

Employment Law Q&A: COVID-19 Testing in the Workplace



Ryan Neumeyer | Thursday, July 14, 2022

Q. Under the ADA, may an employer, as a mandatory screening measure, administer a COVID-19 viral test (a test to detect the presence of the COVID-19 virus) when evaluating an employee's initial or continued presence in the workplace?

A. Yes, if the employer can demonstrate that it is job related and consistent with business necessity under the Americans with Disabilities Act ("ADA"). This approach is based on modified [Guidance](#) regarding the COVID-19 testing issued by the Equal Employment Opportunity Commission ("EEOC") on July 12, 2022. In earlier guidance issued during the height of the pandemic, the EEOC said COVID-19 testing for on-site employees was permissible without limitation. The change in the EEOC's position reflects the evolving nature of the pandemic and the EEOC's return to its more typical approach to employer-required medical exams and tests.

Under the EEOC's modified guidance, when "an employer seeks to implement [COVID-19] screening testing for employees such testing must meet the 'business necessity' standard based on relevant facts. Possible considerations in making the 'business necessity' assessment may include:"

1. the level of community transmission, the vaccination status of employees;
2. the accuracy and speed of processing for different types of COVID-19 viral tests;
3. the degree to which breakthrough infections are possible for employees who are "up to date" on vaccinations;

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4. the ease of transmissibility of the current variant(s);
5. the possible severity of illness from the current variant;
6. what types of contacts employees may have with others in the workplace or elsewhere that they are required to work (e.g., working with medically vulnerable individuals); and
7. the potential impact on operations if an employee enters the workplace with COVID-19.

In making these assessments, employers should check the latest CDC guidance (and any other relevant sources) to determine whether screening testing is appropriate for these employees.

The EEOC's update also makes clear that employers may test potential employees for COVID-19, as long as such policies are uniformly executed. An employer may only rescind a job offer after a positive COVID-19 test if it is absolutely necessary that the prospective employee start immediately and in-person, the guidance says.

Employers who conduct on-site COVID-19 testing will want to evaluate their current practices to ensure that they are consistent with the EEOC's updated guidance. McDonald Hopkins' Labor and Employment attorneys available to assist employers review testing procedures and develop compliant practices.



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