

RA & TiDBITS

LEGAL NEWS & other

Disability-Related info

November 2021



Is Working from the Office an Essential Job Function?

As the country appears to be moving toward a getting back to normal, many questions still persist, such as those relating to the workplace. A research report from the Rocky Mountain ADA Center takes a closer look at how to determine whether on-site attendance is an essential job function.

The answer is likely 'yes' when the job requires a physical exchange of goods or services. It is likely 'maybe' if the job requires a high level of interaction or teamwork. The legal answer is usually is, "it depends."

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HAVE A QUESTION?

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Is Working from the Office an Essential Job Function?

Resource Type: Research

Downloads:

- SUMMARY - Is Working from the Office an Essential Job Function? 224.99 KB
- FULL - Is Working from the Office an Essential Job Function? 337.74 KB

Essential Job Function — continued on page 3

NOVEMBER IS . . .



Alzheimer's Awareness Month



EPILEPSY AWARENESS MONTH



NATIONAL FAMILY CAREGIVERS MONTH!

HAPPY
THANKSGIVING
From All of Us



HOLIDAY SCHEDULE

OUR OFFICE WILL BE CLOSED ON
THURSDAY, NOVEMBER 11, 2021, IN
OBSERVANCE OF VETERANS DAY
AND

WEDNESDAY THROUGH FRIDAY
NOVEMBER 24-26, 2021, FOR THE
THANKSGIVING HOLIDAY

★ THANK YOU ★
veterans

NOVEMBER 11TH

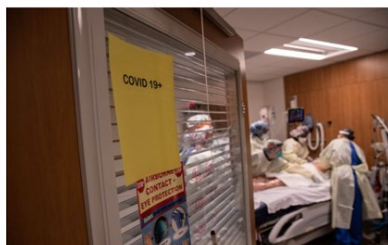


What People with Disabilities Need to Know about COVID-19

disabilityscoop The Premier Source for
Developmental Disability News

Study: Among Vaccinated, Those With Down Syndrome Face Highest Risk From COVID-19

by Michelle Diamant | September 24, 2021



According to findings published in the British Medical Journal, those with Down syndrome have a 12-fold increased risk of death if they contract the coronavirus after receiving at least one vaccine dose.

Researchers used a tool they developed called QCovid to establish cumulative risk scores for hospitalization or death from COVID-19 for different groups. The tool factors for age, sex, ethnic group and the rate of COVID-19 infections.

In addition to people with chronic disorders like Down syndrome, other groups with elevated odds for hospitalization and death after vaccination include those who are immunosuppressed as a result of chemotherapy, a recent bone marrow or solid organ transplant, the study found. Individuals with HIV/AIDS, those living in congregate settings and people with neurological disorders, including dementia and Parkinson's disease, are also in the highest risk group.

Overall, there were very few hospitalizations or deaths in people studied who were at least 14 days past their second vaccine dose. Accordingly, the researchers said they do not have enough data to say definitively whether the trends identified in the study will persist.

To read more, go to: <https://www.disabilityscoop.com/2021/09/24/study-among-vaccinated-down-syndrome-face-highest-risk-covid-19/29502/>.

DON'T FORGET — HHS Hotline to Improve Access to COVID-19 Vaccines for People with Disabilities

The U.S. Department of Health and Human Services (HHS) launched a first-of-its-kind national hotline to connect people with disabilities to information and services to improve access to COVID-19 vaccines. The **Disability Information and Access Line (DIAL)** is now available to help people with disabilities get vaccinated. The DIAL's trained staff is standing by to:

- Help find local vaccination locations
- Assist with making vaccination appointments
- Connect callers to local services — such as accessible transportation — to overcome barriers to vaccination.

**Help with COVID-19 vaccinations for
people with disabilities**

Call: 888-677-1199

Monday-Friday from 9 a.m. to 8 p.m. (Eastern) - or

email: DIAL@n4a.org

To learn more, go to: <https://acl.gov/DIAL>

STAY HEALTHY



HELP US STAY HEALTHY

**Do your part to protect our community while keeping
our economy and schools open:**



When Is COVID a Disability? Courts Tackle Issue in Bias Cases

A Bloomberg Law article recently reported on recent case law regarding whether the ADA protects employees with COVID-19.

