Covid-19 Policy Collaborative:

Policy Checklist for a Disability-Inclusive Recovery

SEED | State Exchange on Employment & Disability

Across the United States, state and local policymakers are adopting policies, plans and other initiatives in response to the COVID-19 pandemic. Given the significant impact of COVID-19 on employment, in general, and the employment of individuals with disabilities, in particular, the State Exchange on Employment & Disability (SEED) convened the COVID-19 Policy Collaborative for an Inclusive Recovery. The Collaborative aims to support state intermediary partners and other stakeholders as they respond to the pandemic to ensure newly implemented policies align with federal, state and local disability and civil rights laws and policies.

The Collaborative identified three broad areas for consideration:

- ✓ *Return to the Workplace: Inclusive Safety and Health and Telework Policies*
- ✓ *Workplace Retention: Inclusive Mental Health and Vaccination Policies*
- ✓ *Preparing for Work: Inclusive Workplace Readiness Programs and Initiatives*

The following checklist is a summary of policy options to assist state and local policymakers in their efforts to adopt disability-inclusive COVID-19 recovery policies and initiatives on the following topics:

- ✓ Safety and health;
- ✓ Telework;
- ✓ Vaccinations;
- ✓ Mental Health; and
- ✓ Workforce readiness.

Safety and Health | Telework | Vaccinations | Mental Health | Workforce Readiness

COVID-19 SAFETY AND HEALTH POLICY AND PLAN OPTIONS

Disability-Inclusive Policies

As workers return to the workplace during and after the COVID-19 pandemic, state and local policymakers may want to consider adopting policies governing the workplace to protect the health and safety of all employees, including employees with disabilities, in a manner that facilitates equal employment opportunity for qualified individuals, consistent with our nation's civil rights statutes.

Based on a review of existing federal and state policies, state and local policymakers may want to consider the following policy options for expanding and improving COVID-19 safety and health policies to make them more inclusive of people with disabilities. Topics addressed include:

✓ References to EEOC guidance;

✓ Worker protections; and

✓ Workplace safety.

1. **References to EEOC Guidance.** In addition to state orders and guidance that include references to CDC and OSHA guidance, state policymakers may include references to EEOC guidance pertaining to disability-related inquiries and medical exams, confidentiality of medical information, hiring and onboarding, reasonable accommodations and return to work practices.

2. **Worker Protections.** Issue an executive order regarding worker protections, including the obligations of employers not to discriminate (including the failure to provide reasonable accommodations and the failure to reinstate) or retaliate against workers on the basis of disability, with a particular focus on the rights of persons with pre-existing conditions that make them at higher risk from COVID-19.

3. **Workplace Safety.** Issue separate guidance related to best, promising and emerging policies and practices for making the workplace safe, while at the same time ensuring equal employment opportunity for persons with disabilities during the COVID-19 pandemic, including persons with pre-existing conditions that make them at higher risk from COVID-19.

Disability-Inclusive Plans

A typical COVID-19 health and safety plan addresses:

✓ Management strategies (e.g., preparing a response plan, assigning a coordinator, training managers, establishing a communication system and keeping records); and

✓ Strategies to prevent or reduce the transmission of the virus (e.g., screening, testing, contact tracing, quarantining, isolating, physical distancing, vaccinating, installing barriers, using face coverings, using personal protective equipment, cleaning and disinfecting and adopting return-to-the workplace criteria).

A disability-inclusive COVID-19 health and safety plan also addresses protections that are aligned with the ADA and comparable state and local civil rights policies. Topics addressed include:

✓ Protecting against discrimination on the basis of disability;

✓ Protecting workers at higher risk for severe illness due to pre-existing health-related conditions;

✓ Ensuring confidentiality of information; and

✓ Protecting against retaliation.

1. **Protecting Against Discrimination on the Basis of Disability.** State and local agencies, as well as private sector employers, may want to consider including in their plans:

✓ Reference to the ADA, including the reasonable accommodation provision;

✓ Reference to the EEOC guidance and OSHA guidance applying the ADA to COVID-19 health and safety; and

✓ Recognition that the ADA provisions are construed to be consistent with guidance provided by CDC, OSHA and state and local public health officials.

As state and local agencies develop plans and templates for private sector employers, they may want to consider including specific examples of how the ADA (and the reasonable accommodation provision) applies to particular situations, for example:

» *The reasonable accommodation interactive process may be different during the pandemic.* Consistent with EEOC guidance, explain how the interactive process (the discussion between an employers and employee to determine an effective accommodation that enables the employee to perform the essential functions of the job) may be modified during the pandemic. Examples of modifications include shortening the interactive process or providing a requested accommodation on an interim or trial basis, with an end date, while awaiting receipt of medical documentation.

