

# Some COVID long-haulers are covered by the ADA



Viruses can have lasting impacts on your body. I know because a bad case of the flu once left me with tinnitus. Thankfully, tinnitus isn't debilitating; it's merely irritating. Pete Townshend of The Who has it, too, but he routinely walked out in front of the stage monitors when he smashed guitars for everyone's amusement.

You can't say the same about long covid. Some people suffer for months with brain fog, joint and muscle pain, difficulty breathing, being unable to smell or taste, and any number of other conditions.

The Department of Health and Human Services and the Department of Justice have issued a joint guidance document in which the agencies [conclude](#) that individuals suffering from long covid can be considered disabled under the American with Disabilities Act. The Department of Labor has dedicated a chunk of its [website](#) to long covid.

## DHHS/DOJ guidance

Long covid can be a disability under the ADA if it substantially limits an individual's major life activity, such as working. This is the standard definition of an ADA-covered disability. There are other components to the definition of an ADA-covered disability, including being perceived as having a disability. The HHS/DOJ guidance deals only with actual disability.

Although the guidance deals with Titles II and III of the ADA, and employment is covered under Title I, the definition of a disability is the same under all three titles.

Two key words to an ADA-covered disability are *substantially limits*. According to the guidance, an impairment doesn't need to prevent or significantly restrict an individual from performing a major life activity, and the limitations don't need to be severe, permanent, or long-term.

*DHHS/DOJ*: Whether an individual with long COVID is substantially limited in a major life activity is determined without the benefit of any medication, treatment, or other measures used by the individual to ease their symptoms. Even if the impairment comes and goes, it's considered a disability if it would substantially limit a major life activity when the impairment is active.

Long covid, however, isn't always a disability, according to the guidance. Individual assessments are necessary to determine whether a person's long covid condition or any of its symptoms substantially limit a major life activity.

### **Reasonable accommodations**

The ADA requires covered employers and employees with disabilities to engage in an interactive process to determine whether there's a reasonable accommodation that suits everyone. This rule applies to long-covid cases.

If a covid long-hauler's medical condition isn't obvious or already known (i.e., the condition isn't active) you can ask your employee to present medical documentation to determine whether their disability necessitates an accommodation.

According to the EEOC, asking the employee these questions would pass muster:

- How has the disability created a limitation?
- Does the requested accommodation effectively address the limitation?
- Could another form of accommodation effectively address the issue?
- How does the proposed accommodation enable them to continue performing the essential functions of their position?

Reasonable accommodations can include allowing the employee to continue to telecommute, come in late, take more or longer breaks and leave work early.