One example was an employee who was fired the same day she reported a positive Covid-19 test and asked for leave to quarantine. Her termination letter indicated that after only a few months on the job, she wasn't "a good fit." A federal judge in Pennsylvania allowed the case to proceed with a discrimination lawsuit challenging her discharge, indicating that Covid-19 potentially could be considered a disability under the Americans with Disabilities Act.

The case is one of several percolating in courts—including one last month against Campbell Soup Co.—that will test a gray area over the virus's interplay with the federal disability bias law.

The ruling cited Biden administration guidance about how "long-haul" Covid symptoms may qualify as a disability. However, whether the ADA also protects workers who contract the virus—prior to the onset of long-term symptoms—remains an open question.

To read more, go to: <https://news.bloomberglaw.com/daily-labor-report/when-is-covid-a-disability-courts-tackle-issue-in-bias-cases>.

THINK POSITIVE
&

KEEP
INFORMED

Essential Job Function — continued from page

While telework was a relatively rare occurrence before the pandemic, the adaptation to telework during the pandemic certainly shows it may have viability as a permanent solution to a variety of employee needs beyond personal safety. The report seeks to explain the question in more detail along with analyzing various sources, including ADA-related tests.

ADA Framework & Importance. The ADA, like most legal creations, is complicated and multi-faceted and for the present paper, there is a specific need to discuss reasonable accommodations under the ADA. While certain aspects of reasonable accommodations are clear and applicable, some aspects are enigmas. For instance, it is clearly outlined that an "Employer's failure to grant reasonable accommodation to a disabled employee falls under the ADA's definition of discrimination."

Multi-Part Accommodation Test. On the other hand, the guidelines are more complex for determining when an accommodation is proper. To do so, courts use a multi-part test whereby:

1. [employee with a disability] bears the burden of establishing [they are] disabled;
2. [employee with a disability] bears the burden of establishing that [they are] otherwise qualified for the position despite [their] disability:
 - A. Without accommodation from the employer;
 - B. With an alleged essential job requirement eliminated; or
 - C. With a proposed reasonable accommodation.
3. Employer will bear the burden of proving that a challenged job criterion is essential and therefore a business necessity or that a proposed accommodation will impose an undue hardship upon the employer.

The above test requires the employee to satisfy each aspect to prove to a court that they should be granted an accommodation. It is specified that only "[qualified] employees are legally entitled to have their employers offer reasonable accommodations." In other words, if an employee is unable to complete essential functions of the job, even with an accommodation, they are not qualified for the job.

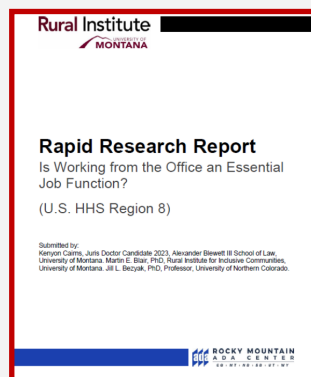
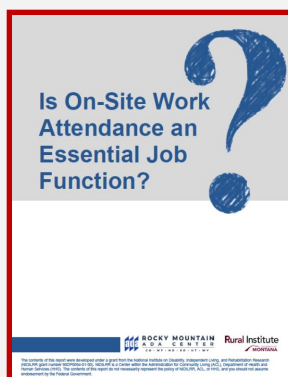
Factors of Essential Job Function

The next step in the evaluation of a reasonable accommodation claim is determining whether a particular job function is essential. Courts use the ADA's implementing regulations as a factor test to determine whether a job function is essential in order to assess failure to accommodate claims. The relevant factors to determine if a job function is essential include:

1. The employer's judgment as to which functions are essential;
2. Written job descriptions prepared before advertising or interviewing applicants for the job;
3. The amount of time spent on the job performing the function;
4. The consequences of not requiring the incumbent to perform the function;
5. The terms of a collective bargaining agreement;
6. The work experience of past incumbents in the job; and/or
7. The current work experience of incumbents in similar jobs.

Source: <https://rockymountainada.org/resources/research/working-office-essential-job-function>.