» *Reasonable accommodations as a strategy to reduce or eliminate direct threats to health and safety.* Consistent with EEOC guidance, explain how the provision of reasonable accommodations (absent undue hardship) may reduce or eliminate a direct threat to the health and safety of oneself or others.

» *Telework as an accommodation*. Recognize that telework may be required as a reasonable accommodation (absent undue hardship) for a particular employee, even if the state or local agency has a general telework policy providing sole discretion with managers to determine who is offered the opportunity to telework.

» *Use of personal protective equipment (PPE) as a reasonable accommodation when necessary*. Consistent with OSHA guidance, recognize that there are times when PPE is not required under OSHA standards or other industry-specific guidance, but some workers may have a legal right to PPE as a reasonable accommodation under the ADA.

» *Suppressing the spread of COVID-19 using face coverings.* Consistent with EEOC guidance and OSHA guidance, discuss the possibility of reasonable accommodations under the ADA (absent undue hardship) for any workers who are unable to wear or have difficulty wearing certain types of face coverings due to a disability (in workplaces with employees who are deaf or have hearing impairments, consider acquiring masks with clear coverings over the mouth for all workers to facilitate lip-reading).

» *Educating and training workers on COVID-19 policies and procedures*. Consistent with OSHA guidance and EEOC guidance, explain that effective and meaningful communication includes using accessible formats and American Sign Language or other accessible communication methods, if applicable and in a manner accessible to individuals with disabilities.

2. **Protecting Workers at Higher Risk for Severe Illness.** State and local agencies (regarding their plans and templates for private sector employers) may want to consider:

✓ Including reference to CDC guidance and OSHA guidance for protecting workers at higher risk for severe illness; and

✓ Encouraging workers who have identified as high-risk to consult with supervisors or human resources personnel about reasonable accommodations (absent undue hardship) such as working at home (part or full-time) or using additional personal protective equipment.

3. **Ensuring Confidentiality of Information.** State and local agencies may want to consider the following in plans and templates specifically developed for private sector employers:

✓ Including reference to the EEOC guidance requiring companies to maintain COVID-19 related illness of an employee as a confidential medical record.

✓ Explaining that the ADA requires an employer to keep all medical information about employees confidential, even if that information is not about a disability, including information that an employee has symptoms of, or a diagnosis of, COVID-19. But the fact that this is medical information does not prevent the manager from reporting to appropriate officials so that they can take actions consistent with guidance from CDC and other public health authorities.

4. **Protecting Against Retaliation.** State and local agencies (regarding their plans and templates for private sector employers) may want to consider including reference to and explaining the prohibition against taking retaliatory action for exercising rights under the ADA.

▶ TELEWORK POLICY OPTIONS

Based on a review of federal, state and local policy guidance and implementation reports regarding telework, state and local policymakers may want to consider the following options for adopting disability inclusive telework policies. Topics addressed include:

✓ General principles;

✓ Telework policies;

✓ Telework agreements; and

✓ Management of telework programs.

1. **General Principles.** To create disability-inclusive telework programs, state policymakers and agencies may want to consider three main principles:

✓ *Clarity* in expectations and procedures.

✓ *Flexibility* in accommodating individual situations, where needed.

✓ *Universal design* in the creation of policies and the selection of telework tools that take into consideration the functional needs and abilities of the greatest numbers of people.

2. **Telework Policies.** To be inclusive, policymakers may want to consider the following policy options:

✓ Explicitly indicating how policies apply to individuals with disabilities, whether it is meant to be inclusive or needs to be modified, so that employees and managers better understand and engage with telework policies.

✓ Providing guidelines and requiring clear documentation to ensure telework requests are handled transparently and reduce discrimination in telework denials and approvals.

✓ Allowing employees flexibility in acquiring and utilizing technology to provide the proper equipment and better meet the needs of employees.

3. **Telework Agreements.** To be inclusive, agencies may want to consider the following policy options:

✓ Allowing employers and employees to customize particular aspects of telework agreements, such as telework schedule, telework location, telework duration, communication methods and means of securing and transporting equipment, to better account for an individual's unique situation.

✓ Indicating protocols to allow employees with disabilities to telework during emergency situations to mitigate additional challenges brought on by the extenuating circumstances (such as traveling to the office during a storm).

