

# HR COMPLIANCE BULLETIN

## DOJ Answers Common Questions About COVID-19 and the ADA

On Jan. 6, 2022, the Department of Justice (DOJ) issued answers to frequently asked questions ([FAQs](#)) about how the Americans with Disabilities Act (ADA) applies to businesses and other entities under certain circumstances related to the COVID-19 pandemic.

The new FAQs mainly focus on compliance with Titles II and III of the ADA. Title II applies to state and local governments, while Title III applies to businesses that are generally open to the public and that fall into one of 12 categories listed in the law. Among others, these include restaurants, movie theaters, schools, day care facilities, recreation facilities and doctors' offices. The FAQs also include information about compliance with Title I, which applies to employers with 15 or more employees.

In particular, the FAQs address questions about situations involving service animals, mask requirements, long COVID-19, medical facility visitation and outdoor restaurant or retail spaces. This Compliance Bulletin provides the FAQs in full below.

### Action Steps

All entities subject to Titles II and III of the ADA should become familiar with the DOJ's new FAQs. They should also follow the most current guidelines and suggestions for COVID-19 safety as issued by the [Centers for Disease Control and Prevention](#) (CDC) and any applicable state or local health agencies.

Employers with 15 or more employees should also review [guidance](#) issued by the Equal Employment Opportunity Commission (EEOC) about how the ADA and other federal fair employment laws apply during the COVID-19 pandemic. Smaller employers should become familiar with any applicable rules under similar applicable state or local laws.

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### Highlights

#### Service Animals

ADA rules requiring service animals to be admitted to any area open to the public still apply during the pandemic.

#### No DOJ Masking Exemptions

The DOJ does not provide exemptions from masking requirements, and any information indicating otherwise was not issued or endorsed by the DOJ.

#### Long COVID-19 and Disability

Long COVID-19 is not necessarily a disability under the ADA, though it can be if it substantially limits one or more life activities.

#### Medical Facility Visitors

Hospitals and other medical facilities must allow nonpatient visitors to accompany patients with a disability as necessary for equal access to care.

#### Outdoor Spaces

Outdoor dining and retail spaces are subject to the same ADA accessibility rules as those that apply to indoor spaces.





## DOJ's Common Questions About COVID-19 and the ADA

### Can a business stop me from bringing in my service animal because of the COVID-19 pandemic?

No. The [rules for admitting service animals](#) are the same even during the pandemic. A service animal is a dog that has been individually trained to do work or perform tasks for a person with a disability. The tasks must be directly related to the person's disability.

A business or a state/local government generally must allow a service animal to accompany a person with a disability into any area where the public is allowed to go. A service animal cannot be excluded just because staff can provide the same services.

[According to the CDC](#), the risk of animals spreading COVID-19 to people is considered low.

For example, a restaurant offers indoor and outdoor seating because of the COVID-19 pandemic. A woman with multiple sclerosis arrives at the restaurant with her service dog. The restaurant cannot require the woman to dine outside because of her service dog.

### Does the DOJ issue exemptions from mask requirements?

No. The DOJ does not provide exemptions from mask requirements but [is aware](#) of certain postings and flyers about this on the internet, some of which include the DOJ's seal. These postings were not issued or endorsed by the DOJ.

### Can long COVID-19 be a disability under the ADA?

Yes. Long COVID-19 can be a disability under the ADA if it [substantially limits one or more major life activities](#). There is a wide range of ways that this could present itself. Some examples include:

- A person with long COVID-19 who has lung damage that causes shortness of breath, fatigue and related effects is substantially limited in respiratory function, among other major life activities.
- A person with long COVID-19 who has symptoms of intestinal pain, vomiting and nausea that have lingered for months is substantially limited in gastrointestinal function, among other major life activities.
- A person with long COVID-19 who experiences memory lapses and "brain fog" is substantially limited in brain function, concentrating and/or thinking.

### Is long COVID-19 always a disability under the ADA?

No. An individualized analysis is needed to determine whether a person's long COVID-19 condition substantially limits the person's health and daily living. For more information, see the DOJ's [Guidance on "Long COVID" as a Disability Under the ADA, Section 504 and Section 1557](#).

### Are there resources available that help explain my rights as an employee with a disability during the COVID-19 pandemic?



Yes. The EEOC provides [guidance](#) about the ADA and other federal laws that protect individuals against employment discrimination during the COVID-19 pandemic.

