



## CLIENT ALERT

### **U.S. Department of Health and Human Services and Department of Justice Provide Guidance on “Long COVID” as a Disability under Various Federal Laws**

On July 26, 2021, the Office for Civil Rights of the Department of Health and Human Services and the Civil Rights Division of the Department of Justice jointly published a guidance, found [here](#), on evaluating whether long-term symptoms of COVID-19 (“long COVID”) constitute a disability. The guidance explains that subject to individual circumstances, long COVID can be a disability under Title II and III of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973, and Section 1557 of the Patient Protection and Affordable Care Act. While the guidance does not specifically address Title I of the ADA, which is applicable to private employers, “disability” is defined consistently throughout the ADA.

To be classified as a disability under the applicable federal laws, an individual with long COVID must have a “physical or mental” impairment that “substantially limits” one or more major life activities as a result of the elongated symptoms. A physical impairment includes any physiological disorder or condition affecting one or more body systems, including, among others, the neurological, respiratory, cardiovascular, and circulatory systems. A mental impairment includes any mental or psychological disorder, such as an emotional or mental illness. “Major life activities” include a wide range of activities typically engaged in on a daily basis, along with the operation of a major bodily function. The term “substantially limits” is construed broadly under the applicable federal laws. The guidance provides examples of long COVID symptoms and conditions, including tiredness, shortness of breath, cough, difficulty thinking or concentrating, loss of smell or taste, chest pain, depression and anxiety, or damage to the lungs, heart, kidney, circulatory system, neurological damage, and mental health conditions.

A long COVID diagnosis does not automatically qualify as a disability under these federal laws. Instead, an individualized assessment is necessary to determine whether an individual’s long COVID condition or corresponding symptoms substantially limits a major life activity. Where an individual’s long COVID qualifies as a disability, such individual is entitled to the same protections from discrimination as any other individual with a disability under the applicable federal laws. Businesses and state or local governments may need to provide accommodations to impacted individuals and address necessary changes in their workplaces to accommodate such long COVID related limitations.

If you have any questions about long COVID as a disability, or employers’ obligations and best practices in light of COVID-19, please contact a member of our employment law team: Paul Holtzman ([pholtzman@kb-law.com](mailto:pholtzman@kb-law.com)), Jill Brenner Meixel ([jmeixel@kb-law.com](mailto:jmeixel@kb-law.com)), Allison Lennon ([alennon@kb-law.com](mailto:alennon@kb-law.com)), or Brian Richichi ([brichichi@kb-law.com](mailto:brichichi@kb-law.com)).