4. **Management of Telework Programs.** To be inclusive, agencies may want to consider the following policy options:

✓ Training managers around facilitating effective telework policies and best practices, especially related to supporting people with different needs.

✓ Designating someone — such as the ADA Coordinator — to coordinate and manage telework accessibility issues.

✓ Coordinating with the state's assistive technology resources — created under Section 4 of the federal Assistive Technology (AT) Act — to provide devices for individuals with disabilities (and often their employers).

✓ Training technology support personnel on selecting and supporting accessible technology by considering universal design and WCAG 2.0 or higher standards in selecting technology platforms; and to troubleshoot the assistive technology devices used by employees.

▶ COVID-19 VACCINATIONS POLICY OPTIONS

As individuals begin to return to the workplace and employers look to retain their workforces, the design and implementation of vaccination policies that are inclusive of people with disabilities is especially important. Based on a review of federal, state and local policy guidance and implementation reports regarding vaccinations, state and local policymakers may want to consider addressing the following topics to maximize the likelihood their policies and programs are disability-inclusive:

✓ Employer workplace vaccination programs;

✓ Vaccination distribution prioritization;

✓ Vaccination registration websites and mobile apps;

✓ Vaccination physical sites and accommodations at sites;

✓ Transportation to and from vaccination sites; and

✓ Communication and outreach.

1. **Employer Workplace Vaccination Programs.** State and local policymakers may want to consider issuing guidance regarding employer workplace vaccination programs. Topics for consideration include:

    ✓ Mandatory versus voluntary (with incentives).

    ✓ Exemptions addressing health/disability and religious concerns consistent with the ADA and Title VII of the Civil Rights Act.

    ✓ If mandatory, compensation for time spent obtaining vaccination and reimbursement for any costs associated with vaccination and transportation to and from site.

    ✓ If voluntary, paid or unpaid sick or family leave provided by employer.

    ✓ Providing accurate and timely information and incentivize workers to get vaccinated.

    ✓ Tax credits under the American Rescue Plan for small or mid-size business.

2. **Vaccination Distribution Prioritization.** According to the NCD, people with disabilities are disproportionately affected by the COVID–19 virus, particularly individuals with intellectual or developmental disabilities (IDD) and individuals with disabilities with underlying health conditions (e.g., chronic lung disease, diabetes, chronic kidney disease, a serious heart condition or a weakened immune system) that place them at risk for contracting the virus, as well as a higher risk for hospitalization once the virus is contracted and a greater risk of dying from the virus.

    Complications from, and death rates due to, COVID-19 for people with IDD are disproportionately higher when compared to people without IDD. Mortality rates have been cited to be up to 15% in individuals with IDD. For individuals with Down syndrome, there is an estimated four-fold increase in risk for COVID related hospitalization and ten-fold increase in COVID-19 related death. As such, state policymakers may want to consider adopting policies that:

    ✓ Prioritize vaccinations for people with disabilities, particularly people with IDD, those with limited mobility, those with serious mental health conditions or substance use disorders, and those with underlying health conditions, regardless of whether they live in their homes or nursing homes and assisted living facilities and other congregate settings such as acute psychiatric facilities and group homes.

3. **Vaccination Registration Websites and Mobile Apps.** Technological access requires ensuring that individuals with disabilities can easily navigate vaccine registration websites and any other digital components of the vaccination process. State and local policymakers may want to consider ensuring that:

    ✓ Vaccination registration websites are accessible to and usable by people with disabilities, including people who are visually impaired and use a screen reader, consistent with WCAG 2.1 A and AA.

✓ Updates about new priority groups and appointment slots are available in multiple formats, including over the phone, and caregivers should be able to register individuals with disabilities directly when necessary.

✓ Communication by phone is accessible to individuals who are deaf and hard of hearing.

4. **Vaccination Physical Sites and Accommodations at Sites.** State and local policymakers may want to consider adopting procedures at vaccination sites to:

✓ Accommodate individuals with disabilities, including individuals who have difficulties waiting for long periods due to sensory disabilities. For example, some people with autism or who have experienced trauma are sensitive to lights, sounds, smells or touch, which makes waiting in lines in busy settings and wearing masks for long periods of time more difficult. Sensory access requires that vaccination sites proactively accommodate these needs with alternatives for those who need them.

✓ Ensure cognitive access. For example, both registration websites and vaccination sites should include explanations that are easy to understand and available in multiple modalities such as plain language or visual storyboards.

✓ Augment communication while wearing masks by other forms of communication. For example, to accommodate individuals who are deaf or hard of hearing, American Sign Language interpreters should be available at the time of vaccination.