## **Can a hospital or medical facility exclude all “visitors” even where, due to a patient’s disability, the patient needs help from a family member, companion or aide in order to equally access care?**

No. To limit the spread of COVID-19, medical providers have changed many of their policies, including restricting nonpatients from entering health care facilities. However, where these policies do not account for the needs of people with disabilities, they may result in unequal care and violate the ADA. For instance, where a patient’s disability prevents them from providing their medical history or understanding medical decisions or directions, the medical provider should explore whether a modification to its visitor policy may be safely carried out.

Several important limitations apply. Not every person with a disability needs someone with them in order to equally access medical care. For those who do not, excluding a companion does not violate the ADA. Also, the ADA recognizes that protecting the rights of individuals with disabilities may need to be balanced with other safety concerns. For instance, the ADA allows health care providers to impose “legitimate safety requirements” necessary for safe operation. But a blanket ban on all nonpatients in all care settings does not fall into this narrow category—even in the midst of COVID-19. Where the exclusion is necessary from a public health perspective, medical providers should think creatively about how to best serve the needs of the patient with a disability.

Examples include the following:

- An adult with Down syndrome who cannot speak has severe chest pain and goes to the hospital with his parent. Due to COVID-19-era restrictions on visitors, the hospital stops the patient’s parent from joining him in the hospital’s emergency department, resulting in delayed treatment and critical medical history not being communicated to the medical team. This is a violation of the ADA.
- A person with severely limited mobility is admitted to a hospital for appendicitis. This patient would like his adult daughter to accompany him during his hospital stay. In this case, the ADA would not require the hospital to modify its COVID-19-era “visitor policy” to permit the daughter to enter because the daughter’s presence plays no special role in ensuring that the patient receives equal access to care.
- The spouse of a patient who is being treated for a traumatic brain injury tested positive for COVID-19 two days ago. The medical office providing rehabilitation services is justified under the ADA in excluding the spouse from entering the facility. However, the provider should work with the spouse, including through the use of technology, to allow the spouse’s remote participation to ensure that the patient receives equal access to care.

## **Does the ADA apply to outdoor restaurants (sometimes called “streateries”) or other outdoor retail spaces that have popped up since COVID-19?**

Yes. Just as the ADA requires businesses to make indoor restaurants or retail shops accessible to people with disabilities, it requires businesses to make outdoor spaces for dining and retail accessible as well. Local governments must also make sure that their programs and activities—such as providing and maintaining curb ramps, accessible routes on sidewalks and accessible street parking—continue to comply with the ADA even though “business” has moved outside.

For a restaurant, this could mean providing an accessible route from the accessible parking and the accessible sidewalk to the outdoor dining area’s accessible seating. An accessible route is one that is free of obstacles—such as sandwich boards, heaters, planters, chairs, or tables—that would make it difficult or impossible for a person with a mobility disability to

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access the business. For an outdoor retail space, this could mean providing an accessible route from the accessible parking and the accessible sidewalk to and throughout the retail space and providing an accessible check-out area.

Additionally, this could mean removing objects that stick out or protrude into the sidewalks that people use to get to and through these spaces. Many objects, such as umbrellas, canopies, tables, tree branches or displays, are at heights that cannot be detected by someone using a cane to assist with their vision disability. These protruding objects make the sidewalk dangerous to people who are blind or have low vision. To eliminate hazards, a restaurant might need to contact their local government to trim trees along the sidewalks that are now within or part of an outdoor dining or retail space.

For local governments, complying with the ADA could also mean making sure during the permit process as well as on an everyday basis that streateries or outdoor retail do not block curb ramps, sidewalks or accessible street parking so that persons with disabilities may continue to use them.

Examples include the following:

- A person who uses a wheelchair cannot continue along the accessible sidewalk where a streatery is located because outdoor diners and their tables and chairs are spread across the sidewalk, blocking the accessible route. The restaurant must move the tables, chairs and other items blocking the sidewalk to restore the accessible route for people with disabilities and then maintain that clear route. The local government may also have a responsibility to make sure that the accessible route is clear because it provides and maintains the sidewalks.
- A person who is blind looks forward to dining at a streatery but once there runs into the edge of a table umbrella and is injured because the umbrella is too low. The restaurant must raise the umbrellas so that the protruding parts of the umbrella—the edges—are at a height that complies with the ADA and pose less risk to patrons with vision disabilities.

*Source: U.S. Department of Justice*