

Hamilton County LAW LIBRARY

NEWS

Professional legal information, services, and education

June 2020

EEOC updates guidance on addressing health risks of COVID-19 vulnerable employees who do not ask for accommodation

by Attorney Adam Bennett, Porter Wright Morris & Arthur LLP

Businesses are beginning to reopen across the country, and as employees come back to work, employers are considering to what extent they can protect vulnerable employees who continue showing up for work in spite of the risk posed by COVID-19. The U.S. Equal Employment Opportunity Commission (EEOC) recently released [guidance to address this question](#).

For background, as the Centers for Disease Control (CDC) learns more about the COVID-19 virus, it identifies certain conditions that might make a person more susceptible to severe illness. Specifically, the CDC has identified the following groups as high-risk for severe illness:

- People 65 years and older
- People who live in a nursing home or long-term care facility.

Additionally, the CDC has stated that people of all ages with certain underlying medical conditions, particularly if not well-controlled, are at a higher risk for severe illness including:

- People with chronic lung disease or moderate to severe asthma

- People who have serious heart conditions
- People who are immunocompromised
- People with severe obesity
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease.

So to what extent, if any, can an employer proactively protect an employee who the employer knows is a member of a vulnerable population when the employee does not personally ask for an accommodation? The EEOC provides that when an employee has not requested a reasonable accommodation but is known to be a member of a vulnerable population, the employer is under no obligation to provide an accommodation. However, the employer may take certain steps to mitigate the risk of COVID-19 posed to the employee in the workplace.

Even if the employer is concerned about a particular employee's health, the Americans with Disabilities Act (ADA) does not allow the employer to exclude or otherwise take
Cont. on p. 4

Inside this issue:

EEOC Updates on COVID-19	1
Tech Tip: Interactive Webinar CLE sign up and log in	2
CBA Bundle	5
Upcoming live interactive webinar CLEs	5
Reopening Plan	6
Remotely Accessible Employment Law Resources	7

Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5264

Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

Tech Tip: How to sign up for a free 1.0 hour CLE webinar via our website and attend from the comfort of your home.

By Julie Koehne, Systems Librarian



Start Here

Username Password

[Lost Password?](#)

If you are a subscriber log on to our website, hover over the Classes menu, and select "Calendar."

SERVICES **CLASSES** NEWS JOIN ABOUT

CONTINUING LEGAL EDUCATION

YOU AND THE LEGAL SYSTEM

TRAINING

OFFER TRAINING

CALENDAR

Next, click on the desired class title to register.

HOME CATALOG RESEARCH SERVICES **CLASSES** NEWS JOIN ABOUT

List of Events

Date/Time	Event
05/25/2020 All Day	Memorial Day - Closed Available Spaces:(0/0)
06/15/2020 12:00 PM - 1:00 PM	CLE: Elder Abuse Awareness Available Spaces:(32/50)
07/03/2020 All Day	Independence Day - Closed Available Spaces:(0/0)

Ticket Type Spaces

Standard Ticket

Name *

Email *

Phone

After logging onto the website click on the "Click here to RESERVE your seat" button.

You will receive a "Booking successful" message and an email indicating confirmation.

Booking successful.

From: Hamilton County Law Library <hclwebserver@gmail.com>
To: <JKoehne@cms.hamilton-co.org>
Subject: Booking Confirmed

Dear Julie Koehne,

You have successfully reserved 1 space/spaces for CLE: Elder Abuse Awareness.

When : 06/15/2020 @ 12:00 PM - 1:00 PM

Where : Webinar - We will send you a link closer to the meeting time.

Thank you,
Law Library Staff
1000 Main Street, Room 601
Cincinnati, OH 45202
513-946-5300

Topic: CLE : Complex Appeals in Ohio @ Noon
Time: May 13, 2020 Noon Eastern Time (US and Canada)

Join Zoom Meeting direct link
<https://us02web.zoom.us/j/4495249158?pwd=d1IMZWVmYVRPL3h1djZBTmxWNHc2UT09>

Meeting ID: 449 524 9158
Password: 9465300

Closer to the class time you will be sent a Zoom link to attend the class. To join click on the direct link.