5. **Transportation to and from Vaccination Sites.** States and local policymakers may want to consider adopting policies and procedures that:

✓ Support efforts by transportation, public health and emergency medical services sectors in identifying ways to collaborate to ensure all Americans living in urban and rural areas have access to accessible transportation necessary to receive a vaccination.

6. **Communication and Outreach.** Outreach is critical for ensuring that the disability community is engaged in the process of creating an accessible vaccine distribution process, sharing information within the community, increasing vaccine confidence and communicating how individuals with disabilities can be vaccinated with appropriate accommodations. As states and cities improve their distribution process, this active outreach is also necessary to improve awareness of changes for those who have attempted and been unable to sign up for or attend an appointment in the past due to accessibility issues. States and cities may want to consider adopting communications and outreach tactics to:

✓ Prepare toolkits for people with disabilities and conduct outreach to individuals with disabilities and caregivers to assure them that their needs can be accommodated.

✓ Integrate into their vaccination distribution systems and communication and outreach efforts the establishment of relationships and links to Centers for Independent Living, protection and advocacy systems, University Centers for Excellence in Developmental Disabilities and State Councils on Developmental Disabilities.

▶ **MENTAL HEALTH POLICY OPTIONS**

State and local policymakers have engaged in varying levels of innovation during the COVID-19 pandemic to ensure residents' mental health needs are met. Policymakers have an opportunity to continue such innovation by learning from their peers and taking steps to protect the advances made over the past several months by making permanent policies that will expire with their associated emergency declarations.

Specifically, state and local policymakers may want to consider adopting policy options that facilitate the retention of workers whose mental health has been affected by the pandemic, as well as employees with pre-existing mental health and substance abuse disorders who may be experiencing new barriers to employment.

Policy options for consideration include:

- ✓ Expanding access to telemental health;
- ✓ Ensuring equity and accessibility in the provision of telemental health;
- ✓ Educating managers, supervisors and employees and securing feedback;
- ✓ Addressing the needs of frontline workers, particularly health care workers;
- ✓ Addressing the needs of transition-age youth; and
- ✓ Making flexibilities permanent.

1. **Expanding Access to Telemental Health.** State and local policymakers may want to consider taking some or all of the following actions to expand access to telemental health services:

- ✓ Expand private coverage to include telemental health services.
- ✓ Expand Medicaid to cover telemental health services.
- ✓ Establish payment parity for online services.
- ✓ Eliminate co-payments for telemental health services.
- ✓ Expand the types of mental health providers who can be reimbursed for conducting assessments and provide telemental health services.
- ✓ Provide licensure flexibility for out-of-state residents.
- ✓ Provide technical assistance to mental health providers on how to allay heightened anxiety and privacy concerns for online treatment.
- ✓ Suspend establishing patient-provider relationships through initial in-person visits.

2. **Ensuring Equity and Accessibility in the Provision of Telemental Health.** While telemedicine may improve access and reduce barriers to health access during the pandemic for many persons, barriers and challenges can exist for racial and ethnic minorities and persons with disabilities.

    For racial and ethnic minorities, state and local policymakers may want to consider:

    ✓ Adopting a comprehensive strategy for advancing equity in the provision and delivery of mental health services during and after the pandemic. The strategy may include assessing whether state agency and private sector policies and actions create or exacerbate systemic barriers to full and equal participation and adopt action steps to eliminate the barriers.

    ✓ Creating a racial disparities task force and action plan/roadmap that includes a charge to remove barriers to accessing mental health care, including increasing culturally meaningful screening, early intervention and linkage to treatment in primary health care and community settings.

    For people with disabilities, state and local policymakers may want to consider:

    ✓ Adopting a policy ensuring that video and audio platforms used to provide telehealth services are accessible to and usable by all (including built-in accessibility features and interoperability with assistive technology), consistent with generally accepted technical standards (e.g., WCAG 2.1 A and AA). For example, individuals who are visually impaired may require accessibility features such as high-resolution screens.

3. **Educating Managers, Supervisors and Employees and Securing Feedback.** In order to retain workers returning to the workplace, it will be critical for state agencies and private sector employers to address employee mental health concerns created or exacerbated by the pandemic. State and local policymakers may want to consider establishing an infrastructure to develop or share existing resources and provide training regarding:

    ✓ Strategies for addressing stress, managing panic attacks and identifying and reducing triggers.

    ✓ Application of the ADA, including reasonable accommodations for persons with mental impairments.

    ✓ Establishment of Employee Resource Groups focused on mental health concerns.

