer is willing to consider, on a case-by-case basis, any reasonable request from employees who have the CDC-listed or other medical conditions. Should an employee request an accommodation in advance of returning to work, employers may engage in the interactive process before the return to work date and proceed as they would for any other request for an accommodation under the ADA.

**Pandemic-Related Harassment.** Employers should remind all employees that harassment by any means, including emails, calls, video or chat communications, based on national origin, race or other protected characteristics is illegal. Employers also should remind supervisors and managers of their role to look out for, stop and report workplace harassment.

**Age Discrimination.** Employers may provide flexibility (e.g., telework, modified schedules) to employees age 65 and older even if it results in employees age 40–64 being treated less favorably based on age in comparison. Employees age 65 and older also may have medical conditions that bring them under the protection of the ADA, entitling them to request a reasonable accommodation for their disability.

**Caregiver/Family Responsibilities Discrimination.** Employers may provide flexibility to employees with school-age children due to COVID-19-related school closures or distance learning, so long as employers do not treat employees differently based on sex or other protected characteristics. For example, employers should not provide flexibility to female employees but not male employees because of a gender-based assumption about who may have caretaking responsibilities for children.

**Pregnancy Discrimination.** Employers may not exclude an employee from the workplace due to pregnancy even if motivated by a genuine concern for the pregnant employee’s health and safety due to the pandemic. Pregnant employees may be entitled to an accommodation under the ADA for pregnancy-related medical conditions. Pregnant employees also may be entitled to job modifications and leave under Title VII to the extent such modifications and leave are provided to other employees who are similar in the ability or inability to work.

There may be state and local legislative developments that could impact the guidance provided by the EEOC. Employers should consult legal counsel for individualized legal advice regarding specific circumstances on COVID-19-related return to work issues.