



## Updated EEOC Guidance Allows Employee COVID-19 Testing

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How far is too far? That is a question most employers are struggling with as they work to maintain workplaces free from COVID-19 and ensure the health and safety of their employees. This is especially true with regard to efforts to restrict access to the workplace based upon medical examinations – a practice that is normally frowned upon. However, the EEOC just provided some welcome guidance in this area in light of the ongoing pandemic.

On April 23, the EEOC updated its publication “[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)” to address employee COVID-19 testing:

### **A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?**

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the

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virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require - to the greatest extent possible - that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

As testing availability opens up in this next phase of the pandemic, the EEOC has confirmed that employers may require COVID-19 testing as a condition of allowing employees to return to the workplace as long as it is done in a manner to ensure test results are accurate and reliable. This most recent update provides an additional option to employers as they look to enhance their COVID-19 prevention measures in the workplace.