4. **Addressing the Needs of Frontline Workers, Particularly Health Care Workers.** State and local policymakers may want to consider policies that target the mental health needs of frontline workers, particularly health care workers. Policy options include:

    ✓ Establishing a mental health support system.

    ✓ Waiving certain costs (co-pays, deductibles, out-of-pocket expenses) for mental health services provided to frontline health care workers.

✓ Initiating a public awareness campaign.

✓ Providing a service or support/assistance dog.

✓ Establishing a toll-free hotline.

5. **Addressing the Needs of Transition-Age Youth.** State and local policymakers may want to consider adopting policies focused on the mental health needs of transition age youth. Policy options include:

✓ Establishing an emergency program for pupil mental health.

✓ Funding additional school mental health support personnel.

✓ Supporting training programs for teachers and administrators.

6. **Making Flexibilities Permanent.** A growing topic of conversation among state and local policymakers is whether states should plan to make permanent the many flexibilities, particularly related to telehealth adopted during the COVID-19 pandemic. Policy options include:

✓ Establishing a task force/working group to study the long-term effects of the changes before making them permanent.

▶ WORKFORCE READINESS POLICY AND PROGRAM OPTIONS

State and local policymakers have engaged in varying levels of innovation during the COVID-19 pandemic to ensure youth and adults continue to receive the benefits of disability-inclusive workforce readiness programs and initiatives. Policymakers have an opportunity to continue such innovation by learning from their peers and taking steps to protect the advances made over the past year in the post-pandemic world.

Specifically, state and local policymakers may want to consider adopting the following policy options for ensuring that workforce readiness programs are inclusive of people with disabilities. These policy options are applicable to the range of workforce readiness programs and initiatives, including apprenticeship programs, secondary and postsecondary programs and vocational rehabilitation programs. Topics addressed include:

✓ Online accessibility and usability;

✓ Assistive technology devices and services;

✓ Reasonable accommodations;

✓ Mental health;

✓ Training and provision of technical assistance to managers, supervisors and people with disabilities; and

✓ Coordination and collaboration.

1. **Online Accessibility and Usability.** State and local agencies should ensure that websites, mobile apps and online systems that are used to provide remote services and supports (including teleworking for staff, tele-counseling for clients, tele-facilitation between service providers and clients, workshops, digital coaching and job fairs) are accessible to and usability by persons with disabilities consistent with WCAG 2.1, A and AA.

2. **Assistive Technology Devices and Services.** The COVID-19 pandemic has highlighted the importance of access to and use of assistive technology devices and services as many apprenticeship experiences, education, work, vocational rehabilitation training and social service delivery have gone virtual. State and local policymakers should ensure that people with disabilities have access to assistive technology devices and services to enable them to fully participate in these services and supports.

3. **Reasonable Accommodations.** In addition to online accessibility and usability and access to assistive technology devices and services, the COVID-19 pandemic has re-emphasized the importance of engaging in an interactive process between the service provider/employer and people with disabilities to ensure that people with disabilities enjoy an opportunity to benefit/participate in a way that is as effective and meaningful as that provided to others. Examples of reasonable accommodations include flexible work schedules and additional personal protective equipment.

4. **Mental Health.** Mental health services are increasingly critical for people with pre-existing mental health conditions and others to help them cope with the additional stresses of the pandemic. States and local agencies are finding innovative ways to continue providing mental health services and supports, including by providing telemental health services, offering resources to mental health service professionals, connecting students and parents with resources and services and offering direct support services to individuals and families.

5. **Training and Provision of Technical Assistance to Managers, Supervisors and People with Disabilities.** The COVID-19 pandemic has necessitated how workforce readiness programs are provided and thus requires new and different skills and understandings for managers and supervisors and the understanding by people with disabilities (and their families) of their rights. Skills and understandings required during the pandemic include, for example, availability of telework as a reasonable accommodation, ensuring accessibility and usability of online platforms, appropriate selection of assistive technology and providing mental health services and supports.

6. **Coordination and Collaboration.** The COVID-19 pandemic has placed significant strain on the various state and local service delivery systems, including systems serving people with disabilities, requiring even more efficiencies. Strategies for enhancing coordination and collaboration among agencies may include:

- ✓ Establishing infrastructure that facilitates communication among agencies.
- ✓ Entering into memoranda of understanding.
- ✓ Scheduling regular coordination meetings.
- ✓ Open sharing of data.
- ✓ Open sharing of resources and blending and braiding of funding.
- ✓ Connection of customers to essential services.
- ✓ Coordination of referrals.
- ✓ Cross-training of staff.