Long COVID, the ADA, and Employment

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Overview

• Background: what we know, what we’re still learning
• Diagnosis, management & prevention
• Long COVID as an ADA Disability
• Reasonable accommodations
• Resources
• Q&A

*Current as of 4/12/2023. Information may change*
Impact on the workforce

• “[Long COVID] represents the largest new entrant to the disability community in modern history.”
  – Rep. Lloyd Doggett, Chair of US House Ways & Means Health Subcommittee

• More common in working-age people

• Frontline workers overrepresented (healthcare workers, teachers, service industries)

• Contributing to labor shortage – may account for 15% or more of unfilled jobs (Brookings Institute)

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Impacts of the virus that causes COVID-19

*Current as of 4/12/2023. Information may change.

Among COVID-19 survivors, an increased risk of death, serious illness,” Washington University School of Medicine

Image by Sara Moser, “Among COVID-19 survivors, an increased risk of death, serious illness,” Washington University School of Medicine
Outcomes of COVID-19

4/12/2023 *Information may change as we learn more.
Causes unknown

- Theories being explored:
  - Direct tissue damage from virus
  - Autoimmune triggers
  - Micro-clots
  - Ongoing inflammation from viral reservoirs
  - Reactivation of SARS-CoV-2 or other viruses (ex: Epstein-Barr)
  - Combination of these, or something else

*Current as of 4/12/2023. Information may change*
What is long COVID?

- **Multiple definitions:**
  - CDC: “a wide range of new, returning, or ongoing health problems people can experience four or more weeks after first being infected with the virus that causes COVID-19.”
  - WHO: starts at 12 weeks, adds “not explained by another health condition”

- **Also called:**
  - Long-haul COVID or long-haulers
  - Chronic COVID
  - Post-acute sequelae of COVID-19 (PASC)
  - Post-COVID conditions, and other names

*Information may change as we learn more.*
Symptoms of long COVID

• Over 200 reported

• Different from person to person

• May occur in clusters/subtypes

• Can be ongoing, new, or may come and go

• Can last for weeks, months, or longer

• Can range from mild to severe enough to be a disability

4/12/2023 *Information may change as we learn more.
Some potential symptoms

- Cough
- Difficulty breathing or shortness of breath
- Fever
- Rash
- Difficulty thinking or concentrating (sometimes referred to as “brain fog”)
- Headaches
- Changes in smell or taste
- Tiredness or fatigue
- Mood changes
- Anxiety or depression

*Information may change as we learn more.*

Image source: NYC Health + Hospitals
More potential symptoms

- Chest or stomach pain
- Changes in period cycles
- Diarrhea
- Joint or muscle pain
- Pins-and-needles feeling
- Symptoms that get worse after physical or mental activities
- Sleep problems
- Dizziness on standing (lightheadedness)
- Fast-beating or pounding heart (also known as heart palpitations)

*Information may change as we learn more.*

Image source: NYC Health + Hospitals
Who can get long COVID? Anyone.

- Young, healthy people can get long COVID
- People with mild COVID-19 can get long COVID
- Risk is higher if:
  - COVID-19 was severe or required hospitalization
  - Person already has health issues (diabetes, HIV, kidney disease, mental health issues, overweight, asthma, autoimmune disease)
  - People who smoke
  - Unvaccinated or not boosted
- May be more likely in women, people of working age and older
- Still learning who and why.
How common is long COVID?

• Difficult to measure: no case definition, may be too mild/moderate to seek treatment, may not realize symptoms are long COVID...

• Estimated **5-30%** of adults with COVID-19 will have long COVID
  • CDC: potentially 1 in 5 adults who have had COVID (1 in 4 in 65+ years old*)
  • Children & teens: estimated 2-12%
  • A subset will have severe long-term symptoms

• Has decreased, but “milder” variants still causing long COVID, relapse

*Information may change as we learn more.*
Impact on communities

• Inequities + Harder hit by pandemic + greater exposure may = more long COVID
  • BIPOC communities, immigrants, LGBTQIA+, people with disabilities, rural and low-income areas

• Other barriers:
  • Communicating about long COVID is hard
  • Accessing health care, prevention
  • Fear, stigma, dismissiveness
  • Hard to get support, benefits
Share of Americans with long COVID who also reported significant activity limitations, by race

Survey of 50,258 U.S. adults conducted Sept. 14–26, 2022

- Non-Hispanic Black: 38%
- Hispanic or Latino: 37%
- U.S. overall: 25%
- Non-Hispanic White: 20%

Data: U.S. Census Bureau, Household Pulse Survey 2022; Chart: Madison Dong/Axios Visuals
Seeking care