The article also provided links to downloads for a SUMMARY version and a FULL version of the report prepared: Is Working from the Office an Essential Job Function? To read the SUMMARY, go to: <https://rockymountainada.org/sites/default/files/2021-09/Is%20Working%20from%20the%20Office%20an%20Essential%20Job%20Function%20Summary%20Final.pdf>. To read the FULL version, go to: <https://rockymountainada.org/sites/default/files/2021-09/Is%20Working%20from%20the%20Office%20an%20Essential%20Job%20Function%20Final.pdf>.

**Unemployment Rate Remains Double for People with Disabilities 18 Months into Pandemic**

The latest economic data show people with disabilities continue to experience an unemployment rate twice that of people without disabilities. Monthly data from the U.S. Bureau of Labor Statistics show the continuing higher rate of unemployment, with 10.9 percent unemployment for people with disabilities and 5.0 percent unemployment for people without disabilities in August.

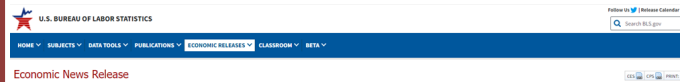


Table A-6. Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted

HOUSEHOLD DATA Table A-6. Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted (Numbers in thousands)	Persons with a disability		Persons with no disability	
	Sept. 2020	Sept. 2021	Sept. 2020	Sept. 2021
TOTAL, 16 years and over	29,802	31,589	230,941	236,196
Civilian noninstitutional population	6,047	7,051	154,026	154,341
Participation rate	20.3	22.3	66.7	67.0
Employed	5,291	6,407	142,451	143,609
Employment-population ratio	17.8	20.3	61.7	64.1
Unemployed	755	644	11,575	6,732
Unemployment rate	12.5	8.0	7.5	4.4
Not in labor force	23,751	24,532	76,915	79,855

"The economy was greatly affected by the pandemic and many individuals lost their jobs, but it was especially hard for those with disabilities," said Diane Winiarski, Director at Allsup Employment Services (AES), an SSA-authorized Employment Network (EN). "As the economy recovers, we need to create a more inclusive workforce that gives individuals with disabilities the opportunities they deserve to reenter the workforce."

October marked National Disability Employment Awareness Month, which commemorates the many and varied contributions of individuals with disabilities to America's economy. COVID-19 has disproportionately affected the unemployment rate for people with disabilities, pushing the rate up to 13.2% in August 2020.

Source: <https://www.allsup.com/newsroom/unemployment-rate-remains-double-for-people-with-disabilities-18-months-into-pandemic-reports-allsup-employment-services>.

Study: Just 1 out of 5 People with Disabilities Works from Home

A report by the Rutgers Program for Disability Research finds a disproportionate number of people with disabilities work in blue collar and retail jobs, where remote work is typically not an option. Some of the findings are:



Study: Just 1 out of 5 people with disabilities works from home. Millions still do not have the option

- The employment rate for working-age people with disabilities stands at about 20%.
- Working from home is actually more common among people without disabilities (24%) than people with disabilities (19%).
- Working from home is actually more common among people without disabilities (24%) than people with disabilities (19%).

The researchers are digging deeper. A branch of the U.S. Department of Health and Human Services has established a Rehabilitation Research and Training Center at Rutgers to study how reshaping employer policies could make it easier for people with disabilities to advance their careers.

Source: <https://www.business.rutgers.edu/news/study-just-1-out-5-people-disabilities-works-home-millions-still-do-not-have-option>.

To read the Report, go to: [FactSheet_DisabilityTelework_Pandemic_Sept2021.pdf \(rutgers.edu\)](https://www.business.rutgers.edu/news/study-just-1-out-5-people-disabilities-works-home-millions-still-do-not-have-option).



Overcoming Past Tragedies, Hope for the Future

Japanese calligraphic artist Shoko Kanazawa displays the kanji for "katsu" (勝) — meaning "victory" — to convey a message for a battered humankind as one of hope in 2021. A message that the virus can be overcome and that brighter days lie ahead for us all.

What Will Be the 2021 Kanji of the Year in Japan?

