

# COVID-19, Return to Work & the Risks of Disability Discrimination Quiz



Don't treat employees returning from COVID-19 like they're radioactive lepers.

## SITUATION

Fully recovered from his bout with COVID-19, Corey is thrilled and excited to return to work after 14 days of mandatory home isolation. But almost immediately, he senses that something is wrong. His co-workers shun him and leave the room the moment he enters. And, while hygiene and handwashing are *de rigueur* for all crew members, Corey alone is required to douse his hands in germicide and don rubber gloves each time he touches a piece of equipment. After weeks of putting up with it, Corey goes to management and complains that he's being singled out because he had COVID-19. But his complaints fall on deaf ears and he continues to be ostracized and made to take extraordinary safety and hygiene measures not required of anybody else. So, Corey hires a lawyer and sues the company for disability discrimination.

## QUESTION

**Does Corey have a valid case for disability discrimination?**

1. No, because while having COVID-19 may be deemed a disability, Corey is fully recovered
2. No, because the differential treatment he received were legitimate health and safety measures
3. Yes, because Corey was treated differently because he was perceived as having COVID-19
4. Yes, because he was forced to go into self-isolation because he had COVID-19

## ANSWER

19. Corey does have a valid case because he was saddled with additional health and safety burdens due to the perception of having COVID-19.

## EXPLANATION

Almost the moment the pandemic began, regulators across the country have made it known that they consider COVID-19 to be a disability protected from discrimination under human rights laws. As a result, subjecting an employee (or job applicant) to differential and unfavourable treatment because they have COVID-19 is disability discrimination. This is also true if that differential treatment is based on the mere belief that the employee or job applicant has the virus, even if that perception is wrong.

This scenario, which is purely hypothetical, is designed to illustrate how those principles play out in real life. The point is that Corey was singled out and stigmatized because he once had COVID-19 and was, wrongly, perceived as posing a greater risk of infection. So, C is the right answer.

## WHY THE WRONG ANSWERS ARE WRONG?

**A is wrong** because a person who doesn't have COVID-19 can be considered disabled if he/she is perceived as having it. Thus, adverse treatment resulting from being perceived to be disabled is discrimination, even if that perception is wrong. Legally, Corey's situation is like the job applicant who gets rejected because the company wrongly believes him to be a drug addict.

**B is wrong** because Corey was shunned and forced to take health and safety measures required of no other employee all because he once had COVID-19. It's important to note that there's no scientific evidence to support the notion that people who had the virus are more apt to transmit it to others after they recover; in fact, people recovering from COVID-19 pose a lesser risk because they have antibodies to fight the virus.

**D is wrong** because while being forced to self-isolate due to COVID-19 is differential treatment based on a disability, human rights commissions have acknowledged that it's a justifiable health and safety measure during the current pandemic that's required by public health guidelines to prevent the virus from spreading.