When system dialog prompts, click **Open Zoom Meetings**.

If you have Zoom Client installed, [launch meeting](#). Otherwise, [download and run Zoom](#).

If you cannot download or run the application, [join from your browser](#).

If you do not have Zoom installed on your device, click "join from your browser."

Next, enter your name so we may take attendance, check "I'm not a robot" then click "Join." You will be directed to a waiting room and we will admit you in.

Join a Meeting

Your Name

Your Name

☐ I'm not a robot

reCAPTCHA
Privacy Terms

Join

Please wait, the meeting host will let you in soon.

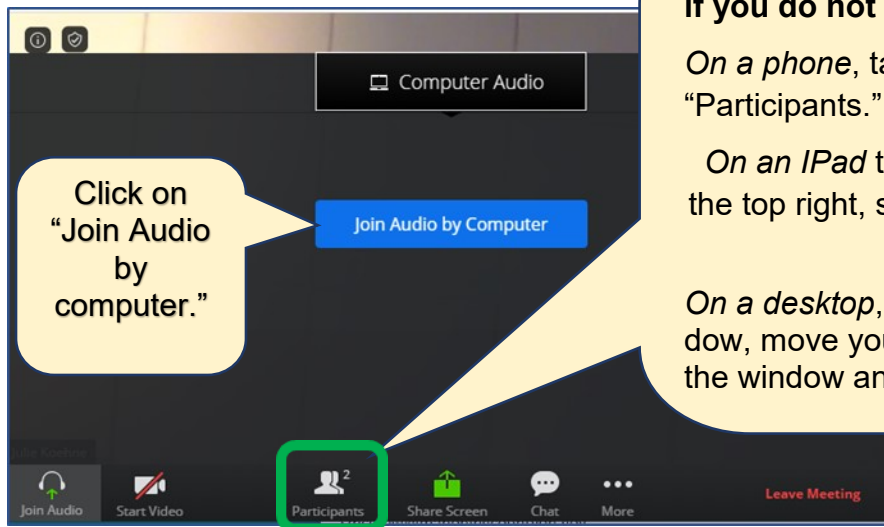
When you first connect if you do not see the controls.

On a phone, tap the screen and select "Participants."

On an iPad the controls will display at the top right, select Participants or More (...).

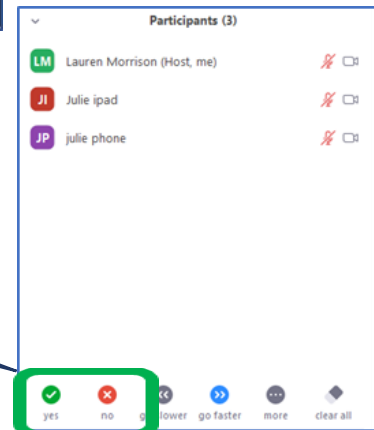
On a desktop, depending on size of window, move your cursor to the bottom of the window and select Participants.

Click on "Join Audio by computer."



If asked a Yes or No questions during the presentation, please use the following responses.

If you need further help contact us or see <https://support.zoom.us/hc/en-us/articles/201362193>



any adverse action solely because the employee has a medical condition that the CDC has identified as increasing the employee's vulnerability to COVID-19. The ADA provides that such action can only be taken if the employee's disability poses a "direct threat" (i.e. a "significant risk of substantial harm") to the health of the employee or others in the workplace that cannot be eliminated or reduced by reasonable accommodation.

A direct threat analysis should be a highly fact-specific, individualized assessment. An employer cannot rely solely on a condition's inclusion on the CDC's vulnerable conditions list to determine that an employee poses a direct threat to his or her personal health. Employers should consider factors such as:

1. The duration of the risk;
2. The nature and severity of the potential harm;
3. The likelihood that the potential harm will occur; and
4. The imminence of the harm.

The EEOC notes that analysis of these factors should include considerations based on the severity of the pandemic in a particular area and the employee's own health (e.g., is the employee's condition controlled) and the employee's particular job duties. The analysis should also include the likelihood of the employee being exposed to the virus at work, as well as general measures the employer may be taking to protect all workers, such as social distancing.