• Important to talk with a health care provider
  • They can **document** symptoms and impact for employer, school, insurance claims, disability application
  • Early help may be better
  • May be able to help relieve symptoms, speed up recovery, or offer other support
Challenges for patients

• Not one way to diagnose or treat long COVID
• Tests may come back normal despite obvious illness
• Provider may not know what to do
• Long waits for long COVID clinics, specialty care
• Insurance denials
• *Still important to talk to a health care provider*
Assessment & diagnosis

• No single test for long COVID

• Other tests:
  • Can rule out other causes
  • Help determine treatment/management
  • May come back normal
  • May require specialists (cardiologist, pulmonologist, others)

• Assess loss of function, impact on daily life

• ICD-10 code, U09.9: Post-COVID-19 condition, unspecified
Treatment and management

- There is no cure. Treatment/management:
  - Based on symptoms
  - Can follow management of similar conditions
  - May include rehabilitation (physical or occupational therapy, respiratory therapy, even “smell therapy”)
  - May include medication, special diet, mental health support
  - May involve pacing, strict rest periods

- Unproven home treatments can be harmful, expensive

- **Some people get better with time.** Others do not. A lot to learn about WHO and WHY
Preventing Long COVID

• Best prevention: avoiding infection (or reinfection) with the virus that causes COVID-19
  - Layered approach when cases are high: mask, test, avoid indoor crowds

• Vaccination & boosters greatly reduce chance of severe disease; may reduce longer-term impacts of virus

• Positive test = important to rest, not “push through”

• Potential medications during acute infection

• Support overall good health, preventive exams

4/12/2023 *Information may change as we learn more.
Long COVID & disability

- **May** qualify under the ADA as of July 2021
  - Case-by-case based on limitations, how long, how severe
  - Must “**substantially limit**” one or more major life activities, such as caring for oneself, performing manual tasks, working, etc.
  - May face barriers, denials, delays

- **Short- or long-term disability benefits** may be needed

- **Accommodations** may be needed at work or school
  - Examples: gradual return, flexible schedule, modified duties, hybrid option, extra breaks, sitting more, lifting less, remove distractions, tools for memory

*Information may change as we learn more.*
**Understanding Impacts of Long COVID**
- Surveys & assessments
- Analyzing existing claims & EHR data
- Overlap with chronic diseases, mental health & more

**Clinical Guidance**
- Learning network/workgroup for living guidance:
  - Diagnosis
  - Management
  - Coordinated Care
- Focus on healthcare “gatekeepers,” implementation

**Education & Resources**
- Awareness campaigns, website, graphics, videos
- Sector-specific presentations & resources (workplaces, schools)
- Goals: Culturally-relevant messaging, trusted messengers; community-specific support groups

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**Partnerships & Engagement**
Community Voices partner group, health care providers & systems, patients & caregivers, ADA Minnesota, state agencies, Local and Tribal public health

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**Health equity lens**
Long COVID

A POST-COVID CONDITION

Post-COVID conditions are health problems that people experience four or more weeks after being infected with the virus that causes COVID-19. Post-COVID conditions are also called long COVID, long-haul COVID, chronic COVID, post-acute COVID, or post-acute sequelae of COVID-19 (PASC).

About Long COVID

What we know about long COVID, including symptoms and treatment.

Resources and Support

Medical and support resources for long COVID survivors, caregivers, schools, workplaces, and more.

What We Are Doing

What MDH is doing to understand the impacts of long COVID.

For Health Care Providers

Interim guidance, research, and resources.

MDH website: health.mn.gov/longcovid
Resource page: Employees & employers

Long COVID Resources and Support

On this page
- Medical care
- Mental health support
- If you struggle with daily tasks
- Tools for managing symptoms at home
- Resources for employees and employers
- Resources for caregivers, schools, and more

If you are experiencing symptoms of long COVID, medical and social support may be available to you. Explore the lists below to learn more.

If you need help finding a doctor, mental health support, or insurance coverage, visit Minnesota Department of Human Services (DHS): Health care. For help filling out applications or enrolling in coverage, search the directory of MNsure-certified Navigators.

For culturally-specific assistance with COVID-19 issues, understanding the effects of COVID-19, or finding mental health resources, search the listing of COVID-19 Community Coordinators.

To access Minnesota assistance programs, visit mnbenefits.mn.gov.

