

April 28, 2020



[Home](#) / [EEOC Issues Guidance On Testing Employees For COVID-19](#)

EEOC Issues Guidance On Testing Employees For COVID-19

On April 23, 2020, the U.S. Equal Employment Opportunity Commission (“EEOC”) issued guidance on testing employees for COVID-19. The pandemic is ongoing and no one knows exactly when it will end, but the EEOC guidance will help employers navigate some challenges as employees return to work during the COVID-19 pandemic.

Previously issued guidance by EEOC stated that Covid-19 was a “direct threat” to the health of others under the Americans with Disabilities Act (“ADA”). In light of that, the new EEOC guidance allows an employer to administer a COVID-19 test before permitting employees to enter the workplace if that test is “job related and consistent with business necessity.”

The new guidance comes with caveats. Employers should ensure that the tests are accurate and reliable, and “may wish to consider the incidence of false-positives or false-negatives associated with a particular test.” To help, the EEOC instructs employers to regularly review U.S. Food and Drug Administration guidance for updates about what may or may not be considered safe and accurate testing, and to seek additional guidance from the Center for Disease Control or other public health authorities. Employers should also be aware that accurate testing only reveals if the virus is currently present, but a negative test does not mean any employee will not later acquire the virus.

Finally, employers should continue to observe infection control practices, such as social distancing and regular hand washing, to help prevent spreading the virus. Testing employees should not be viewed as a perfect preventative, but rather another tool to help limit workplace exposure to COVID-19. This latest EEOC guidance does not shed much light on precisely when or how often an employer may test an employee for COVID-19. As long as COVID-19 remains a direct threat, it appears that employers have considerable latitude in determining when and how often to test. Employers should keep in mind that the ADA requires that medical data is to be handled in a confidential manner.

Employers looking for help navigating the Covid-19 pandemic should reach out to one of Ryley Carlock & Applewhite’s Labor and Employment attorneys for further direction.

Nate Niemuth | 602.440.4810 | nniemuth@rcalaw.com

Michael D. Moberly | 602.440.4821 | mmoberly@rcalaw.com

Robert M. Warzel | 602.440.4888 | rwarzel@rcalaw.com

Related Attorneys

- [Nathan R. Niemuth](#)

Solutions

- [Labor and Employment](#)

COPYRIGHT © 2022 - RYLEY CARLOCK & APPLEWHITE. A PROFESSIONAL CORPORATION. ALL RIGHTS RESERVED.

[Arizona](#) | [Colorado](#)