

# Long COVID, Disability, and the Workplace

Neil J. Nusbaum, JD, MD<sup>1,2</sup>

**Abstract:** The long-term societal impact of coronavirus disease 2019 (COVID-19) includes not only those who have died from COVID-19 but also those who have survived with prolonged residual symptoms. “Long COVID” symptoms such as fatigue may impair an individual’s ability to work, but gaps in disability law may leave such workers vulnerable to job loss and involuntary retirement.

**Key Words:** coronavirus disease 2019 (COVID-19), disability, discrimination, employment

Much attention has rightfully been paid to the more than 1 million Americans who have died of coronavirus disease 2019 (COVID-19) since the start of the pandemic, with mortality rates particularly high among the oldest Americans, such as those residing in nursing facilities.<sup>1</sup> At the same time, many tens of millions of Americans of working age are survivors of one (or more) COVID-19 infections, an uncertain fraction of which were actually acquired from transmission in the workplace. It is increasingly being recognized that the survivors of COVID-19 are at risk of a plethora of “long COVID” sequelae that can limit their ability to work.<sup>2</sup> At the same time, these employees may have difficulty accessing economic supports even if they are unable to work.<sup>3</sup> In the absence of a definitive laboratory test to diagnose long COVID or a specific therapy for its cure, one may anticipate ongoing uncertainty about how employment law can help address the needs of workers with long COVID.

The intersection of public health law and employment is one the United States previously faced in connection with acquired immunodeficiency syndrome,<sup>4,5</sup> with some notable differences from the present COVID-19 epidemic. In the case of acquired immunodeficiency syndrome, unlike COVID-19, the response was shaped largely by stigma directed at some of the risk groups for the disease. Workplace transmission of the human immunode-

ficiency virus was rare, with the notable exception of needlestick accidents to healthcare workers.<sup>6</sup> Initially, there were no effective treatments to prevent the progression to a fatal outcome. Until the emergence of the antiretroviral medications, the number of individuals who had the human immunodeficiency virus infection but were still healthy enough to work was necessarily limited by the natural history of the disease.

In contrast, COVID-19 has been ubiquitous in the US population, and most people infected with COVID-19 do survive. COVID-19 exposure is common, both at work and in the larger community. Some COVID-19 survivors make a rapid complete recovery to an asymptomatic state, others have a transient period of disability after their acute infection, and some have long COVID with a prolonged period of impairment of function.

A particular worry is that those who already have long COVID may suffer repeat infections from new clades as the circulating virus continues to evolve; therefore, the concern is for transmission of COVID-19 from previously healthy (but newly infected) individuals to previously infected people, as much as for transmission in the reverse direction. The fear of reinfection can further complicate the return of the COVID-19 survivor to the workplace.

The US Census Bureau reported that in November 2022, more than 3.8 million Americans had COVID-19 symptoms lasting ≥3 months that caused them “a lot” of reduction in their ability to carry out day-to-day activities, and an additional more than 9.2 million had symptoms but with a lesser degree of associated disability.<sup>7</sup> Frequent persistent symptoms noted with long COVID have included fatigue and shortness of breath.<sup>8</sup>

At the federal level, the Department of Labor, the Department of Health and Human Services, and the Department of Justice have noted the applicability of the Americans with Disability Act (ADA) to some workers with long COVID.<sup>9</sup> Many of these workers presumably might benefit from accommodations under the ADA such as “providing or modifying equipment or devices” or “part-time or modified work schedules” ... “for any limitations...related to ... disability, even if temporary or episodic, for when they are needed.”<sup>10</sup> Based on the US Census Bureau

From the <sup>1</sup>Southeast Louisiana Veterans Health Care System, New Orleans, and the <sup>2</sup>University of Illinois College of Medicine, Rockford.

Correspondence to Dr Neil J. Nusbaum, 2400 Canal St, New Orleans, LA 70119.

E-mail: nusbaum.neil@gmail.com. To purchase a single copy of this article, visit sma.org/smj. To purchase larger reprint quantities, please contact reprintsolutions@wolterskluwer.com. The personal opinions contained herein are those of the author, and are not the position of the Department of Veterans Affairs or the US government.

The author did not report any financial relationships or conflicts of interest.

Accepted February 21, 2023.

