

Jason Habinsky in Bloomberg Law: 'My Brain's Not as Sharp: COVID Woes Stalk Workers Back on Job'

October 7, 2020 Jason Habinsky

PRACTICES Employee Benefits and Executive Compensation

Haynes Boone Partner [Jason Habinsky](#) talked with *Bloomberg Law* about labor and employment implications for employers at companies with COVID-19 survivors.

Below is an excerpt:

Millions of people could be dealing with medical issues including heart, kidney and lung damage long after the pandemic subsides. With no clear legal or regulatory guidance yet on how accommodating employers will have to be, COVID-19 has created a parallel predicament for businesses that carries numerous risks of litigation. It's unclear whether and how key workplace protections under the Americans with Disabilities Act will apply, leaving it up to employers and employees to sort out what accommodations can or should be made.

The question is whether COVID-19's lingering effects will qualify and how employers should accommodate them. It will largely depend on how COVID-19 affects each person.

"I would be surprised if there was a blanket determination that anyone with coronavirus is disabled," said Jason Habinsky, a partner at Haynes Boone, who chairs the firm's labor and employment practice group.

Without rulings on the scope of the law specifically related to COVID-19, the Equal Employment Opportunity Commission must rely on existing interpretations of similar circumstances to guide employers on whether long-term and lingering effects of the disease might qualify as a disability, and how employers should respond. In recent guidance on workplace pandemic preparedness, the EEOC said "employers and employees are encouraged to use interim solutions to enable employees to keep working as much as possible."

"The EEOC and other agencies are preaching giving employees the benefit of the doubt," Habinsky said.

What's Reasonable?

Additional leave, teleworking, or a modified schedule to allow for doctor visits are examples of reasonable accommodations that EEOC says may be required as long as they don't create an undue hardship for an employer.

But these solutions aren't always meant to be indefinite.

"If someone says 'I want to take time off. I can't tell you how long or when I'll be back,' that might not qualify as a reasonable accommodation," Habinsky said.

To read the full article, click [here](#).