
Employers May Screen for COVID-19

On April 23, the Equal Employment Opportunity Commission (EEOC) updated its guidance on the Americans with Disabilities Act (ADA) and the Rehabilitation Act in regards to the coronavirus. Under the new guidance employers may screen employees for COVID-19, as long as the test is job-related and consistent with business necessity. ADA and Rehabilitation Act rules still apply; however, the new guidance makes it easier for employers to comply with the CDC guidelines and suggestions for employers, available at https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html.

Considerations

While employers may screen employees entering the workplace for COVID-19, they need to be aware of the limitations of testing. A negative COVID-19 test does not mean that an employee will remain negative. Also, testing for antibodies is problematic because of well-documented incidents of false positives or false negatives with currently available tests. Employers should also have a policy in place in case an employee refuses to be tested, as well as guidelines for what to do if an employee does test positive (e.g., how long before the employee can return to work, how to address possible workplace exposure, must the employee test negative on one or two subsequent tests, etc.)

Testing or screening must be performed in a nondiscriminatory manner. Employers cannot single out individual employees for testing and would likely need

to test all employees entering the worksite. Also, test results are confidential medical records and must be treated as such. Employers may be obligated to pay employees for time spent waiting to be tested and waiting for results, assuming employees are not permitted to enter the workplace until test results are available.

Undue Hardship

The ADA requires employers to provide reasonable accommodations for employees with disabilities as long as those accommodations do not impose an undue hardship on the employer. The EEOC updated the guidance on what constitutes undue hardship during a pandemic on April 17. Employers may now take into account loss of income stream and lower staffing levels when considering whether an accommodation poses an undue hardship. Note, that even with these new guidelines employers should be careful about citing undue hardship as a reason to refuse accommodations as it may require the employer to prove the hardship should an employee file suit.

What This Means for Counties

As states begin to relax shelter in place restrictions, counties should decide if testing employees for COVID-19 is necessary before allowing them to return to the workplace. If counties decide to implement testing, they should review the CDC's guidelines and the EEOC guidance (<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>) to ensure they are in compliance. For more information, contact CTSI at (303) 861 0507. [CTSI](#)