

# **Top 5 Things To Consider Before Reopening:**

## **An ADA COVID-19 Guide**

*Presented by*



**Strategic  
Employment  
Solutions**

*Mobilizing An ABLE Workforce*

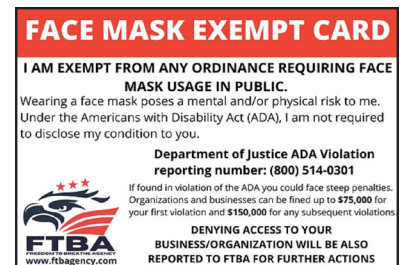
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This is an ever changing and challenging time in business. COVID-19 has made everyone stop in their tracks and reevaluate/reorganize how they do business. It is constantly changing and can be frustrating. Here are the top 5 things you should be aware of as the economy reopens, closes and reopens again and again.

## 1) ADA and Masks

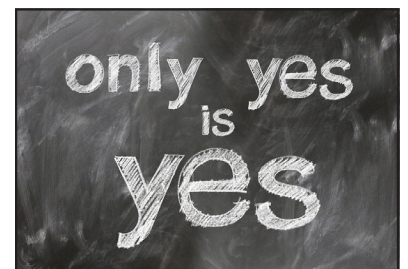
Businesses or cities that require customers to wear masks during COVID-19 are required to accommodate people who may not be able to wear a mask due to a medical condition. There are many people abusing “cards” and flyers so that they don’t have to wear a mask even if they don’t have a medical condition.

- o The “cards” and flyers that people are using are not accurate or legally binding.
- o ADA does not apply to those who DO NOT have disabilities. Again, if a NON disabled person sues a business for denying access without a mask ADA will not protect that person because they do not have a disability.
- o There are no HIPAA guidelines for masks, HIPAA does not cover retail, restaurants etc. It primarily governs medical establishments and confidentiality.
- o Stores have the right to deny access to those without a mask but need to find ways to accommodate those who say they can’t wear masks.
  - Accommodations may include shopping for them, bringing things out to the curb, etc.
- o ADA states that in pandemic times the safety of the greater community is first and foremost over the individual.



## 2) Under ADA you can...

- o Request a doctor’s note from employees who are returning to work and are asking for accommodations relating to COVID-19.
  - Justified under ADA standards for disability related inquiries of employees during pandemic times
- o Request a doctor’s note to verify that the condition is considered a disability under ADA
- o You can start the interactive process (accommodation process)
  - How does the pandemic create a limitation?
  - How will the requested accommodation address the limitation?
  - Will another form of accommodation effectively address the issue?
    - o PPE? Isolated work environment at the office? Working a different shift? etc.
  - How will the proposed accommodation let the employee continue performing the “essential functions” of their position.





### 3) How ADA looks different because of COVID-19

- o You may shorten the interactive process by not requiring a doctor's note
- o Accommodations may be short term with expiration dates based on pandemic status
- o A temporary accommodation can be made while waiting for medical proof.
- o Due to health and safety of all employees you can put an employee on unpaid leave until reasonable accommodations can be made as pandemic guidelines change.
- o Those who don't qualified as having a disability under ADA but are caring for "at risk" family members may qualify for time off/accommodations through FMLA

### 4) "Undue Hardship" redefined

- o The EEOC has clarified that hardships posed by pandemics can factor into the undue hardship analysis.
- o An accommodation that would not have been and undue hardship before the pandemic may pose as one now do to loss of revenue during the pandemic.
- o All undue hardships must be documented and proven

### 5) Best Practices

- o Consider the safety and availability of an employee being able to get documentation from their doctor during pandemic times where schedules are limited for doctors and going to the doctor may be dangerous for the employee.
- o Consider accepting previous doctor documentation about the disability.
- o Temporarily approve accommodation until access to doctor is more available or until the pandemic guidelines change.
- o Provide accommodations for customers.
  - You CANNOT ask "what is your disability".
  - You can only ask "Does a medical condition keep you from being able to wear a mask?"
- o A customer/employee without a disability cannot sue you for ADA noncompliance.
  - Keep record of the accommodations you offer for Non mask customers/employees so you have proof that you offered reasonable accommodations in case of a lawsuit.
- o Make sure you have an interactive process (accommodations process) for your company so you can document every accommodation and accommodation attempt.
  - Having a standard form gives you documentation of your efforts in case of lawsuits.

For additional and up to date information go to [www.ada.gov](http://www.ada.gov) or <https://www.adapacific.org>.

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If you need assistance with accommodations or the interactive process you can reach Strategic Employment Solutions where we can assist you in addressing your needs and creating a safe and productive plan.



# Strategic Employment Solutions

*Mobilizing An ABLE Workforce*

## Next Steps

### **Our Mission:**

*Bringing together cutting edge businesses and employees with disabilities to create dynamic, productive, diverse, and inclusive work forces that break social stereotypes and create inclusive communities.*

### **Resources:**

We have created a full series of workshops and training to support companies looking to properly integrate people with disabilities into their workplace.  
Let's get started today



### **List of Available trainings:**

- Introduction to Disabilities in the Workforce
- Management/current employee training
- Modifying job descriptions
- Strategic new hire trainings
- Connect with agencies who source employees with disabilities
- Active Recruiting of people with disabilities
- Etiquette Training
- Affinity (ERG) group facilitation for employees with and without disabilities
- Accommodations