



EEOC Updates Guidance on COVID-19 Testing

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The Equal Employment Opportunity Commission (EEOC) released updated guidance (https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=) on Sept. 8 clarifying that employers can screen workers for COVID-19 without violating the Americans with Disabilities Act (ADA) if they follow guidelines from the U.S. Centers for Disease Control and Prevention (CDC) and other authorities.

"Consistent with the ADA standard, employers should ensure that the tests are considered accurate and reliable," the EEOC said.

The CDC and the U.S. Food and Drug Administration may revise their recommendations based on new information, the EEOC noted, so employers may want to periodically check agency websites for new information.

We've rounded up resources and articles from *SHRM Online* and other trusted outlets on this news.

'Business Necessity' Standard

The ADA prohibits medical examinations unless they are job-related and consistent with business necessity. The EEOC clarified that employers that follow CDC guidelines while administering COVID-19 tests won't run afoul of the ADA's standard. "The ADA does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate," the agency said. "Testing administered by employers consistent with current CDC guidance will meet the ADA's 'business necessity' standard."

(Bloomberg Law (<https://news.bloomberglaw.com/daily-labor-report/workplace-covid-tests-meet-disability-law-standards-eeoc-says>))

Periodic Testing

Employers should note that certain COVID-19-related inquiries are allowed based on the potential existence of a "direct threat" to the workforce. The EEOC previously confirmed that employers can choose to administer COVID-19 testing to employees before initially allowing them to enter the workplace. The agency clarified that employers can also periodically test workers who come into contact with co-workers, customers and other members of the public to determine if they pose a direct threat. But employers can't ask teleworking employees—who are not interacting with others—about COVID-19 testing. Employers also shouldn't ask whether employees' family members have COVID-19 or related symptoms.

(The National Law Review (<https://www.natlawreview.com/article/more-eeoc-covid-19-guidance-testing-screening-managers-confidentiality-and-telework>))

Reasonable Accommodation Requests

The EEOC also updated its guidance explaining when employers may invite employees, in advance of their expected return-to-work date, to disclose whether they need a reasonable accommodation. "Employers may inform the workforce that employees with disabilities may request accommodations in advance that they believe they may need when the workplace reopens," the EEOC said. If advanced requests are received, employers may begin an interactive dialogue to determine if a reasonable accommodation can be made. However, employers can't require that all accommodation requests be made by a specified date. "If an employee chooses not to request accommodation in advance, and instead requests it at a later time, the employer must still consider the request at that time," the agency said.

(Lexology (<https://www.lexology.com/library/detail.aspx?g=e3980f78-0b33-4b73-bd8d-e3c9bf9cb71a>))

A Guide to Employee Temperature Checks

The EEOC previously gave employers the green light to take employees' temperatures to try and ward off the spread of the coronavirus. "Generally, measuring an employee's body temperature is a medical examination," the EEOC stated. Because the CDC and state and local health authorities have acknowledged community spread of COVID-19 and have issued related precautions, "employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever," the agency stated. And some people with a fever do not have COVID-19.

(*SHRM Online* (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/eeoc-coronavirus-temperature.aspx))

5 Steps to Take When an Employee Gets COVID-19

The bad news might come from a phone call or a routine screening at work. Either way, on learning that an employee has tested positive for COVID-19, employers should act immediately to ensure the safety of the employee's co-workers and comply with all applicable laws. Based on guidance from the CDC and the Occupational Safety and Health Administration, as well as the advice of attorneys who've already guided clients through a COVID-19 response, here are five basic steps to take in the aftermath of an employee's COVID-19 diagnosis.

(*SHRM Online* (www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/when-employee-has-covid.aspx))

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