Last year, in a public calligraphy performance by Mori Seihan, the chief priest of Kiyomizu Temple in Kyoto, who announced the kanji of 2020, which had been chosen through a contest has been read as "mitsu" (密), meaning "close" or "dense." The character was used in the Japanese government's anti-coronavirus campaign of avoiding the "Three C's:" closed spaces, crowded places and close-contact settings. The chief priest proclaimed that he prayed for the repose of the souls of people who died due to the coronavirus outbreak and that the coming year would be a happy one for all people. He also said that the kanji "mitsu" also has a meaning of "familiarity" to convey that he hoped for people to have stronger connections with each other even if they are physically apart.

Enter Shoko Kanazawa, who subsequently offered an entry for the 2021 Kanji of the Year. What is most remarkable about Kanazawa is that she is a person with Down Syndrome. Under the guidance of her mother, herself a Shodo (calligraphy) master in Japan, Shoko took on lessons beginning at age 5, persevered and eventually became a well-known and popular performance calligraphist since turning 20 with multiple shows. In fact, she was scheduled to do an exhibition at the Portland Japanese Garden in 2020, which ironically had to be postponed due to the pandemic, but became available virtually.

Despite her disability, or perhaps because of it, and the hardships she faced in her personal life, there is no doubt that Shoko appreciated the message of the 2020 Kanji of the Year. Nonetheless, her vision was for a different message. Her kanji expresses "victory." It is how she sees herself. It is how she prays that the world will be in overcoming the corona virus and possibly other challenges from the past. Victory against those issues that could serve to set us all back and move forward to a more hopeful future. In other words, it is a statement of how she sees others, or at least, hopes for them.

People with disabilities, not unlike Shoko, face many challenges, who find ways. Some obstacles are greater than others, which is why federal and state laws became passed to attempt to level the playing field. It is these types of examples that push us forward in the work we do at P&A. To see that hopeful future for the many, many people with disabilities to have the same opportunities and access to participate in as full a life as possible.

We still can take a lesson from Shoko to press forward.

Robert Walters, P&A Staff Attorney



DID YOU KNOW?

The U.S. Department of Justice filed a statement of interest in a case against Quest Diagnostics Incorporated, a health care services company. The plaintiffs allege that Quest's self-service kiosks at various patient service centers are inaccessible to those who have vision disabilities.

Source: https://www.ada.gov/quest_soi.pdf.

ADA.gov
United States Department of Justice
Civil Rights Division

DISABILITY RIGHTS ARE HUMAN RIGHTS

Statement of Interest by the United States in Julian Vargas and American Council of the Blind vs. Quest Diagnostics

1 KRISTEN CLARKE
2 Assistant Attorney General
3 REBECCA B. BOND (CSBN 2022220)
4 Chief
5 KATHLEEN P. WOLFE
6 Special Litigation Counsel
7 KEVIN J. KUEWSKI
8 Deputy Chief
9 CHRISTINE KIM (DCBN 1044186)
10 Trial Attorney
11
12 U.S. Department of Justice
13 600 Pennsylvania Ave., N.W. - 4CON
14 Washington, D.C. 20530
15 Telephone: (202) 305-0043
16 Facsimile: (202) 305-9775
17 Email: Christine.Kim@doj.gov
18
19 Attorneys for the United States of America
20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22
23 JULIAN VARGAS and AMERICAN
24 COUNCIL OF THE BLIND,
25 individually on behalf of themselves and
all others similarly situated,
Plaintiffs,
v.
QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC.; QUEST
DIAGNOSTICS HOLDINGS, INC.;
QUEST DIAGNOSTICS
INCORPORATED; and DOES 1-10,
inclusive,
Defendants.

CASE NO. 2:19-cv-08108-DMG-MRW
Hon. Dolly M. Gee
STATEMENT OF INTEREST OF
THE UNITED STATES OF AMERICA



VOTE EARLY
VOTE SAFE
WYOMING

November Elections

There are no statewide elections in Wyoming this year. However, there may be local matters that will be submitted to voting.

Effective July 1, 2021, Wyoming voters will be required to show an acceptable form of identification when voting in person. There are many ID options for you to use to prove your identity. For more info, go to: <https://sos.wyo.gov/Elections/VoterID/Default.aspx>. Be prepared!

FOR MORE
INFO

CONTACT US

Protection & Advocacy System, Inc.

7344 Stockman Street
Cheyenne, WY 82009
(307) 632-3496
(800) 624-7648
(307) 638-0815

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