



## COVID-19 Update: EEOC approves testing employees for coronavirus before returning to work

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As state officials are beginning to implement plans to safely phase out stay-at-home orders, employers are evaluating various ways to prevent the transmission of COVID-19 as employees begin returning to the workplace. On April 23, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) issued new guidance that expands an employer's ability to protect its workforce by allowing employers to test employees for the presence of COVID-19.

In a [previous publication](#), we discussed considerations for employers who choose to take their employees' temperatures before allowing them to report to work. Now, the updated EEOC guidance provides employers with assurance that going a step further by implementing COVID-19 testing is also lawful under the Americans with Disabilities Act (ADA).

As the EEOC explains, any mandatory medical test of employees must be "job related and consistent with business necessity" in order to comply with the ADA. Applying this standard to the COVID-19 pandemic, the EEOC guidance states that employers may choose to administer COVID-19 tests to employees before they enter the workplace to determine if they have the virus "because an individual with the virus will pose a direct threat to the health of others."

Employers must ensure, however, that the tests are reliable and accurate. The EEOC recommends that employers review [guidance from the U.S Food and Drug Administration](#) about what may or may not be considered safe and accurate COVID-19 testing, as well as guidance from the CDC and other public health authorities. In addition, the EEOC cautions employers to consider the possibility of false positives or false negatives and that a negative test does not mean an employee cannot contract the virus later.

Finally, the EEOC emphasizes that employers should continue to implement other measures to the greatest extent possible to prevent the transmission of COVID-19, such as social distancing, frequent handwashing and disinfecting common areas.

Employers interested in implementing mandatory COVID-19 screening should consult with legal counsel. Although the EEOC's guidance approves of testing employees for the virus under the ADA, there other important employment law implications that should be considered, such as employee confidentiality and wage and hour issues.

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