Info on:

- Long COVID and the ADA
- Job accommodations, return to work
- Resources from DEED, MN RETAIN, US Dept. of Labor, consultations

*Will add as we learn more!*
Finding support

- Centers for Independent Living (see map)
- DHS Disability Hub, DIAL hotline
- Administration for Community Living
- Online support groups
- Seek support from family, friends, neighbors, faith community, others

*Information may change as we learn more.*
Possible Symptoms of Long COVID

**General symptoms include:**
- Tiredness that interferes with daily life
- Symptoms that get worse after physical or mental effort
- Trouble sleeping

**Some other possible complications**
- Diabetes
- High cholesterol
- Kidney damage
- Low iron

**NOTE:** This is not a complete list. People may have one or many symptoms. Health conditions other than long COVID can also cause these symptoms. Talk to a healthcare provider if symptoms are not improving or interfere with your daily life.

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**Long COVID**

Long COVID: Information and resources - Spanish
- mnhealth • 123 views • 6 months ago
- 1:01

Long COVID: Information and resources - English
- mnhealth • 100 views • 5 months ago
- 0:37

Calamidadh COVID-19: 2 Meses de la vacuna: Como se ve el cuerpo? Hora y en el cuerpo?
- mnhealth • 81 views • 6 months ago
- 0:48

Long COVID: Information and resources - Somali
- mnhealth • 49 views • 6 months ago
- 0:42

Long COVID: Prevention (Spanish)
- mnhealth • 9 views • 3 months ago

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4/12/2023

Graphics & video PSAs
Refresher: Definition of a Disability

- **Actual Disability**: An individual has a physical or mental impairment that **substantially limits** a **major life activity** (such as walking, talking, seeing, hearing, or learning, or operation of a **major bodily function**);

- **Record of a Disability**: An individual has a history or “record of” an actual disability (such as cancer that is in remission); or

- **Regarded as**: An individual is perceived to have an impairment
Is COVID an ADA Disability?

EEOC Technical Assistance: What You Should Know About COVID-19 and the ADA

- COVID 19 is an impairment
- Likely will impact a major life activity (breathing, caring for oneself, interacting with others, concentrating, working)
- Most frequent question is whether there is a substantial limitation in a major life activity
- Individualized assessment required
- Analysis includes severity of symptoms and length of time experiencing symptoms
Is Long-COVID an ADA Disability?

- Long COVID can be a disability
- Long COVID is a physiological impairment affecting one or more body systems
  - Ex: Lingering emotional illness and other mental health conditions
- Long COVID can substantially limit one or more major life activities
  - Ex: “Brain fog” can substantially limit brain function, concentration and/or thinking

Guidance from DOJ/HHS (July 2021)
- Applies to Titles II/III, Rehab Act, Affordable Care Act
- EEOC adopted Long COVID analysis for employment
COVID as a “Disability” under the ADA

An individual diagnosed with COVID-19 who experiences ongoing but intermittent multiple-day headaches, dizziness, brain fog, and difficulty remembering or concentrating, which the employee’s doctor attributes to the virus, is **substantially limited** in neurological and brain function, concentrating, and/or thinking, among other **major life activities**.
An individual diagnosed with COVID-19 who initially receives supplemental oxygen for breathing difficulties and has shortness of breath, associated fatigue, and other virus-related effects that last, or are expected to last, for several months, is substantially limited in respiratory function, and possibly major life activities involving exertion, such as walking.
COVID as a “Disability” under the ADA (3)

- **Episodic**: An individual diagnosed with “long COVID,” who experiences COVID-19-related intestinal pain, vomiting, and nausea that linger for many months, even if intermittently, is **substantially limited** in gastrointestinal function, among other major life activities.
COVID as a “Disability” under the ADA (4)

- COVID causes or exacerbates limitations:

  After an individual’s COVID-19 resolves, the individual develops diabetes attributed to the COVID-19. This individual would be substantially limited in the major life activity of endocrine function.

  An individual initially has a heart condition that is not substantially limiting. The individual is infected with COVID-19. The COVID-19 worsens the person’s heart condition so that the condition now substantially limits the person’s circulatory function.
Transitory and Minor – Not a Disability

- Conditions that are transitory (i.e., will last fewer than six months) and minor

**COVID-19 Related Examples:**

- An individual who is diagnosed with COVID-19 who experiences congestion, sore throat, fever, headaches, and/or gastrointestinal discomfort, which resolve within several weeks, but experiences no further symptoms or effects, is not substantially limited in a major bodily function or other major life activity.
  - Even if individuals must be isolated/quarantined during a specified period while they are infectious.
Areas of ADA Coverage

• Maintaining workers’ confidentiality and privacy

• Reasonable accommodations for workers with Long COVID

• Remember – federal law also prohibits caregiver discrimination
Confidentiality

• Strict ADA limitations on use of medical information

• All medical information, including RA documentation, kept in file separate from personnel records

• Includes sharing information with coworkers (need-to-know)
Reasonable Accommodations

Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities
Reasonable Accommodation and Long-COVID

- Employer must consider providing reasonable accommodations for any limitations related to a disability, even if temporary or episodic if they are related to the performance of job tasks/functions.
  - Accommodations can be removed when no longer needed
  - Evaluation/assessment should occur periodically to determine if the accommodation is still needed
• Limited medical documentation may be requested to document the limitation if it is not obvious and/or to document the need for an accommodation.

