



## Legal Alert: EEOC Issues Guidance Regarding ADA-Compliant Workplace Preparation for the Swine Flu

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On May 4, 2009, the EEOC issued guidance regarding ADA-compliant workplace preparation strategies for the 2009 H1N1 flu virus (swine flu).

The Americans with Disabilities Act (ADA) prohibits employers from discriminating against applicants and employees on the basis of a disability. Thus, employers may only request disability-related information or require a medical examination in certain circumstances. Additionally, the ADA requires employers to provide reasonable accommodations to employees with disabilities.

The guidance provides answers to frequently asked questions regarding disability-related inquiries, medical examinations, and reasonable accommodations related to preparation for a pandemic flu:

- (1) How can employers ask employees about factors, such as chronic medical conditions, that may cause them to miss work in the event of a pandemic?
- (2) May an employer require employees to have a post-offer test to determine their exposure to the flu virus?
- (3) May an employer require its employees to adopt infection control practices (e.g., regular hand washing, coughing and sneezing etiquette) during a pandemic?
- (4) May an employer require its employees to wear personal protective equipment (e.g., face masks, gloves) designed to reduce viral transmission?
- (5) May an employer encourage or require employees to telework as an infection control strategy?

The EEOC guidance can be found at:  
[http://www.eeoc.gov/facts/h1n1\\_flu.html](http://www.eeoc.gov/facts/h1n1_flu.html)

We have also recently distributed a Legal Alert discussing how employers may prepare for a pandemic flu outbreak. You can access this legal alert via the following link: <http://www.fordharrison.com/shownews.aspx?show=4733>

**The Bottom Line:**

The EEOC guidance provides additional information to assist employers in determining what types of disability-related inquiries are allowed, who they may require medical examinations from, and what types of reasonable accommodations are appropriate in the event of a pandemic flu virus.

More information regarding the H1N1 flu virus is also available on the CDC's web site, <http://www.cdc.gov>. If you have any questions regarding this issue or need assistance in ensuring your company is prepared for the contingency of a flu pandemic, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, Isabella Lee, [ilee@fordharrison.com](mailto:ilee@fordharrison.com) or 404-888-3856.