If an employer conducts a direct threat analysis and determines that an employee poses a direct threat to his or her personal health, the employer still may not exclude the employee from the workplace or take any other adverse action unless there is no way to reduce or eliminate the risk by providing a reasonable accommodation in the workplace.

The EEOC provides a number of examples of possible accommodations to reduce the risk posed to a vulnerable employee during the COVID-19 pandemic. These accommodations include:

- Protective gowns, masks, gloves, or other gear;
- erecting a barrier that provides separation between an employee with a disability and coworkers/the public;
- increasing the space between an employee with a disability and others;
- elimination or substitution of marginal functions
- temporary modification of work schedules to decrease contact with coworkers and/or the public when on duty or commuting;

moving the location of where the employee performs work (for example, the end of a production line instead of the middle of the line).

Conclusion

Instinctually, many employers are looking for ways to protect their workforce upon returning to work. However, employers should be wary of proactively asking employees whom they have identified as vulnerable to stay at home to try to reduce the risk of COVID-19 to the workforce. The ADA penalizes employers from discriminating against an employee on the basis that it regards the employee as having a disability, whether or not the employee is in fact is a person with a disability as defined under the Act. There are likely ways that the employer can accommodate vulnerable employees short of sending them home.

Further, although the DOL's ADA guidance does not directly implicate issues of age discrimination, employers should be similarly restrained before taking steps to protect an employee just because of age. As many are aware, the CDC has identified individuals 65 and older as being at higher risk for severe illness. Even so, the federal Age Discrimination in Employment Act (ADEA) prohibits singling out or treating older employees less favorably because of their age. The better approach is to let older employees come forward with any individual concerns they may have and address those on a case-by-case basis, rather than imposing across-the-board working conditions or quarantine

requirements only because of age.

Information about COVID-19 and its impact on local, state and federal levels is changing rapidly. This article may not reflect updates to news, executive orders, legislation and regulations made after its publication date. Visit our [COVID-19 resource page](#) to find the most current information.

Attorney Adam Bennett is an associate in the Porter Wright Columbus office and practices in the Labor & Employment Department. He focuses his practice on employment discrimination as well as ADA and FMLA compliance. His experience includes drafting employer position statements in response to employee discrimination charges, conducting independent internal investigations of workplace misconduct, counseling clients through employee termination and retention decisions, reviewing client policies and handbooks for legal compliance and efficacy, and representing clients throughout the litigation process.

Article reprinted with permission.



CBA Bundled Membership Renewal

The CBA has extended their membership renewal deadline to June 15. For anyone who typically bundles their Law Library subscription with their CBA membership and has yet to renew, there's still time! Please just select the bundle option when you renew with the CBA. If you've already renewed with the CBA and forgot to add on the bundle, you can still add it until June 15. Please email Lauren at lmorrison@cms.hamilton-co.org as soon as possible and she'll help you take care of it. And for everyone who has already renewed, thank you!

Upcoming CLEs—Live Interactive Webinars

Monday, June 15, 2020, 12pm-1pm

Elder Abuse Awareness (in honor of World Elder Abuse Awareness Day)

Presenters: Reference Librarian Amy Kurlansky & Attorney Matt Barnes, Pro Seniors, Inc.

1.0 general credit in OH & pending in KY

\$

Tech Services Librarian

Melissa Barney, our Tech Services Librarian, has accepted another position and will be leaving the Hamilton County Law Library at the end of May. We wish Melissa all the best as she begins her new adventures. She will be missed!

\$

Topical Updates

If you have not signed up before and would like to start receiving substantive bi-weekly updates in one or more practice areas, please visit the topical updates page on our website to sign up. You can select from the following areas of law:

Constitutional Law— ****NEW Update****
 Criminal
 Employment
 Estates and Trusts
 Family Law
 Intellectual Property
 Pension Benefits
 Real Estate
 Tax
 Torts

If you have any questions about this please feel free to contact our Reference Librarian, [Amy Kurlansky](#).