  – May ask questions to clarify why the accommodation is needed and to explore alternative accommodations, if necessary.
Common Types of Reasonable Accommodation

Personal protective equipment (PPE) - *PPE itself may need to be accommodated* (ex: clear face masks; non-latex gloves)

Temporary leave (ADA Leave and/or qualifying FMLA)

Work from home or hybrid work schedule

Modifying job duties (removing non-essential job tasks)
  - Activities that could be done from home or with social distancing
Common Types of Reasonable Accommodation (2)

Specialized equipment

- Organizing software, Apps for reminders, etc.

Written versus verbal instructions (brain fog)

Use of captioning during virtual or in-person events (memory, auditory processing)

Quiet area (distractibility)

Additional break times/rest periods (fatigue)
Remote Work as a Reasonable Accommodation

Questions to consider:

- Can employee do all the essential functions of the job from home? Are there any unique aspects of the job that would make telework difficult?
- Does the employee’s job require access to specialized equipment or programs?
- What does the job description say?
- Has the employee worked from home before?
- Do other employees in similar jobs in the organization work from home?
- Does the employer have a remote work policy?
It is never an accommodation to remove essential functions.

It may be a reasonable accommodation to remove marginal tasks.

Factors to consider:
- What does the employer think?
- What does the job description or CBA say?
- How much time is spent on this task?
- Consequences of not doing task?
- Experience of others in job?
Reassignment as a Reasonable Accommodation

Reassignment is the accommodation of “last resort”
- Best to accommodate in current position

Reassignment is a good option if:
- Vacant position exists (not required to create job)
- Position would make it possible for the employee to work (perhaps better suited for social distancing or telework)
- The employee is qualified for position; not a promotion
- Position is not subject to bona fide seniority system
Reassignment as a Reasonable Accommodation (2)

If there is a vacant position, and certain conditions are met, employers generally must place an employee in the job.

- **Tip**: Identify specific position and request to be placed in the position as a reasonable accommodation.
- Given temporary nature of COVID pandemic, employee could request temporary reassignment.
Leave as a Reasonable Accommodation

**Leave as an ADA accommodation**
- ADA potentially provides unpaid leave; courts have limited ADA leave to no more than one month
- **Limit**: Only applies to employees, not family members (compare FMLA)

**Family Medical Leave Act (FMLA)**
- Provides employees up to **12 weeks of job-protected leave** if they or a family member are incapacitated by a serious health condition – including COVID-19

**Employer policies**
- Some employers have internal policies offering a medical or personal leave
National Resources

- US Equal Employment Opportunity Commission (EEOC)
  - www.eeoc.gov
  - toll free: 800-669-4000, local number: 612-552-7306

- Job Accommodation Network (JAN)
  - www.askjan.org
  - 800-526-7234

- Great Lakes ADA Center
  - www.adagreatlakes.org
  - 800-949-4232 (V/TTY)
  - 312-767-0377 (Video Phone)
Minnesota Resources

**Minnesota Department of Human Rights**
Voice: 651-539-1100
TTY: 651-296-1283
Toll Free: 800-651-3704
http://www.humanrights.state.mn.us

**DEED/Rehabilitation Services Branch**
651.259.7114 or 800.657-3858
651.296.3900 TTY
https://mn.gov/deed/job-seekers/disabilities/

**MN State Services for the Blind**
651-539-2300
https://mn.gov/deed/ssb/

**Minnesota Department of Health Website:**
https://www.health.state.mn.us/diseases/longcovid/index.html
Key takeaways

• Virus that causes COVID-19 can impact nearly every system of the body. Still learning how/why/who.

• Long COVID can affect people across the lifespan, including those who were healthy before having COVID-19.

• Symptoms vary from person to person.

• Diagnosis & treatments: still emerging.

• Disparities in impacts and access to care persist.

• Long COVID can result in new disability.
More key takeaways

- Long COVID may qualify as a disability under the ADA.
- Explore Federal and state resources. Documentation from a healthcare provider is usually necessary to access benefits, services, and accommodations.
- Long COVID affects health and also healthcare, the workforce, economy, societal wellbeing.
- Just as COVID-19 is not going away, long COVID is not going away.
- More information and resources: health.mn.gov/longcovid
We welcome your questions.

Thank you!

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