



ISSUE BRIEF

Long COVID: Farmworker Rights and Protections

Introduction

COVID-19 can lead to long-term symptoms that affect a person's ability to work. Although most people get better from COVID within a couple weeks, others experience new or recurring symptoms for months or years.¹ People with post-COVID conditions (or long COVID) can experience a variety of symptoms, including fatigue, difficulty thinking or concentrating, dizziness, and problems with sleep.² Long COVID is a physiological impairment that affects major life activities such as performing manual tasks, concentrating, and working.³ According to the Centers for Disease Control and Prevention (CDC), one in five American adults who have had COVID are currently experiencing long COVID.⁴

The COVID-19 pandemic disproportionately affects farmworkers due to their working and living conditions, lack of access to paid sick leave, and co-morbidities.⁵ A recent study found that California farmworkers were four times more likely to be infected with COVID.⁶ Deemed "essential workers" from the onset of the pandemic, many farmworkers have been repeatedly exposed to COVID in the workplace or in shared housing or transportation.⁷ Further, 44% of farmworkers lack work authorization and may fear seeking out medical attention due to their immigration status.⁸ Farmworkers often lack access to health care and information about their workplace rights.

Someone is more susceptible to long COVID if they are unvaccinated, had a severe COVID-19 illness, have been re-infected with COVID, or have pre-existing conditions or other co-morbidities (such as diabetes or obesity).⁹ Farmworkers experience barriers to COVID vaccination due to immigration status and poor access to health care, among other factors, and thus may have a lower vaccination rate than other segments of the population.^{10, 11} Additionally, due to the working and living conditions of farmworkers, they are more likely to be re-infected with COVID—a threat multiplier for long COVID.¹² Finally, many farmworkers have co-morbidities that increase the risk of severe COVID and long COVID.¹³

While long COVID affects each individual in a different

way, the federal government recognizes that long COVID can be a disability as it impacts an individual's ability to work and live a normal life. While there is no test for long COVID, clinicians play a critical role in identifying whether someone has symptoms and is thus entitled to the legal protections that exist for individuals affected by long COVID.

Legal Protections for Individuals with Long COVID

The Americans with Disabilities Act (ADA) provides protections for individuals with long COVID. In addition to the ADA, there are legal protections through Section 504 of the Rehabilitation Act (Rehab Act) and Section 1557 of the Affordable Care Act (ACA).¹⁴ In order to be protected by the ADA, an individual must have an "actual disability." The ADA defines an actual disability as a, "physical or mental impairment that substantially limits one or more major life activities."¹⁵ In order to determine whether a particular case of long COVID meets this definition, an individual assessment is necessary.¹⁶ Under the ACA, a disability can be either a physical (a physiological disorder or condition) or mental (mental or psychological) impairment.¹⁷ Major life activities include core bodily functions and physical activities, though whether these life activities are substantially limited by the disability is construed broadly.¹⁸ In July 2021, the Department of Health and Human Services (HHS) identified long COVID as a disability under the ADA if it meets the same definitional criteria.^{19, 20}

Legal Protections for Farmworkers Still Able to Work

Under the federal protections previously outlined, employers are required to provide allowances to workers with disabilities. There is no official form or method to request an accommodation as long as employees inform their employers of the need for workplace accommodations. Workers with long COVID may be entitled to workplace accommodations such as an adjustment to training materials, a reassignment to another vacant position, the provision of modified equipment or devices, and/or part-time work schedules.²¹ However, accommodations are not required to be provided to workers that

would cause an undue hardship to the employers.²²

If a worker is a qualified individual with a disability, the employer must consider providing allowances for any limitations that are caused by long COVID on an as-needed basis.²³ Employers may not discriminate against farmworkers who have a disability, regardless of the individual's immigration status.^{24,25} If an employer does not provide adequate accommodations, the worker can file a complaint with the U.S. Equal Employment Opportunity Commission or the appropriate state enforcement agency.²⁶