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, Wolters Kluwer Cheetah™, Bloomberg Law®, Overdrive e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Eight meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Intelli-Connect Law, Business, Tax, and Accounting

Reopening

We are still hard at work on our safe reopening plan and hope to have an announcement for you soon. We will provide updates via email and social media when we have a firm date. In the meantime, if you have any questions please don't hesitate to contact [Lauren](#), and please continue to use our [remote reference services](#). Our talented librarians are awaiting your research requests!

Follow us on social media!

If you appreciate the content of our monthly newsletter, you should like us on [Facebook](#) and follow us on [Twitter](#) (@HCLawLib) for even more updates on library happenings and info on relevant legal news. We also publish a [blog](#) and push those updates to our social media accounts, so if you follow us you'll never miss a post.



Ebooks

Have you always thought about seeing what our ebooks collection is all about, but never gotten around to it? Now is the time! Our Lexis digital ebooks collection actually contains full text treatises from multiple publishers, including Lexis, West and ABA Publishers. Check out Vanessa's [blog post](#) for more information and Julie's [Tech Tip](#) in the March newsletter (Page 3) for tips on how to access it on your mobile device. You can also click to access the [login page](#) on your computer using many browsers. Your user name is your "LastnameFirstname" and your password is your borrower number. If you have any trouble accessing it or need your borrower number, please don't hesitate to email us at reference@cms.hamilton-co.org.

Remotely Accessible Employment Law Resources

Law Library subscribers have access to a variety of Remotely Accessible Employment Law Resources**, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300.

**Remote access is available to subscribers who are solo or firm attorneys whose entire firm has a subscription to the Law Library. Please contact reference staff with questions.

EBSCO

Create Your Own Employee Handbook
Dealing with Problem Employees
Employer's Legal Handbook
Essential Guide to Federal Employment Laws
Legal Forms for Starting & Planning a Small Business
Manager's Legal Handbook
Working for Yourself

Fastcase—LoisLaw Library

Employment Discrimination Law Library
Americans with Disabilities Handbook
Archived Employment Discrimination Articles
Civil Rights in the Workplace
Employee Relations Law Journal
Employment Discrimination: Law & Practice
Representing Plaintiffs in Title VII Actions
Sexual Harrassment in the Workplace: Law & Practice
Employment Law Library
Archived Employment Law Articles
CCH State-specific Employment Law Library
Covenants Not to Compete
Employee Dismissal Law & Practice

Employment Relationships: Law & Practice

Immigration Law in the Workplace

HeinOnline

ABA Journal of Labor & Employment Law
Civil Rights Litigation
Employment & Labor Relations Law
Labor & Employment Law
Labor Relations Law Letter

OVERDRIVE E-books

Ohio Transaction Guide—Legal Forms
Principles of Employment Law

Westlaw (contact staff for materials)

ABA Update
Age Discrimination
The Americans with Disabilities Act
Benefits Guide
EEOC Compliance Manual
Employee Benefits Handbook
Employer's Guide to the Fair Labor Standards Act
Employment Coordinator
Employment Discrimination Coordinator
Employment Law
Employment Law Counselor
Employment Safety & Health Guide
Family and Medical Leave Handbook
Fundamentals of Employment Law
Kentucky Employment Law Letter
Labor & Employment Cases
Labor & Employment Statutes & Court Rules
Labor Law Journal
Manual on Employment Discrimination & Civil Rights Actions in the Federal Courts
Ohio Employment Practices Law—Baldwin's
Ohio Handbook
Ohio Forms & Transactions
Practitioner Insights for Employment
State Employment Law Compare (CCH)
State Labor & Employment Laws (CCH)
The Hill: Labor & Employment

Upcoming Events:

June 15, 2020: Live Interactive Webinar CLE: Elder Abuse Awareness, 1.0 credit in OH & 1.0 credit in KY pending

June 22, 2020: Ohio Elder Abuse Awareness Day



June 2020 Law Library Newsletter

- INSIDE THIS MONTH**
- Tech Tip: Sign up for Remote CLEs
 - Topical Updates
 - Upcoming CLEs—Live Interactive Webinars
 - Remotely Accessible Employment Law Resources

Hamilton County Law Library
Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202

ADDRESS CORRECTION REQUESTED