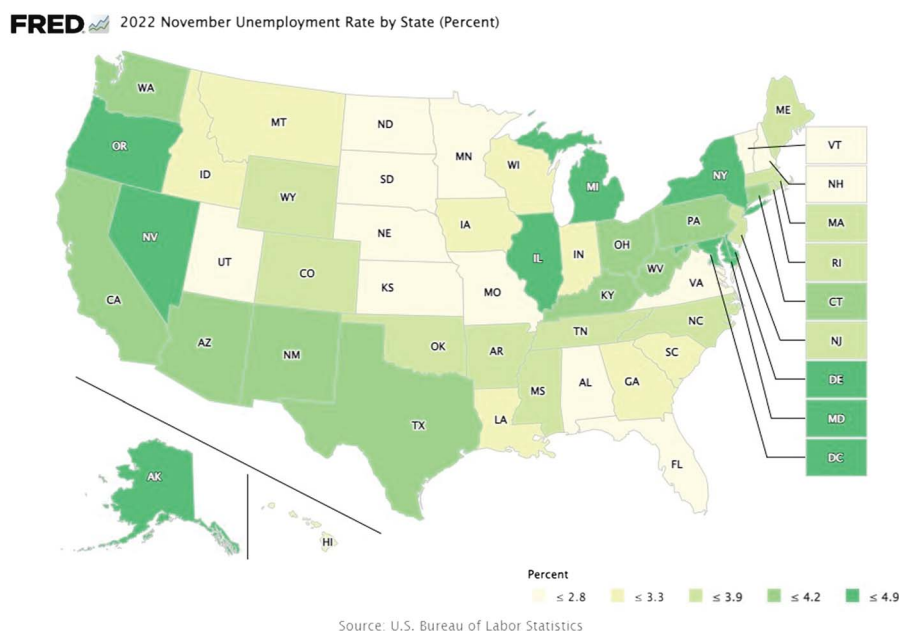
0038-4348/0-2000/116-718

Written work prepared by employees of the Federal Government as part of their official duties is, under the U.S. Copyright Act, a “work of the United States Government” for which copyright protection under Title 17 of the United States Code is not available. As such, copyright does not extend to the contributions of employees of the Federal Government.

DOI: 10.14423/SMJ.0000000000001586

## Key Points

- Coronavirus disease 2019 symptoms such as fatigue may often linger for months.
- Long COVID (coronavirus disease 2019) can substantially impair a person’s ability to work.
- Disability protection for the affected employee may be lacking.



**Fig. November 2022 unemployment rate by state (percent).**<sup>17</sup> FRED® Maps ©Federal Reserve Bank of St. Louis. 2023. All rights reserved. All FRED® Maps appear courtesy of Federal Reserve Bank of St. Louis. <https://fred.stlouisfed.org>.

survey data noted above, there are likely several million workers with long COVID who may benefit from at least several months of workplace accommodation.

The federal Occupational Safety and Health Administration has indicated that a contagious illness (other than the common cold or influenza) is to be considered work related if the employee is infected at work.<sup>11</sup> In turn, a work-related injury may entitle the employee to workers compensation benefits under state law, and these benefits may well be more generous than their routine sick leave coverage, if any, that they may have.<sup>12–14</sup> In practice, of course, in the setting of widespread community transmission of COVID-19, it may be difficult to know whether an employee contracted COVID-19 in the workplace or outside it, unless the workers compensation framework in that state happens to include a legal presumption that the COVID-19 infection was acquired at work.<sup>15</sup>

Although the most proximate impact of long COVID is on the individual worker, the indirect aggregate impact is on society at large. An individual who was already contemplating retirement within the next few years, but who now has an episode of long COVID, may well choose to retire now instead. Such decisions by older workers are likely to contribute to ongoing shortages in the labor supply.<sup>16</sup> If, however, the work setting is accommodating to the needs of the worker still recovering from long COVID, then often workers will find it more convenient to return to work gradually rather than to retire early. Policies to facilitate worker retention in the active workforce may be of particular economic benefit in those states with the most severe labor shortages, as manifested by the lowest unemployment rates (Fig.).

In many cases in fact, neither the employer nor the employee will know for certain whether an employee's current limitations

are a result of long COVID or are the result of some other etiology, and it may be unclear whether the employee strictly meets the criteria to be considered disabled under the ADA. In any event, a pattern of workplace flexibility by the employer (eg, adjustment of work duties, paid leave, unpaid leave) may aid employee retention in the labor market.