Legal Protections for Farmworkers Who Are Unable to Work

For farmworkers who are unable to work because of long COVID, there are additional challenges to receiving legal protections. Social Security Disability Insurance (SSDI) assists people of limited means who are unable to work due to a disability.²⁷ However, it can be difficult to qualify for SSDI. When HHS issued its guidance in July 2021 that long COVID could potentially be considered a disability under the ADA, it included an important footnote that it was not necessarily a disability for the purposes of eligibility requirements under Social Security.²⁸ As an additional complication, those who are approved for SSDI automatically qualify for Medicare—but the benefits are not received until after a mandatory two-year waiting period.²⁹ Further, disability benefits often depend on an individual's immigration status, as well as many other eligibility factors.³⁰

Workers' compensation may be the primary source of support for farmworkers who experience long COVID and are unable to work. However, there are numerous challenges that farmworkers face if trying to use workers' compensation. First, farmworkers' eligibility for workers' compensation varies from state to state.^{31,32} Second, while some states provide protections for individuals who contract COVID-19 in the workplace, such as New York, it is unclear whether this protection will extend to long COVID.³³ Finally, the employee must demonstrate that their health issues are directly correlated with their original COVID-19 diagnosis and not a subsequent reinfection.^{34,35}

Considerations for Clinicians

A clinician determines whether the individual's long COVID symptoms substantially limits a major life activity.³⁶ Chart documentation and a patient's medical

history are crucial to connect long COVID to the original COVID infection. If a worker seeks support through workers' compensation, there must be documentation that the COVID-19 infection was work-related.³⁷ An injury or illness is work-related if it more likely than not resulted from or is sustained in the course of employment.³⁸ However, unlike determining a medical diagnosis, clinicians need to be only 51% certain of the work-relatedness of the COVID-19 infection. Clinicians should use language such as: "more likely than not" due to work, work "most likely" the cause of the condition, or "but for the work" the condition would not exist to demonstrate that a patient's long COVID is tied to employment.³⁹ We encourage clinicians to partner with legal services providers to help connect farmworkers to benefits and understand their rights.⁴⁰

Conclusion

Long COVID can result in debilitating symptoms that make it difficult or impossible to work. As the health community continues to grapple with and understand long COVID, it is critical to validate the suffering of farmworkers with long COVID to ensure that there is no shame or judgement of farmworkers who have long COVID, especially workers who may be unvaccinated.

Long COVID is still an emerging issue that the federal government is responding to in real time. There are federal protections for farmworkers who experience long COVID. Farmworkers have the right to ask for reasonable accommodations in the workplace. Farmworkers who are unable to work due to long COVID may apply for disability insurance or workers' compensation, depending on the state where they work and the circumstances around their COVID infection. However, the legal landscape for protections for workers who are unable to work is still evolving.

FJ continues to monitor long COVID's impact on farmworker communities. As more information emerges, we will share resources for farmworkers, health care providers, and community organizations. You can visit our [web-site](#) for COVID-19 information relevant to farmworkers.

Additional resources:

- [Health and Human Services: Civil Rights and COVID-19](#)
- [Civil Rights Division of the Department of Justice: COVID-19 and the ADA](#)
- [Centers for Disease Control: Post-COVID Conditions](#)

- [Equal Employment Opportunity Commission: COVID-19](#)
- [Department of Labor: Workers with long COVID-19—You May be Entitled to Workplace Accommodations \(includes information in Spanish\)](#)
- [Migrant Clinicians Network: The COVID-19 Pandemic—Information and Resources](#)

Note: This issue brief is for health center staff and advocates to support farmworkers who may have long COVID based on current research. There are many new and ongoing developments related to long COVID and existing legal protections. Farmworker Justice will continue to monitor and provide updates related to long COVID to ensure farmworkers with long COVID can receive care and assert their legal rights. You can contact Alexis Guild at aguild@farmworkerjustice.org with any questions.

Disclaimer: This publication is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling \$137,500 with 0% financed with non-governmental resources. The contents are those of the author and do not necessarily represent the official views of, nor an endorsement by, HRSA, HHS, or the U.S. Government. For more information, please visit HRSA.gov.

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