In summary, there is considerable evidence that long COVID is common, and may impair the ability of an individual to work even several months after the acute illness itself. In theory, financial resources and workplace accommodation may be available to the worker with long COVID. In practice, however, these benefits may prove difficult for the worker to access, not least because of the difficulty of clearly demonstrating the existence and severity of long COVID in an individual worker. An improved societal whole health approach to the patient with long COVID should include attention to both its medical and its financial consequences.

## References

- Centers for Medicare & Medicaid Services. COVID-19 Nursing Home Data. <https://data.cms.gov/covid-19/covid-19-nursing-home-data>. Accessed May 27, 2023.
- Kaiser Family Foundation. What are the implications of long COVID for employment and health coverage? <https://www.kff.org/policy-watch/what-are-the-implications-of-long-covid-for-employment-and-health-coverage>. Published August 1, 2022. Accessed December 27, 2022.
- Society for Human Resource Management. COVID-19 long-haulers may have tough time getting long-term disability benefits. <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-long-haulers-long-term-disability-benefits.aspx>. Published February 11, 2022. Accessed December 27, 2022.
- Nusbaum N. Guest editorial: public health and the law: HIV antibody status and employment discrimination. *J Acquir Immune Defic Syndr* 1989;2:103-106.

5. Nusbaum N. Guest editorial: HIV antibody status and employment discrimination: 1991 update. *J Acquir Immune Defic Syndr* 1991;4:927-929.
6. CDC. Sharps Safety for Healthcare Settings. <https://www.cdc.gov/sharpsafety/index.html>. Accessed May 27, 2023.
7. US Census Bureau. Week 51 household pulse survey, November 2 – November 14. Health, Table 11: Duration of COVID-19 symptoms and ability to carry out everyday activities, by select characteristics. <https://www.census.gov/data/tables/2022/demo/hhp/hhp51.html>. Published November 29, 2022. Accessed December 31, 2022.
8. Wanga V, Chevinsky JR, Dimitrov LV, et al. Long-term symptoms among adults tested for SARS-CoV-2—United States, January 2020–April 2021. <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7036a1-H.pdf>. Published September 10, 2021. Accessed December 31, 2022.
9. US Department of Health and Human Services. Guidance on “long COVID” as a disability under the ADA, Section 504, and Section 1557. <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>. Published July 26, 2021. Accessed December 27, 2022.
10. Carter Batiste L. Workers with long COVID-19: you may be entitled to workplace accommodation. <https://blog.dol.gov/2021/07/06/workers-with-long-covid-19-may-be-entitled-to-accommodations>. Published July 6, 2021. Accessed December 27, 2022.
11. Occupational Safety and Health Administration. Standard number 1904.5: Determination of work-relatedness. <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.5>. Accessed December 27, 2022.
12. Pennsylvania Department of Labor & Industry. Workers’ compensation & the injured worker. <https://www.dli.pa.gov/Individuals/Workers-Compensation/publications/Pages/LIBC-100-WC-The-Injured-Worker-Pamphlet.aspx>. Accessed December 27, 2022.
13. CBS Bay Area. Cal/OSHA board votes to end mandatory pay for workers with COVID-19. <https://www.cbsnews.com/sanfrancisco/news/cal-osha-board-ends-mandatory-pay-workers-with-covid-19>. Published December 15, 2022. Accessed December 27, 2022.
14. Workers’ Compensation Division State of Oregon Outreach. Workers have a right to file for workers’ compensation for COVID-19. <https://wcd.oregon.gov/COVID/Pages/index.aspx>. Accessed December 27, 2022.
15. National Conference of State Legislatures. Summary: COVID-19: workers’ compensation. <https://www.ncsl.org/research/labor-and-employment/covid-19-workers-compensation.aspx>. Updated January 24, 2022. Accessed December 28, 2022.
16. Smialek J, Casselman B. Retirees are one reason the Fed has given up on a big worker rebound. <https://www.nytimes.com/2022/12/27/business/economy/labor-shortage-retirees-boomers.html#:~:text=the%20main%20story-,Retirees%20Are%20One%20Reason%20the%20Fed%20Has%20Given%20Up%20on,they%20aren't%20coming%20back>. Published December 27, 2022. Accessed December 28, 2022.
17. FRED Economic Data. 2022 November unemployment rate by state (percent). <https://fred.stlouisfed.org/graph/?m=QzBC>. Accessed December 28, 2022.